

**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 MOTION FOR ENTRY OF ORDER ESTABLISHING  
PROCEDURES FOR TREATMENT OF VALID RECLAMATION CLAIMS**

Met-Coil Systems Corporation, debtor and debtor in possession (the "**Debtor**" or "**Met-Coil**") in the above-captioned Chapter 11 case (the "**Case**"), hereby presents this motion (the "**Motion**") for entry of an Order establishing procedures for the treatment of valid reclamation claims. In support of the Motion, the Debtor respectfully represents as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are §§ 105, 503(b) and 546(c)(2) of title 11 of the United States Code (the "**Bankruptcy Code**").

**INTRODUCTION**

4. On August 26, 2003 (the "**Petition Date**"), the Debtor filed a voluntary petition for reorganization relief under chapter 11 of the Bankruptcy Code.

5. The Debtor is operating its business as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed.

### **VENDORS**

6. The Debtor's operations rely on the uninterrupted services of hundreds of vendors. These vendors supply the Debtor with a variety of goods critical to the Debtor's ability to operate its two manufacturing divisions, The Lockformer Company ("Lockformer") and Iowa Precision Industries ("Iowa Precision"). Lockformer relies on its vendors to provide the goods necessary for Lockformer to produce systems that automate production of window screens and glass, metal furniture, shelving and panels, as well as a recently developed system which automates cutting/fabrication pipe for mechanical contractors. Similarly, Iowa Precision depends on its vendors and suppliers to consistently provide it with the goods it requires in order to produce slit and sheared blanks and punched, notched and roll formed parts from sheet metal coils.

### **RELIEF REQUESTED**

7. By this Motion, the Debtor respectfully requests that the Court enter an Order, pursuant to §§ 105(a), 503(b) and 546(c)(2) of the Bankruptcy Code, establishing procedures for the treatment of valid reclamation claims, as described below.

### **TREATMENT OF RECLAMATION CLAIMS**

8. The Debtor anticipates that vendors and suppliers will file numerous Reclamation Claims (as defined below). The Debtor believes that establishing procedures, as set forth in this Motion and in the proposed form of the Order annexed hereto, will simplify the process of addressing such claims while adequately safeguarding the reclamation rights of the creditors asserting them.

9. The Debtor has received and anticipates receiving demands from numerous vendors asserting such vendors' purported rights of reclamation pursuant to § 2-702(2) of the Uniform Commercial Code (the "UCC") and § 546(c) of the Bankruptcy Code (each a "**Reclamation Claim**" and, collectively, the "**Reclamation Claims**"). The Reclamation Claims, if properly asserted, will request that the Debtor return certain goods identified in the Reclamation Claims (the "**Reclamation Goods**"), grant a lien against the Reclamation Goods or grant such creditor an administrative claim.

10. The Debtor's operations require the constant availability of a variety of goods for the operation of the Debtor's manufacturing and distribution business. If the Debtor's suppliers are allowed to exercise their rights of reclamation, the Debtor's operations could be compromised and the Debtor's ability to successfully reorganize its operations could be significantly diminished.

11. In anticipation of receiving the Reclamation Claims, the Debtor has established internal procedures for the handling of such claims and for bringing them to the attention of the Debtor's professionals. The Debtor intends to analyze the Reclamation Claims according to the following criteria: (i) whether the holder of the Reclamation Claim adequately described the Reclamation Goods delivered to the Debtor, (ii) whether the Reclamation Claim was timely received by the Debtor, (iii) whether the Debtor has already paid for the Reclamation Goods, (iv) whether the Debtor has already consumed or altered the Reclamation Goods by the time the applicable Reclamation Claim was received, (v) the value of the Reclamation Goods at the time the Reclamation Claim was made, and (vi) whether the amount and value of the Reclamation Goods as set forth in the Reclamation

Claim conforms to the amount and value of such Reclamation Goods as reflected in the Debtor's books and records.

12. Outside of bankruptcy, reclamation rights generally are governed by § 2-702(2) of the UCC. That section allows a seller of goods, upon discovering that the buyer has received goods on credit while insolvent, to reclaim the goods upon a demand made within ten (10) days of the buyer's receipt of the goods. If a written misrepresentation of the buyer's solvency has been made to the seller within three (3) months before the delivery of the goods, the ten-day limit does not apply.

13. Section 546(c) of the Bankruptcy Code preserves a seller's reclamation rights under § 2-702 of the UCC, subject to certain significant limitations. Among other things, § 546(c) imposes the additional requirements that (a) the sale must be in the ordinary course of the seller's business, (b) the reclamation demand must be in writing, and (c) the reclamation demand must be made within ten (10) days after the debtor's receipt of the goods or, if the ten-day period expires after the commencement of the bankruptcy case, within twenty (20) days after such receipt. Section 546(c) also provides a debtor with the right to continue to use goods subject to valid reclamation claims in the ordinary course of business, if the reclaiming seller is granted an administrative claim for the value of such goods or, alternatively, a lien to secure such claim.

14. When read together, reclamation claims under §§ 546(c) of the Bankruptcy Code and § 2-702 of the UCC are subject to an array of defenses, including the following:

- (a) a seller has no right to reclaim goods delivered to a debtor that was not insolvent when the goods were delivered;

- (b) a seller has a right to reclaim only those goods delivered without the seller's knowledge of the buyer's insolvency;
- (c) a seller has a right to reclaim only those goods for which it made a reclamation demand within ten (10) days of the buyer's receipt of the goods or, if such ten-day period expires after the commencement of the bankruptcy case, within twenty (20) days of such receipt;
- (d) a seller has a right to reclaim goods only if the reclamation demand is in writing;
- (e) a seller has the right to reclaim only those goods that are specifically identifiable as of the time the reclamation notice is received by the debtor (*i.e.*, goods not having been consumed, altered, or manufactured into a finished product);
- (f) a seller may reclaim goods only to the extent that the goods were in the possession of the debtor at the time the debtor received the reclamation demand;
- (g) a seller has no right to reclaim goods that have been transferred to a "buyer in the ordinary course" or a "good faith purchaser"; and
- (h) a seller's reclamation rights are not superior to the liens of any prior secured creditor, and are subject to the existence of surplus proceeds, after satisfaction of such prior secured claims, in the goods subject to reclamation.

See 11 U.S.C. § 546(c); UCC § 2-702; see also In re Reliable Drug Stores, Inc., 70 F.3d 948, 949 (7<sup>th</sup> Cir. 1995) (observing that the Bankruptcy Code qualifies the scope of reclamation rights under the UCC); In re Adventist Living Ctrs., Inc., 52 F.3d 159, 162 (7<sup>th</sup> Cir. 1995) (discussing limitations on sellers' rights to reclaim goods in the bankruptcy process); In re Rawson Food Serv., Inc., 846 F.2d 1343, 1346 (11<sup>th</sup> Cir. 1988) ("[s]ection 546(c) of the Bankruptcy Code provides the exclusive remedy for a seller who seeks to reclaim goods from a debtor in bankruptcy"); Archer Daniels Midland Co. v. Charter Int'l Oil Co., 60 B.R. 854, 856 (M.D. Fla. 1986); In re Primary Health Systems, Inc., 258 B.R. 111, 117 (Bankr. D. Del. 2001); In re Child World, Inc., 145 B.R. 5, 7 (Bankr. S.D.N.Y. 1992), Eagle Indus. Truck Mfg. Inc. v. Cont'l Airlines, Inc., 125 B.R. 415, 417 (Bankr. D. Del. 1991).

**PROPOSED PROCEDURE FOR DETERMINING  
AMOUNT OF RECLAMATION CLAIMS**

15. The Debtor seeks to have this Court authorize the following procedures respecting the reconciliation and settlement of the Reclamation Claims and the treatment thereof specified below:

- (a) Absent further order of the Court, the Debtor, within thirty (30) days after the entry of an order (the "**Reclamation Order**") approving the Motion (the "**Service Date**"), will file with the Court and serve on the parties listed below (the "**Notice Parties**"), a statement listing those Reclamation Claims which the Debtor believes to have been correctly asserted according to applicable law, as well as the amounts of such Reclamation Claims and the parties holding such Reclamation Claims. The Notice Parties include counsel to any official committee appointed by the Office of the United States Trustee in the Case (the "**Committee**"), counsel to the postpetition lender, all known parties asserting Reclamation Claims and the Office of the United States Trustee. The Notice Parties shall have ten (10) days from the Service Date (the "**Objection Deadline**") to file a written objection with the Court and serve such objection on the Debtor and the other Notice Parties. To the extent that no objection is filed, the claimant shall be allowed an administrative expense claim. In such case, any time after the Objection Deadline, the Debtor, in the exercise of its business judgment, may either (i) return the goods underlying the specific Reclamation Claim to the claimant or (ii) pay the claimant the amount of the Reclamation Claim in cash. To the extent a written objection is filed and served as set forth above on or before the Objection Deadline, the Debtor shall promptly request a hearing on such objection before this Court, and the Court's decision shall govern such Reclamation Claim.
  
- (b) Absent further order of the Court, the Debtor, on or before the Service Date, will file with the Court and serve on the Notice Parties, a statement listing those Reclamation Claims which the Debtor disputes, as well as the amounts of such Reclamation Claims, the parties holding such Reclamation Claims and the Debtor's recommendations concerning such Reclamation Claims. The Notice Parties shall have until the Objection Deadline to file a written objection with the Court and serve such objection on the Debtor and the other Notice Parties. To the extent that no objection is filed, the Debtor's decision with regard to such Reclamation Claim(s) shall control. To the extent a written objection is filed and served as set forth above on or before the Objection Deadline, the Debtor shall promptly request a hearing on

such objection before this Court, and the Court's decision shall govern such Reclamation Claim.

16. Nothing in this Motion should be deemed or interpreted as an admission of any kind relating to Debtor's insolvency at any time. Furthermore, the Debtor and other parties in interest expressly reserve their rights, at a later date, to contest the extent, validity and enforceability of any Reclamation Claims that are allowed as administrative claims pursuant to this Motion.

17. Establishment of a clear procedure for reconciling the Reclamation Claims will assist in the consensual resolution of such demands, to the benefit of the Debtor's estate and its creditors. In addition, the Debtor will avoid litigation costs that would necessarily arise in connection with non-consensual resolution of such claims as well as those costs associated with a disorganized, unstructured process for resolving these claims. If the reclamation program outlined herein is not approved and implemented, it can be expected that the holders of Reclamation Claims will commence adversary proceedings against the Debtor, increasing both the Debtor's costs to defend piecemeal litigation and the burden on this Court's docket. In short, the Debtor believes that the proposed reclamation program will streamline the process of resolving the Reclamation Claims, benefiting the Debtor, its estate, and its creditors.

#### **BASIS FOR RELIEF REQUESTED**

18. The relief sought herein is supported by law, as discussed above, and by the Debtor's business judgment. Relief similar to that sought herein has been granted in other recent, large chapter 11 cases in this and other Districts. See e.g., In re Goldman Industrial Group, Inc., Case No. 02-10467 (MFW) (Bankr. D. Del. 2002) In re Continental Airlines, Inc., Case No. 90-00932 (MFW) (Bankr. D. Del. 1991); see also In re Kmart

Corporation, Case No. 02-B02474 (Bankr. N.D. Ill. 2002); In re Warnaco Group, Case No. 01-41643 (Bankr. S.D.N.Y. 2001) (granting debtor's request for procedures for the treatment of reclamation claims consistent with §§ 546(c) and (g) of the Bankruptcy Code); In re Serv. Merch. Co., Inc., No. 99-02649 (Bankr. M.D. Tenn. 1999); In re Bradlees Stores, Inc., No. 95-42777 (Bankr. S.D.N.Y. 1996).

19. The Debtor believes that the relief requested herein will ensure the continuous supply of goods that are vital to the Debtor's ongoing business operations and integral to its successful reorganization. See In re Marks Elecs., Inc., 145 B.R. 25, 27 (Bankr. N.D. Ohio 1992) (court may deny seller reclamation and instead grant administrative priority claims); Continental Airlines, 125 B.R. at 417-18 (Bankr. D. Del. 1991) (denying reclamation of equipment and granting administrative expense claim to creditor where equipment was necessary for debtor's reorganization).

20. In light of the foregoing, the Debtor believes that the relief requested in this Motion is appropriate and in the best interests of the Debtor, its estate and its creditors.

#### **NOTICE AND PRIOR APPLICATION**

21. 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) the Debtor's twenty (20) largest unsecured creditors; (d) the United States Environmental Protection Agency; (e) the Attorney General of the State of Illinois; (f) the DuPage County State's Attorney; (g) counsel to the plaintiffs in the environmental litigation matters pending before the United States District Court for the Northern District of Illinois and the Circuit Court for the Eighteenth Judicial District, DuPage County (collectively, the "Core Group"); and (h) all parties listed on the Core Group service list and



those that have requested notice of pleadings pursuant to Bankruptcy Rule 2002. The Debtor submits that the notice provided is appropriate under the circumstances and that no other or further notice need be given.

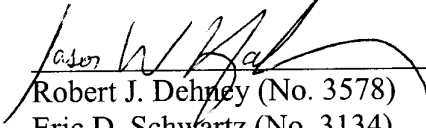
22. No previous motion for the relief sought herein has been made to this or any other court.

### CONCLUSION

**WHEREFORE**, the Debtor respectfully requests that this Court enter an Order, substantially in the form annexed hereto, (i) establishing a procedure for the treatment of valid Reclamation Claims, and (ii) granting such other and further relief as this Court deems just and proper under the circumstances.

Dated: Wilmington, Delaware  
September 8, 2003

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