

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

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

**DEBTOR'S OBJECTION TO THE MOTION OF NEW ENGLAND H.V.A./C.  
SERVICES, CORPORATION FOR RELIEF FROM THE AUTOMATIC STAY**

Met-Coil Systems Corporation (the "Debtor" or "Met-Coil"), debtor and debtor-in-possession in the above-captioned Chapter 11 case (the "Bankruptcy Case"), hereby objects to the Motion of New England H.V.A./C. Services, Corporation ("New England") for Relief from the Automatic Stay (D.I. 301) (the "Motion"). In support of this objection (the "Objection"), the Debtor respectfully states as follows:

**PRELIMINARY STATEMENT**

1. New England's Motion relates to a lawsuit it filed on or about July 11, 2003 in the Superior Court of New Jersey, Hudson County, against several non-debtor parties as well as the Debtor and "Lockformer Corp., Inc."<sup>1</sup> (the "Lawsuit"). The Lawsuit alleges six counts, all but one of which (negligence) are based in contract.

2. Lockformer, an operating division of the Debtor, manufactured the Vulcan Plasma Cutter (the "Vulcan") referred to in New England's Motion and Lawsuit. The Vulcan is a computer-controlled cutter. Lockformer manufactured only the hardware; the

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<sup>1</sup> Lockformer is an operating division of the Debtor rather than a separate corporation. To minimize confusion, for purposes of this Objection, it is assumed that all legal claims being asserted against Lockformer are asserted against the Debtor, and the terms "Debtor" and "Met-Coil" include Lockformer.

software was outsourced to a third party. Typically, Lockformer purchases the software and then integrates it with the hardware it manufactures. Lockformer then sells the system, usually to a distributor. New England purchased its Vulcan, not from Lockformer, but from a third-party distributor, Oxford Machinery Sales Corp. ("Oxford"). *Lockformer/Met-Coil has no contractual relationship with New England.*

3. Lockformer's contract with Oxford (a true and correct copy of which is attached hereto as **Exhibit A** and which is incorporated herein by reference) expressly disclaims any and all warranties, express or implied.

4. New England's attempt to haul the Debtor into court in New Jersey to defend a simple contract dispute would result in an unnecessarily burdensome diversion of resources, both monetary and human, away from the Debtor's operations and reorganization. It is unnecessary because any claims New England may have against the Debtor are easily resolved through the bankruptcy claims process, New England having filed a proof of claim in this Bankruptcy Case on or about October 27, 2003<sup>2</sup>. New England has demonstrated no reason that its dispute against the Debtor must be litigated outside the Bankruptcy Case; the Debtor, however, has a clear interest in resolving the dispute in this Court rather than being forced to pay the expenses of defending before a jury in New Jersey. For the foregoing and following reasons, New England's Motion should be denied.

#### LEGAL STANDARDS

5. Section 362 of the Bankruptcy Code provides that a bankruptcy petition "operates as a stay, applicable to all entities," of the commencement or continuation of

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<sup>2</sup> The Debtor objected to New England's claim in its Second Omnibus Objection (Substantive) to Certain Claims Pursuant to Section 502 of the Bankruptcy Code, Rule 3007 of the Federal Rules of Bankruptcy Procedure and Rule 3007-1 of the Local Rules of Bankruptcy Procedure (the "Omnibus Objection"). New England's response, if any, to the Omnibus Objection is due on January 13, 2004.

judicial proceedings against the debtor. 11 U.S.C. § 362(a)(1). Subsection (d) of § 362 provides as follows:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay...

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest...

11 U.S.C. § 362(d).

6. The Debtor agrees with New England that the prevailing legal standard to be applied in determining whether § 362(d) "cause" exists to lift the automatic stay is a balancing test that considers (1) the prejudice to the debtor or the bankruptcy estate from allowing the non-bankruptcy litigation to continue; (2) the relative hardship to the debtor and to the party seeking relief; and (3) the creditor's probability of prevailing on the merits in the litigation. In re Udell, 18 F.3d 403 (7<sup>th</sup> Cir. 1994). All three of these factors weigh heavily in favor of denying New England's Motion.

#### ARGUMENT

7. It is highly unlikely that New England would prevail against the Debtor on the merits of the Lawsuit were it to proceed in state court. The Lawsuit alleges breach of contract, breach of express and implied warranties, and negligence. The Debtor is, as a matter of law, immune from these claims as it had no contract with New England. Gotham Partners, L.P. v. Hallwood Realty Partners, L.P., 817 A.2d 160, 172 (Del. 2002) ("It is a general principle of contract law that only a party to a contract may be sued for breach of that contract") (quoting Wallace v. Wood, 752 A.2d 1175, 1180 (Del.Ch.1999)). Lockformer's agreement was with a third party, Oxford, and that agreement contained an express disclaimer of all warranties, express and implied. Furthermore, the facts do not support a

negligence claim as purely economic losses are not recoverable under a negligence theory. Restatement (Third) of Torts: Prod. Liab. § 21 (1998); Alloway v. General Marine Industries, L.P., 695 A.2d 264 (N.J. 1997).

8. Furthermore, it is clear from the face of the Lawsuit that any difficulties New England experienced with the Vulcan arose from software, printers, or other factors rather than the hardware manufactured by Lockformer. The Debtor is one of several defendants to the Lawsuit and believes that New England's claim against it can and should be resolved quickly and expeditiously in the Bankruptcy Court.

9. The Debtor would be severely prejudiced if the stay were modified and the Debtor required to defend the Lawsuit, essentially a garden variety contract dispute, in New Jersey. To defend the Lawsuit in New Jersey would require a substantial diversion of effort and expense from the reorganization and rehabilitation of the Debtor to resolve a claim that could quickly and efficiently be resolved in this Court.

10. By contrast, the automatic stay will only minimally prejudice New England, if at all. If its Motion is denied, New England will still have a full opportunity to proceed with its claims against the Debtor. The bankruptcy claims administration process is just as capable of resolving New England's claim fairly as a potentially lengthy and costly litigation in state court. In fact, New England has already embraced the bankruptcy claims process by filing its proof of claim in the Bankruptcy Case.

11. Furthermore, New England's claim in its Motion that a delay in proceeding against the Debtor in state court may hinder its ability to proceed against the other, non-Debtor parties to the Lawsuit is baffling. The automatic stay does not prevent New England from proceeding against non-debtor parties, and it is clear from the Lawsuit

that the Debtor's presence is not needed for New England to proceed normally against the other defendants. New England's claims against the non-debtor defendants are freestanding claims that can be decided independently of the Debtor's involvement, or lack thereof, in the Lawsuit.

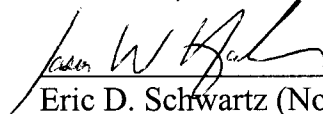
**CONCLUSION**

12. New England has failed to show cause, pursuant to Bankruptcy Code § 362(d), for the relief requested in its Motion for relief from the automatic stay. As the prejudice to the Debtor will far outweigh any inconvenience to New England having its claim resolved in the Bankruptcy Court, and as the Bankruptcy Court is well suited to resolve the claim, New England's Motion should be denied.

WHEREFORE, the Debtor requests that this honorable Court enter an order denying the Motion with prejudice, and providing such other and further relief as the Court deems appropriate.

Dated: January 13, 2004

**MORRIS, NICHOLS, ARSHT & TUNNELL**



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