

**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 AGREED MOTION FOR LIMITED RELIEF
FROM THE AUTOMATIC STAY WITH RESPECT TO THE
WORKERS' COMPENSATION CLAIM OF MICHAEL KENNY**

Met-Coil Systems Corporation, as debtor and debtor in possession in the above-captioned case (the "**Debtor**"), by and through its undersigned counsel, hereby moves (the "**Motion**"), pursuant to §§ 105 and 362(d) of title 11 of the United States Code (the "**Bankruptcy Code**") for limited relief from the automatic stay to allow Michael Kenny to pursue his workers' compensation claim solely against the appropriate insurance carriers. In support hereof, the Debtor respectfully states as follows:

Jurisdiction

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G) and (M).
2. The statutory predicates for the relief sought herein are §§ 105 and 362 of the Bankruptcy Code.
3. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

Background

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 Bankruptcy Code §§ 1107 and 1108. An official committee of unsecured creditors has been appointed.

6. On November 13, 2003, Michael Kenny filed his Proof of Claim ("**Claim No. 201**") against the Debtor. In Claim No. 201, Mr. Kenny contends that he has non-Hodgkin's lymphoma "caused in whole and/or in part as a result of exposure to trichloroethylene that he experienced as a result of his employment at the Debtor's Lockformer facility in Lisle, Illinois from 1992 through the present."

7. The Debtor and Mr. Kenny have agreed that (a) Claim No. 201 constitutes a workers' compensation claim against the Debtor (the "**WC Claim**") and (b) the automatic stay should be lifted solely to allow Mr. Kenny to proceed against any available workers' compensation insurance, policies and proceeds.

8. The Debtor respectfully requests that the Court modify the automatic stay with respect to the WC Claim to permit the following limited relief: (i) to allow Mr. Kenny to proceed with the WC Claim in his venue solely against the applicable insurance carriers, policies and proceeds; and (ii) to allow Mr. Kenny to collect any judgment obtained through the WC Claim solely against the applicable insurance carriers, policies and proceeds thereof.

9. Bankruptcy Code § 362(d)(1) provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section subsection (1) of this section, such as by terminating, annulling, modifying, or conditioning such stay – (1) for cause . . .

11 U.S.C. § 362(d)(1).

10. To determine whether "cause" exists to lift the automatic stay to allow the continuation of a lawsuit pending in another forum, courts often consider: (i) the likelihood of prejudice to the debtor or the estate from the continuation of the civil claim; (ii) whether the hardship to the non-bankruptcy party to the civil claim considerably outweighs the hardship to the debtor; and (iii) the likelihood that the creditor will prevail on the merits of the claim. See, e.g., In re Rexene Products Co., 141 B.R. 574, 576 (Bankr. D. Del. 1992).

11. In balancing the equities involved in this case, it is appropriate to modify the automatic stay to permit Mr. Kenny to proceed with his WC Claim solely against the applicable insurance carriers, policies and proceeds. First, no prejudice to the Debtor or its estate will result by allowing the WC Claim to proceed solely against the insurance carriers, policies and proceeds. The Debtor has, and at all relevant times has had, workers' compensation insurance coverage in place to protect the Debtor against lawsuits such as the WC Claim. Should Mr. Kenny succeed in his WC Claim; he would recover any judgments only from the appropriate insurance carrier, policies and proceeds thereof. Thus, even were Mr. Kenny successful, any recovery would not come from the Debtor or its estate. Therefore, there will be little, if any, financial burden on the Debtor or its creditors if Mr. Kenny is permitted to proceed with the WC Claim.

12. Conversely, additional delay would be prejudicial to Mr. Kenny.

13. Moreover, modification of the automatic stay to permit a lawsuit in state court is appropriate where, as in the WC Claim, the issues presented are governed solely by state law.

14. Finally, Mr. Kenny has met the third factor because the WC Claim does not appear to be frivolous. As this Court has previously noted, "the third prong . . . merely requires a showing that [the] claim is not frivolous." Levitz Furniture Inc. v. T. Rowe Price Recovery Fund, L.P. (In re Levitz Furniture Inc.), 267 B.R. 516, 523 (MFW) (Bankr. D. Del. 2000) (citing Rexene).

15. Given the foregoing, sufficient cause exists to modify the automatic stay to permit Mr. Kenny to: (i) proceed with the WC Claim solely against the applicable insurance carriers, policies and proceeds; and (ii) collect any judgments obtained from the applicable insurance carriers, policies and proceeds thereof.

16. To the extent an Order is entered granting this Motion, Mr. Kenny's Claim No. 201 shall be deemed withdrawn as moot.

17. No request for the relief sought herein has previously been made to this or any other court.

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

(i) granting the Motion in its entirety; (ii) permitting Mr. Kenny to proceed with the WC Claim solely against the applicable insurance carriers, policies and proceeds; and (iii) permitting Mr. Kenny to collect any judgments obtained in the WC Claim from the appropriate workers' compensation insurance carrier, policies and proceeds thereof.

Dated: February 20, 2004

MORRIS, NICHOLS, ARSHT & TUNNELL

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