

**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 TO ASSUME CERTAIN EXECUTORY
CONTRACTS AND CURE EXISTING DEFAULTS**

Met-Coil Systems Corporation, debtor and debtor in possession (the "**Debtor**") in the above-captioned chapter 11 case (the "**Case**"), hereby moves (the "**Motion**"), pursuant to § 365 of title 11 of the United States Code (the "**Bankruptcy Code**"), to assume certain executory contracts and to cure existing defaults with respect thereto. In support of this Motion, the Debtor 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 predicate for the relief requested herein is § 365 of 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's primary business has historically been metal fabrication including manufacturing advanced sheet metal forming equipment, fabricating equipment, and computer-controlled fabrication systems. Met-Coil's products are generally custom-designed and manufactured to meet unique customer specifications, and the products are often incorporated into the customer's standard product line.

6. Attached hereto as Exhibit A is a listing of the executory contracts (the "**Agreements**") that, through this Motion, the Debtor seeks authority to assume. Exhibit A also sets forth the type of agreement to be assumed.¹

RELIEF REQUESTED

7. Pursuant to § 365 of the Bankruptcy Code, the Debtor seeks authority to assume the Agreements and to cure any defaults existing with respect to those contracts.

APPLICABLE AUTHORITY

8. Section 365 of the Bankruptcy Code provides, in relevant part:

- (a) Except as provided in section 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, 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).

9. Under § 365(a) of the Bankruptcy Code, a debtor may assume or reject an executory contract or unexpired lease. An executory contract is a "contract under which

¹ The Debtor is not attaching a copy of each of the Agreements to this Motion, but will provide a copy of the Agreements upon request.

the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach." Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp., 872 F.2d 36, 39-40 (3rd Cir. 1989); see also In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997) ("A contract is executory if each side must render performance, on account of an existing legal duty or to fulfill a condition, to obtain the benefit of the other party's performance.").

10. In order to assume and assign an executory contract or unexpired lease under § 365 of the Bankruptcy Code, the debtor must establish that the decision is one made in its sound business judgment. In re ANC Rental Corp., Inc., 278 B.R. 714, 723 (Bankr. D. Del. 2002) (citing In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999)). The decision to assume or reject an executory contract is a matter within the "business judgment" of the debtor. See National Labor Relations Board v. Bildisco (In re Bildisco), 682 F.2d 72, 79 (3rd Cir. 1982) ("The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the 'business judgment' test."), aff'd, N.L.R.B. v. Bildisco and Bildisco, 465 U.S. 513, 104 S. Ct. 1188, 79 L. Ed. 2d 482 (1984).

11. The business judgment standard is satisfied when a debtor demonstrates that assumption will benefit the estate or its reorganization effort. See In re Bullet Jet Charter, Inc., 177 B.R. 593, 601 (Bankr. N.D. Ill. 1995). "The bankruptcy judge should have a deferential view of the debtor's business judgment in this regard, but need not accept that judgment blindly." Id. "The rule as applied to a bankrupt's decision to reject an executory contract because of perceived business advantage requires that the decision be accepted by courts unless it is shown that the bankrupt's decision was one taken in bad faith or in gross

abuse of the bankrupt's retained business discretion." Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1046 (4th Cir. 1985), cert denied, 475 U.S. 1057, 106 S. Ct. 1285, 89 L. Ed. 2d 592 (1986).

12. Assuming the Agreements is an exercise of the Debtor's sound business judgment and will benefit the Debtor's estate and its reorganization effort. As evidenced through the descriptions on Exhibit A, the Agreements are critical to the daily operation of the Debtor's business and will benefit the Debtor's reorganization.

The Debtor Must Cure Existing Defaults

13. Section 365(b)(1) requires the Debtor to cure any defaults in any executory contract before it can be assumed. 11 U.S.C. § 365(b)(1); see also In re ANC Rental, 278 B.R. at 724. The Debtor proposes to cure any pre- or post-petition defaults currently existing under the Agreements. Payment of the amounts to cure the Debtor's defaults under the Agreements will cause no disruption to the Debtor's business.

14. Exhibit A sets forth the cure amount that the Debtor has determined corresponds to each of the Agreements. To the extent that the respective third parties to the Agreements disagree with the stated cure amount, an objection to this Motion with respect to such cure amount must be filed with the Bankruptcy Court and served on the Debtor, Mestek, the Committee and the United States Trustee on or before the objection deadline set forth in the caption above, namely January 13, 2004 at 4:00 p.m. To the extent that the Debtor and the respective third party objecting to the cure amount are unable to reach agreement on the cure amount, the issue of the cure amount will be addressed at the hearing on January 20, 2004.

15. By seeking authorization to assume the Agreements, the Debtor does not hereby waive any claims, defenses or rights of setoff that it may have against the respective third parties to the Agreements.

NOTICE

16. 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 respective third parties to the Agreements; and (e) all parties that have requested notice of pleadings pursuant to Bankruptcy Rule 2002.

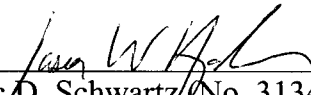
NO PRIOR REQUEST

17. 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 the entry of an order substantially in the form attached hereto authorizing it to assume the Agreements and to pay the cure amounts, if any, and granting such other and further relief as is just and proper.

Dated: December 31, 2003

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