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.	)	**Objection Date: Dec. 26, 2003 @ 4:00 p.m. ET**
	)	**Hearing Date: Jan. 7, 2004 @ 2:00 p.m. ET**

DEBTOR'S FIRST SUBSTANTIVE OMNIBUS OBJECTION TO PROOFS OF CLAIM NUMBERS 172, 184, 185, 186, 187, 202, 203, 204, 205, 212, 218, 220 222, 223, 224, 226, 227, 235, 240 AND 246 FOR CONTRIBUTION AND RULE 11 SANCTIONS

Met-Coil Systems Corporation, debtor and debtor in possession in the above-captioned case (the "**Debtor**"), hereby submits its objection (the "**Objection**") pursuant to §§ 502(b) and (e) of title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 3001 and 3007 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") to proofs of claim numbered 172, 184, 185, 186, 187, 202, 203, 204, 205, 212, 218, 220, 222, 223, 224, 226, 227, 235, 240 and 246 (the "**Claims**") filed by various third-party and fourth-party defendants in certain lawsuits currently proceeding in the United States District Court for the Northern District of Illinois, Eastern Division, styled as Mejdrech v. Met-Coil Systems Corp., Case No. 01 C 6107 (the "**Mejdrech Action**") and LeClerq v. The Lockformer Co., Case No. 00 C 7164 (the "**LeClerq Action**"). In support of its Objection, the Debtor states as follows:

Introduction

1. On August 26, 2003 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is operating its business as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

3. The statutory predicates for the relief sought herein are §§ 502(b) and (e) of the Bankruptcy Code and Bankruptcy Rules 3001 and 3007.

The Claims

4. Fifteen third-party and fourth-party defendants in the LeClerq Action and the Mejdrech Action (the "**Contribution Defendants**") have filed the Claims.[1] The Claims range in stated amounts from $500,000 to more than $51,000,000. All the Claims, other than claim number 227, include contingent claims for contribution (the "**Contribution Claims**"); eight of the Claims also include claims for sanctions under Rule 11 of the Federal

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[1] The Contribution Defendants include: Rexnord Corporation (Claim No. 172), Magnetrol International, Inc. (Claim Nos. 184, 185 and 186), Arrow Gear Company (Claim No. 187), Theresa LeClercq & Al LeClercq, and all others similarly situated by Suburban Moving & Storage Co., Inc., a/k/a Suburban Self Storage (Claim No. 202), Jan Matisiak & Walt Matisiak and others similarly situated by Suburban Moving & Storage Co., Inc., a/k/a Suburban Self Storage (Claim No. 203), Suburban Moving & Storage Co., Inc., a/k/a Suburban Self Storage (Claim No. 204). Suburban Moving & Storage Co., Inc. (Claim No. 205), Molex Incorporated (Claim No. 212), Flexible Steel Lacing Company (Claim No. 218), White Lake Building Corporation (Claim No. 220), Lindy Manufacturing Co. (Claim No. 222), Bison Gear (Claim No. 223), William Helwig (Claim No. 224), Ames Supply Company (Claim No. 226), The Morey Corporation (Claim No. 227), Scot Incorporated (Claim No. 235), Fusibond Piping Systems, Inc. (Claim No. 240), and Tricon Industries Incorporated (Claim No. 246). Suburban Moving & Storage Co., Inc., William Helwig, White Lake Building Corporation and Fusibond Piping Systems, Inc. are fourth party-defendants in the LeClerq and Mejdrech Actions. Scot Incorporated is a fourth-party-defendant in the LeClerq Action and a third-party defendant in the Mejdrech Action. All the other Contribution Defendants are third-party defendants in both the LeClerq and Mejdrech Actions. Although the Debtor has not asserted claims against fourth-party defendants Fusibond Piping Systems, Inc., Suburban Moving & Storage Co., Inc., and William Helwig in either the LeClerq or Mejdrech Actions (Scott Incorporated is a third-party defendant in the Mejdrech Action), the claims asserted by each of the Contribution Defendants are substantially similar.

Rules of Civil Procedure and 28 U.S.C. § 1927 in the LeClerq Action (the "**Rule 11 Claims**").[2]

5. With respect to the Contribution Defendants asserting Contribution Claims, each Claim contains, in an attached addendum, a statement substantially similar to the following statement:

> To the extent that Lockformer/Met-Coil, property owners at and in the area of the Lockformer Property and/or the Ellsworth Industrial Park, the Illinois Environmental Protection Agency, and/or the United States Environmental Protection Agency prove that Creditor caused the release of hazardous substances from its property . . . , and that such releases have contributed to the contamination at and migrating from the Lockformer Property, then Creditor would have a claim for contribution and other relief under state and federal statutes and common law against any other parties responsible for such contamination, including, but not limited to, Lockformer and or Met-Coil.[3]

The Contribution Defendants further state, "Creditor's Contribution Claims are contingent upon a future finding of liability of Creditor to third-parties." Accordingly, each Contribution Claim is a contingent, unsecured and unliquidated claim for contribution reimbursement with respect to claims for which, if valid, the Debtor is jointly liable.

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[2] Claims numbered 172, 187, 218, 222, 223, 226, 227 and 246 assert the Rule 11 Claims. The Contribution Defendants asserting a Rule 11 claim also state in their proof of claims that they "intend[ ] to file a similar Rule 11 Motion in the Mejdrech Action." However, no such Rule 11 motion has yet been filed in the Mejdrech Action, and there is no basis for such a filing. The Debtor reserves its rights under § 362 of the Bankruptcy Code with respect to either or pending or future Rule 11 motions.

[3] Claim numbers 202, 203, 204 and 205 filed by Suburban Moving & Storage Co., Inc., contains the following statement regarding its contribution claim: "To the extent the court finds Suburban liable pursuant to the Fourth party-Complaint, Suburban has claims against the Debtor pursuant to CERCLA § 113(f), 42 U.S.C. § 9613(f), and/or the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/2 et seq, as well as other state and federal law claims, including claims for attorney's fees."

6. With respect to the Contribution Defendants asserting Rule 11 Claims, each Claim contains, in an attached addendum, a statement substantially similar to the following statement:

> Creditor believes that Lockformer's third-party complaints in the Mejdrech Action and the LeClerq Action are without merit and frivolous and on August 8, 2003 filed a motion for sanctions in the LeClerq Action under Rule 11 of the Federal Rules of Civil Procedure and 28 U.S.C. Section 1927 seeking recovery of attorneys' fees and other defense costs incurred by Creditor in responding to the LeClerq Action . . . . This motion is pending with the District Court.

The Contribution Defendants asserting Rule 11 Claims go on to state that the amount of recovery under the motion cannot be ascertained with certainty at this time although they believe the amount could be in excess of $1,000,000.[4]

Relief Requested

7. By this Objection, the Debtor requests this Court disallow and expunge the Claims pursuant to §§ 502(b) and 502(e) of the Bankruptcy Code and Bankruptcy Rules 3001 and 3007.[5]

Basis for Relief

8. The Claims are without merit and should be disallowed and expunged from the Debtor's claims docket. First, the Contribution Claims are contingent claims for contribution for which the Contribution Defendants, if the Claims were true, would be liable

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[4] Claim number 227 filed by the Morey Corporation does not contain any statements supporting its claim but merely attaches, as an exhibit, what appears to be a computer printout of fees and a copy of the motion for sanctions.

[5] Claim numbers 184, 185 and 186 filed by Magnetrol International, Inc. and Claim numbers 202, 203, 204 and 205 filed by Suburban Moving & Storage Co. are duplicative of one another. The Debtor reserves the right to include an objection to such claims in a non-substantive omnibus objection.

with the Debtor. Accordingly, the Contribution Claims should be expunged pursuant to § 502(e)(1)(B). Second, the Debtor simply is not liable as a matter of law for either the Contribution Claims or the Rule 11 Claims. Accordingly, such claims should be expunged pursuant to § 502(b)(1). Third, the Claims fail to state the amount of their claims as of the Petition Date and also fail to attach sufficient documentation to support any amounts claimed. Accordingly, the Claims should be disallowed pursuant to Bankruptcy Rule 3001.

A. The Contribution Claims Should Be Expunged Pursuant to § 502(e)(1)(B).

9. Section 502(e)(1)(B) of the Bankruptcy Code provides, in pertinent part:

> (e)(1) Notwithstanding subsections (a), (b) and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to extent that –
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> > (B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution…

11 U.S.C. § 502(e)(1)(B). A claim must be disallowed under § 502(e)(1)(B) if three criteria are satisfied: first, the claim must be contingent; second, the claim must be for contribution or reimbursement; and third, the claimant must be co-liable with the debtor with respect to the claim. In re Pinnacle Brands, Inc., 259 B.R. 46, 55 (Bankr. D. Del. 2001) (Walrath J.), (citing In re Dant & Russell, Inc., 951 F.2d. 246, 248 (9th Cir. 1991)). The legislative history behind § 502 states that the section: "requires disallowance of the claim for reimbursement or contribution of a co-debtor, surety or guarantor of an obligation of the debtor, unless the claim of the creditor on such obligation has been paid in full." H.R. Rep.

No. 95-595, 1st Sess. at 353-355 (1977), U.S.Code Cong. & Admin.News 1978, pp. 6308-6311.

10. Section 502(e)(1)(B) is particularly applicable to contingent claims for contribution or reimbursement on account of potential environmental liability. See, e.g., In re Charter Co., 862 F.2d. 1500 (11th Cir. 1989); In re Eagle-Picher Indus., Inc, et al., 131 F.3d. 1185 (6th Cir. 1997); In re Hemmingway Transport, Inc., 993 F.2d. 915 (1st Cir. 1992). Charter Co. is directly on point. In that case, creditors filed proofs of claim alleging that the debtor would be jointly and severally liable to the creditors for any monetary award that might be assessed against them for certain environmental liabilities. The court found that the creditors claims must be disallowed pursuant to § 502(e)(1)(B). 'These claims fall within the ambit of § 502(e)(1)(B) . . . . All are claims for reimbursement or contribution pursuant to 42 U.S.C. § 9613(f)(1) and, as alleged by the appellants themselves, the claims are ones for which [creditors] are liable with the debtor." Charter Co., 862 F.2d. at 1502, 1503.

11. Applying the three-part test set forth in Pinnacle Brands to the Contribution Claims, the Contribution Claims must be disallowed pursuant to § 502(e)(1)(B).

12. First, the Contribution Claims are contingent claims. "The primary example of a contingent claim in this context is 'when a co-debtor has not paid the creditor and [thereby] established his right to payment from the debtor.'" In re MEI Diversified, 106 F.3d. 829, 832 (8th Cir. 1997), citing In re A & H, Inc., 122 B.R. 84, 86 (Bankr. W.D. Wis. 1990)). "A claim for reimbursement or contribution under § 502(e) is contingent, and not allowable, except to the extent that the surety or co-debtor has actually paid the underlying claim." A & H, Inc., 122 B.R. at 86; In re Early & Daniel Indus., Inc., 104 B.R. 963, 967

(Bankr. S.D. Ind. 1989). Here, the Contribution Claims, by their own terms, are contingent claims. In fact, the Contribution Defendants specifically state as much. The Contribution Defendants assert that they will not have a claim against the Debtor unless and until it is proven that such Contribution Defendant caused the release of hazardous substances from its property. No such liability has been proven with respect to any of the Contribution Defendants. Furthermore, none of the Contribution Defendants have paid any of the underlying claims. Accordingly, their claims remain contingent.

13. Second, the Contribution Claims are, by their own terms, claims for reimbursement or contribution. Each of the Contribution Claims assert that the "Creditor would have a claim for contribution and other relief . . . ." Accordingly, the Contribution Claims are claims for contribution and are subject to § 502(e)(1).

14. Third, the Contribution Defendants are co-liable with the Debtor on account of the Contribution Claims. In determining whether a creditor is an entity "liable with the debtor," the court in Matter of Baldwin-United Corp., 55 B.R. 885, 890 (Bankr. S.D. Ohio 1985) stated that the phrase "is broad enough to encompass any type of liability shared with the debtor, whatever its basis." See A & H, Inc., 122 B.R. at 86. In In re Isaac, No. 90-0150 1990 WL 68875 at 2 (E.D. Pa. May 21, 1990), the court stated that:

> [I]n determining whether an entity is liable with the Debtor as used in [§ 502(e)(1)(B)], the proper standard is whether the causes of action in the underlying action assert claims upon which, if proven, the Debtor could be held liable but for the automatic stay. Even when a creditor . . . ascribes various names or titles to its claims, but each is essentially for reimbursement for moneys to be expended by the creditor, the creditor's claims fall within the scope of disallowance of § 502(e).

Here, if the Contribution Defendants could successfully seek contribution from the Debtor on account of environmental liabilities, then the Debtor is necessarily a party who could have

been held liable for such liabilities but for the automatic stay. Therefore, the Contribution Defendants are clearly "liable with" the Debtor on account of their Contribution Claims.

15. The Contribution Claims are nothing more than contingent claims for contribution for which, even if they were valid claims, the Contribution Defendants would be jointly liable with the Debtor. Accordingly, the Contribution Claims should be expunged pursuant to § 502(e)(1)(B).

B. The Third-Party Claims Should Be Expunged Under § 502(b)(1).

16. Section 502(b)(1) states, in pertinent part:

> (b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and hearing, shall determine the amount of such claim as of the date of filing the petition, and shall allow such claim in lawful currency of the United States in such amount, except to the extent that—
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> > (1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.

The Rule 11 Claims and the Contribution Claims are unenforceable against the Debtor under applicable law and therefore should be expunged.

17. First, the Rule 11 Claims are without merit. When the Debtor filed the third-party complaints, it had a good faith belief based upon the best evidence available to it at the time that the allegations and factual contentions contained in the complaints were supported by the evidence or were likely to have support after further investigation and discovery. Furthermore, the claims contained in the complaints are warranted and supported by existing law. In their motion for sanctions, the Defendants rely heavily on the fact that the Court in the underlying action had "several problems" with the allegations made by the

Debtor in the third-party complaints. The court did not, however, reject the Debtor's allegations. Furthermore, the Debtor believed, at the time it filed the third-party complaints, that the allegations were valid and supported by solid factual analysis. Accordingly, the Rule 11 Claims are without merit and should be expunged.

18. Even if the Court does not believe that the Rule 11 Clams should be disallowed and expunged at this time, the bankruptcy claims allowance process is not the proper venue to decide these claims. The Rule 11 Claims should be decided in the context of the third-party contribution actions. As the Court where the LeClerq Action is currently pending recognized, the Rule 11 Claims are dependent on the Court's summary judgment ruling in that Action. (Transcript of Hearing on Aug. 14, 2003, attached hereto as Exhibit C, at 11-12.) In fact, counsel for one of the Contribution Defendants even acknowledged at a hearing in the LeClerq Action: "We have no problem with having [the Rule 11 motion] considered after your Honor rules on our summary judgment motion. It would probably make more sense rather than turning this into the summary judgment motion." (Id. at 12.) The Court where the LeClerq Action is proceeding will have to enter summary judgment on behalf of the Contribution Defendants (which is highly unlikely) for the Rule 11 Motion to even be relevant.[6] At this time, the Rule 11 Claims are at best contingent claims. It makes little sense for this Court to resolve those claims in the context of its claims administration

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[6] As noted above, the Contribution Defendants asserting a Rule 11 claim also state in their proof of claims that they "intend[ ] to file a similar Rule 11 Motion in the Mejdrech Action." However, no such Rule 11 motion has yet been filed in the Mejdrech Action, and there is no basis for such a filing. As to the Mejdrech Action, the very *filing* of a Rule 11 Motion is contingent, much less its resolution.

process. Accordingly, the Rule 11 Claims should be expunged or decided in the context of the LeClerq Action.

19. Second, the Contribution Claims do not constitute valid liabilities of the Debtor. The Contribution Defendants erroneously state: "If Creditor is found to be liable in *the LeClerq Action [and] the Mejdrech Action* . . . for contamination caused or contributed to, in whole or in part, by [the Debtor], Creditor would be entitled to recover a portion of the remediation costs and money damages paid . . . from [the Debtor] . . . ." (Emphasis added.) This statement is nonsense. Contribution actions are equitable proceedings that, by their very nature, allocate the percentage of liability due to each party involved in the action. The Debtor is *already* asserting contribution claims against each third-party defendant in the LeClerq and Mejdrech Actions, and the third-party defendants are seeking contribution from fourth-party defendants in those actions. Each defendant's liability will be determined in the context of those actions. Once the Court hearing the LeClerq and Mejdrech Actions determines the equitable allocation of each third-party and fourth-party defendant, the case will end—all parties, including the Debtor, having been assigned their equitable allocation. The Contribution Defendants will not be able to come back against the Debtor as they erroneously seem to imply.[7] Accordingly, the Contribution Claims must be denied pursuant to § 502(b) of the Bankruptcy Code.

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[7] To the extent that the Contribution Defendants assert claims based on "any other yet to be filed action," these claims are clearly contingent and should be expunged pursuant to § 502(e)(1)(B) based on the analysis in the previous subsection.

C. The Claims Must Be Disallowed Pursuant to Bankruptcy Rule 3001[8]

20. Bankruptcy Rule 3001(a) requires that a proof of claim "conform substantially to the appropriate Official Form," which is Form 10. Both Form 10 and the form on which the Claims were filed require a statement of the amount claimed "at Time Case Filed." They also require the claimant to attach supporting documents, including statements and invoices, or, if those documents are voluminous, a summary.

21. With respect to the Contribution Claims, the Contribution Defendants have failed to include any supporting documents or evidence of their claims. Furthermore, they have failed to assert the amount of their claim at the time the case was filed or the basis for that amount. With respect to the Rule 11 Claims, the Contribution Defendants have failed to include any documents supporting the amount of damages they believe they are due on account of the Rule 11 Claims, but merely state that Met-Coil could be required to pay in excess of $1,000,000.

22. Initially, a claimant must allege facts sufficient to support a legal basis for the claim. Pinnacle Brands, 259 B.R. at 49, 50. If the assertions contained in the claim meet this standard of sufficiency, the claim is prima facie valid pursuant to Bankruptcy Rule 3001. Id. Here, the Claims asserted by the Contribution Defendants fail to meet even this minimum standard. Accordingly, the Claims should be disallowed pursuant to Bankruptcy Rule 3001 and § 502(b) of the Bankruptcy Code.

Notice

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[8] Based upon Local Rule 3007-1(d)(vi), the Debtor believes this objection to be substantive. l To the extent it is ruled otherwise, the Debtor reserves its right to include such objection in a non-substantive omnibus objection.

23. Notice of this Objection has been given to (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for the Debtor's postpetition secured lender; (c) the Committee; (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, (h) those parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure; (i) the future claimants representative; and (j) counsel for each Contribution Defendant. The Debtor submits that no other or further notice need be given.

24. No previous objection or other request for the relief sought herein has been made to this or any other court.

25. To the extent any of the Claims objected to herein are not expunged by the Court pursuant to this Objection, the Debtor reserves its rights to object to any of the Claims on any additional grounds available to it.

26. This Objection complies with Local Rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware.

Conclusion

WHEREOFRE, the Debtor respectfully requests this court enter an order disallowing and expunging: (a) the Contribution Claims pursuant to §§ 502(b) and 502(e)(1)(B); and (b) the Rule 11 Claims and the Contribution Claims pursuant to § 502(b) and Bankruptcy Rule 3001.

Dated: November 25, 2003

MORRIS, NICHOLS, ARSHT & TUNNELL

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