

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

In re:)	
)	Chapter 11
Met-Coil Systems Corporation,)	
)	Case No. 03-12676 (MFW)
)	
Debtor.)	

**DEBTOR'S MOTION PURSUANT TO 11 U.S.C. §§ 105(A) AND 365(A)
AUTHORIZING THE DEBTOR TO ASSUME THE DEBTOR'S
EMPLOYMENT AGREEMENT WITH CHARLES F. KUONI**

Met-Coil Systems Corporation, debtor and debtor in possession (the "**Debtor**" or "**Met-Coil**") in the above-captioned Chapter 11 case (the "**Case**"), hereby presents this motion (the "**Motion**") for entry of an Order authorizing the Debtor to assume its employment agreement with Charles F. Kuoni III ("**Kuoni**"). In support of the Motion, the Debtor refers to and relies upon the Affidavit of Charles F. Kuoni III in Support of First Day Motions of Met-Coil Systems Corporation (the "**Kuoni Affidavit**"), filed contemporaneously herewith and incorporated herein by reference, and respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are §§ 105(a) and 365(a) of title 11 of the United States Code (the "**Bankruptcy Code**").

INTRODUCTION

4. On August 26, 2003 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtor is operating its business as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed.

RELIEF REQUESTED

6. By this Motion, the Debtor respectfully requests that the Court enter an Order pursuant to §§ 105(a) and 365(a) of the Bankruptcy Code, authorizing the Debtor to assume the employment agreement that it executed with Kuoni. Prior to the Petition Date, the Debtor and Kuoni entered into that certain Employment Agreement dated August 11, 2003, a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference (the "**Employment Agreement**"). The Debtor has determined that assuming the Employment Agreement is in the best interest of the Debtor's estate, its creditors and other parties-in-interest. To ensure a successful reorganization of the Debtor, the knowledge, experience and leadership of Kuoni is vital.

7. Section 365(a) of the Bankruptcy Code provides that "the [debtor in possession], subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The debtor should be authorized to assume an executory contract if the debtor demonstrates a sound business justification for doing so. See In re Group of Institutional Investors, Inc. v. Chicago, Milwaukee, St. Paul and Pac. R.R. Co., 318 U.S. 523, 550 (1943) ("the question [of assumption] is one of business judgment"); In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983); In re Delaware

Hudson Railway Co., 124 B.R. 169, 179 (Bankr. D. Del. 1991). Once the debtor articulates a valid business justification, "the business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the business interests of the company.'" In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

8. The business judgment rule has vitality in chapter 11 cases. See Integrated Resources, 147 B.R. at 656; In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (Bankruptcy Code favors continued operation of business by debtor and presumption of reasonableness attaches to the debtor's management decisions).

9. Since joining the Debtor, Kuoni has updated the Debtor's cash management system, negotiated with potential DIP lenders, negotiated with customers and vendors, assisted with communications to the workforce and third parties concerning the impact of the filing and otherwise handled operational and administrative matters for the Debtor.

10. Kuoni has extensive experience in running companies in financial difficulty. Attached hereto as **Exhibit B** is a copy of Kuoni's Curriculum Vitae.

11. The Debtor has not breached any of the terms of the Employment Agreement and as such will not incur costs to cure any defaults in accordance with § 365 of the Bankruptcy Code.

NOTICE AND PRIOR APPLICATION

12. Notice of this Motion has been given to (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for the Debtor's prepetition and postpetition

secured lenders; (c) the Debtor's twenty (20) largest unsecured creditors; (d) the United States Environmental Protection Agency; (e) the Attorney General of the State of Illinois; (f) the DuPage County State's Attorney; (g) counsel to the plaintiffs in the environmental litigation matters pending before the United States District Court for the Northern District of Illinois and the Circuit Court for the Eighteenth Judicial District, DuPage County (collectively, the "Core Group"); and (h) Kuoni. As this Motion is seeking "first day" relief, notice of this Motion and any order entered respecting this Motion will be served as required by Del. Bankr. LR 9013-2(d). The Debtor submits that under the circumstances no other or further notice need be given.

13. No previous motion or application for the relief sought herein has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter an Order in substantially the form annexed hereto, (i) granting this Motion; (ii) authorizing the Debtor to assume the Employment Agreement with Kuoni; and (iii) granting such other and further relief as this Court may deem just and proper under the circumstances.

Dated: August 27, 2003

MORRIS, NICHOLS, ARSHT & TUNNELL



Robert J. Dehney (No. 3578)
Eric D. Schwartz (No. 3134)
James C. Carignan (No. 4230)
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19899-1347
(302) 658-9200

- and -

GOLDBERG KOHN BELL BLACK
ROSENBLUM & MORITZ, LTD.
Ronald Barliant (Illinois ARDC# 0112984)
55 East Monroe Street, Suite 3700
Chicago, Illinois 60603
Telephone: (312) 201-4000
Facsimile: (312) 332-2196

Proposed attorneys for the Debtor and
Debtor-in-Possession