

**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: May 17, 2004 - 4:00 p.m. (ET)**
_____) **Hearing Date: May 24, 2004 - 10:30 a.m. (ET)**

**MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTOR TO ENTER
INTO TRANSHIELD UNDERGROUND
SERVICES, INC. CONTRACTOR AGREEMENT NUNC PRO TUNC MARCH 18,
2004**

Met-Coil Systems Corporation ("**Met-Coil**" or "**Debtor**"), as debtor and debtor in possession, 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 the Transhield Underground Services, Inc. Contractor Agreement (the "**Agreement**"), a copy of which is attached hereto as Exhibit A, nunc pro tunc March 18, 2004. 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 sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the "**Committee**") has been appointed and is serving.

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. 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.

7. 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 currently remediating the Lisle Facility. Met-Coil has determined, in the exercise of its business judgment, that in order to continue that remediation it should enter into the Agreement. Pursuant to the Agreement, Transhield Underground Services, Inc. ("**Transhield**") will provide services essential to the remediation, including collecting soil confirmation samples, installing monitoring wells, and operating high capacity drilling equipment (collectively, the "**Services**").

8. The Agreement contains the provisions under which the Debtor agrees to indemnify Transhield on the stated conditions, as more fully described below.

RELIEF REQUESTED

9. By this Motion, Met-Coil seeks entry of an order: authorizing the Debtor to enter into the Agreement, including its indemnification provisions. Transhield has commenced the Services because the prior drilling company went out of business and the Debtor needed to continue with the environmental remediation.

BASIS FOR RELIEF

10. To carry out the January 22, 2001 Order, the Debtor needs to obtain the services of Transhield. Transhield has insisted on the indemnification provisions contained in the Agreement. Moreover, the Debtor believes that such provisions are standard in such contracts.

11. By entering into the Agreement, however, Met-Coil may be incurring an obligation outside the ordinary course of its business to indemnify Transhield. Any obligation of the Debtor to indemnify Transhield would likely give rise to an administrative expense under § 503(b)(1) of the Bankruptcy Code. Section 364(b) provides, in pertinent part, that "[t]he court, after a notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt allowable under section 503(b)(1) of this title as an administrative expense." 11 U.S.C. § 364(b). Furthermore, under § 105(a) of the Bankruptcy Code, the Court "may issue any order, process or judgment that is necessary to carry put the provisions of this title." 11 U.S.C. § 105(a). By this Motion, the Debtor seeks this Court's authorization to allow it to incur an unsecured obligation to indemnify Transhield under the terms of the Agreement. The Debtor believes that such authorization is in the best interests of the Debtor's estate and its creditors.

12. The Debtor has a sound business justification for entering into the Agreement. Since it discovered the TCE concentration at the Lisle Facility, Met-Coil has endeavored to cooperate with the federal, state and local environmental agencies. The Debtor believes it is in its best interests as well as those 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 needs the Services of Transhield.

13. Furthermore, authorizing the Debtor to grant the indemnity provided in the Agreement is appropriate in this case. The indemnity is narrowly tailored to limit the Debtor's liability to those instances where its negligence is directly related to the claim or suit being levied against Transhield. Specifically, the indemnity provision contained in Sections 2.5 and 4.3 of the Agreement provides:

2.5 CONTRACTOR and CLIENT hereby agree[s] to defend, indemnify and hold harmless each other from and against all direct or indirect costs, expenses and any [AND] all losses, claims, suits [SUITS], damages, fines or penalties, lawsuits or liabilities resulting in, or causing in any way, the injury or the death of any person, including employees of either party, or resulting in, or causing in any way, damage or destruction to any property which: (i) arises directly or indirectly from, or in connection with any negligent act or omission of CONTRACTOR or CLIENT, their officers, agents, or employees, or their subcontractors, or assigns, or: (ii) arises directly or indirectly from, or is related in any way to the negligent performance of the Agreement by either party.

4.3 . . . CLIENT shall hold contractor [CONTRACTOR] harmless and shall indemnify and defend CONTRACTOR for the omission of any pertinent information that results in injury, property damage, financial damage or consequential damage including attorney's fees.

Without the indemnity, Transhield would not enter into the Agreement, and the Debtor's remediation efforts would be delayed or hindered. Because the indemnity is narrowly tailored, however, the risk to the Debtor and its estate is significantly reduced. Accordingly,

the indemnity that the Debtor will grant under the Agreement is reasonable under the circumstances.

14. Moreover, since the services to be provided by Transhield are necessary for the remediation of the TCE contamination of the Lisle Facility, authorization to enter into the Agreement should also be granted under § 363(b).

NOTICE

15. 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 lender; (c) counsel for the Committee; (d) Transhield; (e) counsel for the future claimants' representative; and (f) all parties that have requested notice of pleadings pursuant to Bankruptcy Rule 2002.

NO PRIOR REQUEST

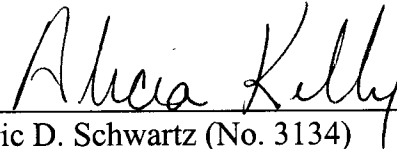
16. No previous request for the relief sought in this Motion has been made to this Court or any other court.

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

(a) authorizing the Debtor to enter into the Agreement, in substantially the same form as Exhibit A hereto, nunc pro tunc March 18, 2004; (b) authorizing the Debtor to indemnify Transshield as provided in the Agreement; and (c) granting such further relief as the Court deems proper.

Dated: May 6, 2004

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