

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
)	Case No. 03-12676 (MFW)
MET-COIL SYSTEMS CORPORATION,)	
)	
Debtor.)	Hearing Date: November 18, 2003 at 12:30 p.m.
)	Objections Due by: November 11, 2003 at 4:00 p.m.

**APPLICATION FOR ORDER AUTHORIZING LEGAL REPRESENTATIVE FOR
FUTURE CLAIMANTS TO RETAIN AND EMPLOY
EXPONENT AS TOXICOLOGISTS AND EPIDEMIOLOGISTS**

Eric D. Green (the "Future Claimants' Representative"), as the legal representative for Future Claimants (defined herein below) in the above-captioned case, hereby files this application (the "Application") for an order pursuant to sections 105(a), 327, and 1103 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the Future Claimants' Representative to retain and employ Exponent effective as of October 20, 2003, principally Dr. Jeffrey Mandel and Dr. Abby Li, as his toxicologists and epidemiologists, to investigate and analyze the Debtor's trichloroethylene-related liability. In support thereof, the Future Claimants' Representative respectfully submits the following:

INTRODUCTION

1. On August 26, 2003 (the "Petition Date"), the debtor in the above captioned case (the "Debtor" or "Met-Coil") commenced this case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
2. Since filing their petitions for relief, the Debtor has continued to manage and operate its business as debtor-in-possession pursuant to Sections 1107 and 1108 of the

Bankruptcy Code. On September 11, 2003, the Official Committee of Unsecured Creditors (the “Committee”) was appointed in this case by the United States Trustee.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein are sections 105(a), 327, and 1103 of the Bankruptcy Code.

4. On September 22, 2003, the Debtor filed its Application for the Appointment of Eric Green as Legal Representative for Future Claimants, (the “Appointment Application”)[D.I. 110]. In the Appointment Application, the Debtor requested that the Future Claimants’ Representative be granted permission to employ attorneys or other professionals consistent with sections 105, 327 and 1103 of the Bankruptcy Code. On October 20, 2003, this Court entered an order appointing Eric Green as Future Claimants’ Representative and granting him authority to employ attorneys or other professionals.

BACKGROUND

5. Met-Coil is a metal forming company with two separate operating divisions, Lockformer and IPI. Lockformer operates out of a manufacturing facility in Lisle, Illinois, and IPI operates out of a manufacturing facility in Cedar Rapids, Iowa. Through its two divisions, Met-Coil manufactures advanced sheet metal-forming equipment, fabricating equipment and computer controlled fabrication systems for HVAC sheet metal contractors, steel service centers and custom roll formers in the global market.

6. Met-Coil filed this chapter 11 proceeding in order to obtain relief from a mounting tide of lawsuits that had been filed against it as a result of an alleged release of trichloroethylene (“TCE”) into the soil at the Lisle facility of one of Met-Coil's operating divisions, the Lockformer Company. The plaintiffs in these lawsuits, allege, amongst other

things, property damages, diminution in property values, nuisance and personal injuries. Certain of the lawsuits also seeks punitive damages from Met-Coil.

7. Most of the plaintiffs in these suits own property or live near the Lisle facility. As is common with claims arising from alleged environmental contamination, it may take years for claimants to develop injuries or realize that their property has been damaged. Many claimants may not realize that they might have a claim against Met-Coil because no damages or injuries have developed or been discovered. Other claimants may allege that their claims arose after the Petition Date. In order to protect the rights and interests of these persons who may have claims or demands against Met-Coil or other third parties arising after the Petition Date as a result of the alleged release of TCE (“Future Claimants”), the Debtor has sought an appointment of a representative to protect the interests of the Future Claimants (the “Future Claimants' Representative”).

8. A key feature of any consensual plan of reorganization in this case will likely be the creation of a channeling injunction. Through a channeling injunction, all current and future personal injury claims and property damage claims against the Debtor will be directed to a trust established for the purposes of equitably distributing available assets to the holders of such claims.

9. The Future Claimants' Representative anticipates that the structure and provision of a plan of reorganization will be the subject of intense negotiations during the coming months. During these negotiations, the rights of current claimants can be well represented and indeed protected by the claimants who have elected to be heard in these proceedings as parties in interest. The appointment of a Future Claimants' Representative is necessary to represent and protect the rights of Future Claimants.

RELIEF REQUESTED

10. By this Application, the Future Claimants' Representative respectfully requests the entry of an order pursuant to Sections 105 and 1103 and, to the extent applicable, section 327 of the Bankruptcy Code authorizing the Future Claimants' Representative to retain and employ Exponent, specifically Dr. Jeffrey H. Mandel and Dr. Abby Li, effective as of October 20, 2003, as his epidemiologists and toxicologists to investigate the Debtor's TCE-related liability.

BASIS FOR THE RELIEF REQUESTED

11. Section 327(a) of the Bankruptcy Code provides, in relevant part, as follows:

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a).

12. Section 1103(a) of the bankruptcy Code provides, in relevant part, as follows:

At a scheduled meeting of a committee appointed under section 1102 of this title, at which a majority of the members of such committee are present, and with the court's approval, such committee may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.

11 U.S.C. § 1103(a).

13. Bankruptcy Rule 2014(a) provides, in relevant part, as follows:

An order approving the employment of attorneys . . . pursuant to § 327, § 1103, or § 1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and . . . a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

14. In other chapter 11 cases, legal representatives for future claimants have been authorized to retain professionals to assist them in performing their duties in the bankruptcy proceedings. See, e.g., In re Johns-Manville Corporation, Ch. 11 Case No. 82-B-11656 (BRL) (Bankr. S.D.N.Y. August 14, 1984); In re Keene Corporation, Ch. 11 Case No. 93-B-46090 (SMB) (Bankr. S.D.N.Y. 1994); In re The Babcock & Wilcox Company, Ch. 11 Case No. 00-1092 (Bankr. E.D. La. 2000); In re Pittsburgh Corning Corporation, Ch. 11 Case No. 00-22876 (JKF) (Bankr. W.D. Pa. 2000); In re North American Refractories Company, Ch. 11 Case No. 02-20198 (JKF) (Bankr. W.D. Pa. 2002); In re Federal-Mogul Global Inc., Ch. 11 Case No. 01-10578 (Bankr. D. Del. 2001); In re USG Corporation (Ch. 11 Case No. 01-2094 (RJN) (Bankr. D. Del. 2001); In re AC and S, Inc., Ch. 11 Case No. 02-12687 (RJN) (Bankr. D. Del. 2002); In re Kaiser Aluminum Corporation, Ch. 11 Case No. 02-10429 (JKF) (Bankr. D. Del. 2002).

15. The Future Claimants' Representative seeks to retain Exponent to provide consulting services and to analyze and produce studies and estimates of potential health problems and accompanying damages resulting from the alleged release of TCE from the Debtor's

Lockformer facility, and provide other services or litigation support as may be necessary. These services will help the Future Claimants' Representative determine the parameters of exposure and the possibility of subsequent health problems arising from the varying degrees of exposure in areas potentially contaminated by the migration of TCE from the Debtor's Lockformer facility. Exponent's studies and analysis will establish one of the factual predicates for determining the number of individuals who may have been affected by, the severity of injuries of those exposed to, and the potential future personal injury and property damage liabilities associated with, the Debtor's TCE release. The services to be provided by Exponent and are essential components of the due diligence that the Future Claimants' Representative must undertake in order to understand and to attempt to quantify the Debtor's future TCE liability.¹

16. Exponent is well-suited to act as the Future Claimants' Representative's toxicologists and epidemiologists. Dr. Mandel has conducted many studies and has published more than 100 articles related to epidemiology, including studies of prostate, colorectal, kidney, pancreatic, breast, lung, stomach, skin and lymphatic and hematopoietic cancers. These studies have evaluated a variety of potential causes for illness, including exposure to various toxic chemicals. He has considerable experience in assessing exposures to solvents and has utilized environmental monitoring in the consideration of potential disease development. Dr. Li is an expert in neurotoxicology, developmental neurotoxicology, and risk assessment, and has served on the EPA's Science Advisory Board reviewing, among other things, regulatory decisions on TCE risk assessment for cancer and non-cancer endpoints. She is currently involved in a project

¹ Exponent has been advised that the Future Claimants' Representative has also retained experts in the areas of hydrology, statistics, trust management, and claim processing to assist the Future Claimants' Representative's due diligence and negotiation efforts. The Future Claimants' Representative's team of experts and other professionals will work in a coordinated manner to avoid any unnecessary duplication of efforts.

evaluating risks to a community exposed to TCE from groundwater contamination and has been involved in recent discussions with the Environmental Protection Agency on TCE risk assessments. Dr. Mandel's and Dr. Li's *curricula vitae* are annexed hereto as Exhibit A. Based on their significant experience in their fields, and their familiarity with the Debtor's mass tort-related liability issues, the retention of Exponent is in the best interest of the Debtor's estate and its creditors and is also in the best interest of the unknown TCE claimants.

17. Subject to court approval, and in accordance with Section 330(a) of the Code, compensation will be paid to Exponent on an hourly basis, which will include actual, necessary expenses incurred by Exponent. Dr. Mandel's hourly rate is \$350.00 and Dr. Li's hourly rate is \$245.00. Expenses for travel and consumables are billed at cost to the client. Charges are not accumulated or billed to the client for non-professional or clerical staff.

18. Exponent understands that their fees and expenses in these chapter 11 proceedings will be subject to the requirements of sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules and any order entered by this Court establishing procedures for interim compensation and reimbursement of expenses of professionals.

19. Neither Exponent, nor any consultant, analyst, or employee thereof, holds or represents any interest adverse to the above-captioned debtor and debtor in possession (the "Debtor") in the matters for which Exponent is to be employed, except as may be set forth in the declaration of Dr. Jeffrey H. Mandel (the "Mandel Declaration"), annexed hereto as Exhibit A.

20. In the event that Exponent discovers connections with any party in interest in the Debtor's chapter 11 case, or any information pertinent to this Application, under the requirements of Bankruptcy Rule 2014, Exponent shall promptly disclose such connections and information to the Court in a supplement to the Mandel Declaration.

BEST INTERESTS OF THE ESTATES

21. Exponent is, in the Future Claimants' Representative's view, highly skilled, and prepared to quickly develop a familiarity with the Debtor's affairs. The Future Claimants' Representative therefore believes that the retention of Exponent is in the best interest of the Debtor, its estate and creditors, as well as in the best interest of the Future Claimants.

NOTICE

22. The Future Claimants' Representative provided notice of this Application to the Office of the United States Trustee, the Debtor, the Committee, Mestek, Inc., or its designee under the Post-Petition Loan and Security Agreement, dated August 28, 2003 (the "DIP Lender"), and all parties who filed Notices of Appearance herein.

NO PREVIOUS REQUEST

23. No previous request for the relief sought in this Application has been made to this or any other Court.

WHEREFORE, the proposed Future Claimants' Representative requests entry of an order authorizing him to employ and retain Exponent effective as of October 20, 2003, as toxicology and epidemiology experts and consultants to investigate the Debtor's TCE-related liability in this chapter 11 case, and granting such other and further relief as is just and proper.

Dated: October 23, 2003



Eric D. Green, as the Future Claimants'
Representative