

**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 Deadline: Jan. 13, 2004 - 4:00 p.m. (EST)
)	Hearing Date: Jan. 20, 2004 – 10:30 a.m. (EST)

**MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTOR TO ENTER
INTO AGREEMENT TO ALLOW ACCESS ONTO
PREMISES FOR ENVIRONMENTAL INVESTIGATION**

Met-Coil Systems Corporation, as debtor and debtor in possession ("**Met-Coil**" or the "**Debtor**"), by and through its undersigned counsel, hereby moves this Court (the "**Motion**") for entry of an order pursuant to 11 U.S.C. §§ 105(a), 363 and 364(b) authorizing the Debtor to enter into an agreement (the "**Access Agreement**") with Kenneth and Donna Olsen (the "**Olsens**") to allow the Debtor access to the property located at 4741 St. Joseph Creek, Lisle, Illinois 60532 (the "**Property**") to conduct an environmental investigation. In support of the Motion, Met-Coil respectfully states as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. The statutory predicates for the relief requested herein are §§ 105(a), 363 and 364(b) of title 11 of the United States Code (the "**Bankruptcy Code**").

INTRODUCTION

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

4. The Debtor is operating its business as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the "**Committee**") has been appointed.

5. Met-Coil has been involved in several lawsuits over the alleged release of trichloroethylene ("**TCE**") into the soil at its facility in Lisle, Illinois (the "**Lisle Facility**"). The Lisle Facility is operated by one of the Debtor's operating divisions, The Lockformer Company ("**Lockformer**").

6. Lockformer utilized a metal "degreaser" at the Lisle Facility which used TCE, a chlorinated solvent, in its operation. The TCE was stored in a rooftop tank. Honeywell International, Inc. and its predecessors, AlliedSignal, Inc. and Baron Blakeslee, Inc., owned and maintained the storage tank and supplied TCE to Met-Coil.

7. In the 1970's and early 1980's, TCE was allegedly spilled when AlliedSignal's employees transferred the solvent from delivery tanker trucks to the rooftop storage tank. In or about 1991, during the course of repairs to underground utilities, Met-Coil discovered a concentration of TCE deposited in the soil near the fill pipe for the TCE storage tank. Met-Coil thereafter retained an environmental consulting firm to investigate the TCE contamination and to recommend appropriate remediation.

8. On December 5, 1994, pursuant to a voluntary environmental investigation and remediation program of the Illinois Environmental Protection Agency (the

"IEPA"), Met-Coil submitted a Review and Evaluation Services Agreement to the IEPA. On August 26, 1998, Met-Coil submitted a Site Remediation Program Form to the IEPA.

9. On January 19, 2001, the Illinois Attorney General and the DuPage County State's Attorney filed a Verified Complaint for Injunction and Civil Penalties against Lockformer and Met-Coil in the Circuit Court for the Eighteenth Judicial District, DuPage County, Illinois (the "**State Case**"), seeking injunctive relief and civil penalties. The Village of Lisle intervened in the State Case pursuant to a court order dated August 31, 2001.

10. In accordance with that certain January 22, 2001 Agreed Order between Met-Coil and the Illinois Attorney General (the "January 22, 2001 Order"), Met-Coil is required to, among other things, conduct an environmental investigation on the Property. The Debtor needs to gain access to the Property to conduct the investigation.

11. On October 8, 2003, the Debtor filed its Motion for Entry of an Order Approving Form of Access Agreement and Authorizing the Debtor to Enter Into Agreements to Allow Access Onto Premises for Environmental Investigation, seeking approval of a form of access agreement (the "**Form Agreement**").

12. On October 20, 2003, the Bankruptcy Court entered an Order Approving Form of Access Agreement and Authorizing the Debtor to Enter into Agreements to Allow Access onto Premises for Environmental Investigation.

13. The Debtor presented the Form Agreement to the Olsens. The Debtor thereafter agreed to make certain immaterial modifications to the Form Agreement at the request of the Olsens, which modifications the Debtor believes do not require Bankruptcy Court approval. However, the Olsens are also requiring that the Debtor remove the language limiting the Debtor's potential liability to direct damages. The inclusion of potential

consequential and incidental damages in the agreement constitutes a material modification requiring this Court's approval, which the Debtor seeks through this Motion.

14. A copy of the Access Agreement that the Debtor seeks authority to execute with the Olsens is attached as Exhibit A. A blackline of such agreement to the Form Agreement is attached as Exhibit B.

RELIEF REQUESTED

15. By this Motion, Met-Coil seeks entry of an order: (a) approving the Access Agreement; (b) authorizing it to enter into the Access Agreement with the Olsens; and (c) authorizing it to indemnify the Olsens as provided in the Access Agreement.

BASIS FOR RELIEF

16. To carry out the January 22, 2001 Order, the Debtor, among other things, needs to obtain access to the Property to conduct an environmental investigation, which will require the Debtor to bore holes on the Property approximately 30 feet deep or until they hit the water table. The Debtor will then take samples of the groundwater encountered. In order to provide protections that the Olsens are requiring and define the terms under which the environmental testing will be conducted, the Debtor proposes that it be authorized to enter into the Access Agreement with the Olsens.

17. The Debtor has a sound business justification for entering into the Access Agreement without a provision concerning no liability for any consequential or incidental damages. Since it discovered the TCE concentration at the Lisle Facility, Met-Coil has endeavored to cooperate with the federal, state and local agencies. The Debtor believes that it is in its best interests as well as the best interests of its estate and creditors to continue to cooperate with these governmental agencies. In order to comply with the

January 22, 2001 Order, Met-Coil is required to conduct environmental testing at the Property. To gain access to the Property, the Debtor needs to enter into the Access Agreement. Accordingly, the Debtor believes, in its business judgment, that entry into the Access Agreement is in the best interests of its estate.

NOTICE

18. 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) counsel for 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 (collectively, the "Core Group"); and (h) all parties listed on the Core Group service list and those that have requested notice of pleadings pursuant to Bankruptcy Rule 2002.

NO PRIOR REQUEST


19. No previous request for the relief sought in this Motion has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests that this Court enter an order:

(a) approving the Access Agreement; (b) authorizing the Debtor to enter into an Access Agreement with the Olsens; (c) authorizing the Debtor to indemnify the Olsens as provided in the Access Agreement; and (d) granting such further relief as the Court deems proper.

Dated: December 31, 2003

MORRIS, NICHOLS, ARSHT & TUNNELL

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