

**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 21, 2004 @ 5:00 p.m. (proposed for Motion to Compel)
)	Hearing Date: May 24, 2004 @ 10:30 a.m. (proposed for Motion to Compel)

**OBJECTION OF THE DEBTOR TO MOTION TO SHORTEN
TIME AND LIMIT NOTICE OF MOTION OF THE OFFICIAL
COMMITTEE UNSECURED CREDITORS TO COMPEL THE DEBTOR
AND MESTEK, INC. TO COMPLY WITH RULE 2004 ORDER (RE: D.I. 824)**

Met-Coil Systems Corporation (the "Debtor" or "Met-Coil"), debtor and debtor in possession in the above-captioned chapter 11 case, hereby objects (the "Objection") to the Motion to Shorten Time and Limit Notice of Motion of the Official Committee Unsecured Creditors [sic] to Compel the Debtor and Mestek, Inc. to Comply with Rule 2004 Order (the "Motion to Shorten") (D.I. 824). In support of the Objection, the Debtor respectfully states as follows:

Preliminary Statement

1. The Official Committee of Unsecured Creditors (the "Committee") seeks an order shortening the notice period for the Motion of the Official Committee of Unsecured Creditors to Compel the Debtor and Mestek, Inc. to Comply with Rule 2004 Order (the "Motion to Compel") (D.I. 823).

2. The Committee provides only one "reason" for having the Motion to Compel heard on shortened notice. The Committee states that "requiring the Committee to wait until June 22, 2004 to have the Motion to Compel heard would seriously hinder its investigation." Motion to

Compel, ¶ 6, p. 7. This “emergency” is self-created, not emergent and impinges on the Debtor’s ability to respond to the complicated factual and legal issues raised in the Motion to Compel.

Background

3. The Motion to Compel seeks the following forms of relief: an interpretation of the meaning of “environmental litigation files” in a prior order of this Court; and a ruling on whether certain documents included on the Debtor’s privilege log (the “Privilege Log”) are subject to discovery, and whether the joint defense privilege (the “Joint Defense Privilege”) applies, to among other things, questions posed to Charles F. Kuoni III (“Mr. Kuoni”) during his deposition.

4. During the November 2003 through January 2004 time frame the Committee requested and received documents from the Debtor regarding the Committee’s investigation of potential causes of action.

5. On March 31, 2004, after seeking no relief from the Court for several months regarding discovery, the Committee filed the Motion of the Official Committee of Unsecured Creditors for an Order Authorizing and Directing the Production of Documents from and Oral Examinations by Deposition of Met-Coil Systems Corporation and Mestek, Inc. Pursuant to Fed. R. Bankr. P. 2004 (D.I. 713) (the “2004 Motion”). In the 2004 Motion the Committee requested the turn over of documents over and above the over one thousand pages already provided to the Committee.

6. On April 12, 2004, the Debtor filed the Response Of Met-Coil Systems Corporation To Motion Of The Official Committee Of Unsecured Creditors For An Order Authorizing And Directing The Production Of Documents From And Oral Examinations By Deposition Of Met-Coil Systems Corporation And Mestek, Inc. Pursuant to Fed. R. Bankr. P. 2004 (the “Response”) (D.I. 739).

7. In advance of the April 19, 2004 hearing on the 2004 Motion the Debtor agreed to certain discovery.

8. On April 19, 2004, at the hearing on the 2004 Motion the Debtor and Committee stated on the record that they had reached an agreement regarding discovery.

9. On April 26, 2004, the Committee submitted a proposed 2004 Order under certification of counsel (D.I. 789) (the "Certification of Counsel"). In the Certification of Counsel the Committee indicated a dispute existed between the Debtor and the Committee regarding the types of documents included in the phrase "environmental litigation files."

10. On April 27, 2004, the Debtor filed the Response of Met-Coil Systems Corporation to Certification of Counsel (D.I. 790), in which the Debtor stated its position regarding the dispute over the meaning of "environmental litigation files".

11. Also on or about April 27, 2004, as a part of the discovery process, the Debtor provided the Committee with the Privilege Log, containing approximately 60 letters that the Debtor believes are covered by privilege.

12. On April 30, 2004, the Court entered the Order on Motion of the Official Committee of Unsecured Creditors for an Order Authorizing and Directing the Production of Documents from and Oral Examinations by Deposition of Met-Coil Systems Corporation and Mestek, Inc. Pursuant to Fed. R. Bankr. P. 2004 (D.I. 795) (the "2004 Order").

13. Additionally, on April 30, 2004, the Debtor provided the Committee with a copy of the Joint Defense Agreement.

14. On May 11, 2004, the Committee examined Mr. Kuoni. During the examination Mr. Kuoni did not answer a limited number of questions based on the Joint Defense Privilege.

Objection

15. To shorten notice a party must “specify[] the exigencies justifying shortened notice.” Del. Bankr. L.R. 9006-1(e). The Committee has not specified any exigency and cannot create one through its own acts.

16. The only “reason” the Committee has given for the relief requested is that “requiring the Committee to wait until June 22, 2004 to have the Motion to Compel heard would seriously hinder its investigation.” Motion to Compel, ¶ 6, p. 7. The Committee has had ample forewarning of every issue it raised in its Motion to Compel. The Committee had knowledge several weeks ago of the dispute over the “environmental litigation files” and the Privilege Log. Moreover, the Committee was also on notice of the Joint Defense Agreement and the possibility of the Debtor exercising its rights thereunder. Despite such knowledge the Committee delayed in seeking the relief in the Motion to Compel.

17. The Committee now places the Debtor in an untenable position through the Committee’s own delay in seeking the relief in the Motion to Compel. If the Motion to Shorten is granted, the Debtor will be forced to respond on three days notice to a very complex factual and legal issue, the Joint Defense Privilege. The Committee spends eight pages on this issue in the Motion to Compel. The Debtor submits that it is fundamentally unfair and unreasonable to expect the Debtor to respond on such notice, especially when this issue is factually and legally complex.

18. Finally, the Committee will not be prejudiced by having the Motion to Compel heard at the June 22, 2004 hearing. The current discovery deadline is July 31, 2004. The Committee will have over five weeks after the June 22nd hearing to complete its discovery. The Debtor submits that this is enough time for the Committee to finish its investigation, especially in

light of the fact that the Committee is still reviewing the thousands of documents that already have been produced.

WHEREFORE, the Debtor hereby respectfully requests that the Court deny the Motion to Shorten and grant such other and further relief as may be just and proper.

Dated: May 19, 2004

MORRIS, NICHOLS, ARSHT & TUNNELL

/s/ Daniel B. Butz

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