

# **EXHIBIT 4**

**Objection Deadline: May 29, 2013 at 4:00 p.m. (prevailing Eastern Time)**  
**Hearing Date (if necessary): June 5, 2013 at 10:00 a.m. (prevailing Eastern Time)**

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Attorneys for the Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

|                               |                           |
|-------------------------------|---------------------------|
| -----                         | X                         |
| In re:                        | :                         |
|                               | :                         |
|                               | : Chapter 11              |
|                               | :                         |
| METEX MFG. CORPORATION,       | :                         |
| (f/k/a Kentile Floors, Inc.), | : Case No. 12-14554 (BRL) |
|                               | :                         |
|                               | :                         |
| Debtor.                       | :                         |
|                               | :                         |
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**NOTICE OF HEARING ON THE DEBTOR’S MOTION FOR AN ORDER  
AUTHORIZING THE DEBTOR TO USE ESTATE ASSETS TO SEEK INTERVENTION  
IN THE HOME INSURANCE COMPANY’S NEW HAMPSHIRE LIQUIDATION  
PROCEEDING IN ORDER TO PROTECT THE DEBTOR’S POLICY RIGHTS**

PLEASE TAKE NOTICE that a hearing (the “Hearing”) on the following  
*Debtor’s Motion for an Order Authorizing the Debtor to Use Estate Assets to Seek Intervention  
in The Home Insurance Company’s New Hampshire Liquidation Proceeding In Order to Protect  
the Debtor’s Policy Rights* (the “Motion”) filed by Metex Mfg. Corporation (the “Debtor”) in the  
above-captioned case, will be held **before the Honorable Burton R. Lifland, United States**

**Bankruptcy Judge, in Room 623 of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), One Bowling Green, New York, New York 10004, on June 5,2013 at 10:00 AM (prevailing Eastern Time), or as soon thereafter as counsel may be heard.**

PLEASE TAKE FURTHER NOTICE that copies of the Motion are available free of charge on the Debtor’s Case Information Website (located at [www.loganandco.com](http://www.loganandco.com)).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion (the “Objections”) must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, and shall be filed with the Bankruptcy Court (a) by registered users of the Bankruptcy Court’s case filing system, electronically in accordance with General Order M-399 (which can be found at <http://nysb.uscourts.gov>) and (b) by all other parties in interest, on a 3.5 inch disk, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399, and served on (i) the Debtor, Metex Mfg. Corporation, 9 Park Place, 4<sup>th</sup> Floor, Great Neck, New York, 11021, Attn: Anthony Miceli; (ii) counsel to the Debtor, Reed Smith LLP, 599 Lexington Avenue, New York, New York 10022, Attn: Paul E. Breene *and also at* Reed Smith LLP, 225 Fifth Avenue, Pittsburgh, Pennsylvania 15222, Attn: Paul M. Singer; (iii) Caplin & Drysdale, Chartered, One Thomas Circle, N.W., Washington, DC 2005, Attn: Peter Van N. Lockwood, counsel for the Official Committee of Unsecured Creditors; (iv) Young Conaway Stargatt & Taylor, LLP, Rockefeller Center, 1270 Avenue of the Americas, Suite 2210, New York, NY 10020, Attn: Edwin J. Harron, counsel for the Future Claimants’ Representative; (v) the Office of the United

States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Paul K. Schwartzberg; and (vi) any other party listed on the Master Service List, **so as to be received no later than May 29, 2013 at 4:00 p.m. (prevailing Eastern Time) (the “Objection Deadline”).**

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Motion, the Debtor intends to, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard.

Dated: May 9, 2013

Respectfully Submitted,  
**REED SMITH LLP**

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*Attorneys for Metex Mfg. Corporation,  
Debtor and Debtor-in-Possession*

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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| In re:                        | :                         |
|                               | : Chapter 11              |
| METEX MFG. CORPORATION,       | :                         |
| (f/k/a Kentile Floors, Inc.), | : Case No. 12-14554 (BRL) |
|                               | :                         |
| Debtor.                       | :                         |
| -----                         | X                         |

**DEBTOR’S MOTION FOR AN ORDER AUTHORIZING THE DEBTOR TO USE  
ESTATE ASSETS TO SEEK INTERVENTION IN THE HOME INSURANCE  
COMPANY’S NEW HAMPSHIRE LIQUIDATION PROCEEDING  
IN ORDER TO PROTECT THE DEBTOR’S POLICY RIGHTS**

TO THE HONORABLE BURTON R. LIFLAND,  
UNITED STATE BANKRUPTCY JUDGE:

The debtor and debtor-in-possession, Metex Mfg. Corporation (the “Debtor” or “Metex”), hereby moves the Court, pursuant to section 363(b) of title 11 of the United States Code (the “Bankruptcy Code”), for an Order authorizing the Debtor to use estate assets to seek intervention and participate in a disputed claims proceeding for the purpose of protecting the

Debtor's interest in certain insurance policies issued by The Home Insurance Company that provide coverage for asbestos personal injury claims against Kentile Floors, Inc. In support of this motion (the "Motion"), the Debtor states as follows:

**JURISDICTION**

1. On November 9, 2012 (the "Commencement Date"), the Debtor filed a petition for relief under the Bankruptcy Code with this Court.

2. The Debtor continues in the management and operation of its business and property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case.

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(a) and (o).

4. The statutory predicates for the relief requested herein are sections 363(b), 541(a)(1), 704(a)(1), and 105(a) of the Bankruptcy Code.

**BACKGROUND**

5. The Debtor, formerly known as Kentile Floors, Inc. ("Kentile"), commenced business in the late 1800's as a manufacturer of cork tile, and thereafter progressed to making composite tile for commercial and residential use. At one time, Kentile had manufacturing facilities in Torrance, California; Chicago, Illinois; Brooklyn, New York; and South Plainfield, New Jersey. The strength of Kentile's business was the manufacture of tile for commercial and institutional use.

6. Until the mid-1980's, Kentile used asbestos as one of the components in certain tiles. Once it could no longer use asbestos in its production, Kentile experienced severe difficulties in maintaining its sales of commercial and institutional tile. After its business had deteriorated quite significantly, Kentile filed a chapter 11 bankruptcy petition in the United

States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) at Case No. 92 B 46466 (BRL) in November 1992 (the “1992 Chapter 11 Case”). The following year, Kentile ceased operations and sold substantially all of its assets.

7. In December 1998, the Bankruptcy Court confirmed a Plan of Reorganization in Kentile’s 1992 Chapter 11 Case (“Kentile’s 1998 Plan”). As part of Kentile’s 1998 Plan, (i) all outstanding stock of Kentile was cancelled and new shares were issued to United Capital Corp. (“United Capital”), and (ii) Kentile’s name was changed to KF Real Estate Holdings Corporation (“KF”). Thereafter United Capital caused KF to be merged with Metex Corporation, a subsidiary of United Capital. KF was the survivor of the merger and its name was changed to “Metex Mfg. Corporation”, the name of the Debtor in this proceeding.

8. Kentile’s 1998 Plan provided that all holders of prepetition and postpetition asbestos claims were entitled to pursue their claims solely to the extent of Kentile’s insurance coverage for such claims, and enjoined holders of such claims from commencing any actions against the debtor (Kentile) and/or the reorganized debtor (Metex).

9. Accordingly, consistent with the provisions of Kentile’s 1998 Plan, since confirmation thereof, all matters involving Kentile’s asbestos claims have been resolved, and all settlements have been paid by the insurers providing coverage for those claims (the “Kentile Insurers”)<sup>1</sup>.

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<sup>1</sup> The Kentile Insurers include: Liberty Mutual Insurance Company; Fireman’s Fund Insurance Company; National Fire Insurance Company of Hartford, as successor by merger to Transcontinental Insurance Company, and Continental Insurance Company, as successor in interest to certain policies issued by Harbor Insurance Company; American Home Assurance Company, Granite State Insurance Company and National Union Fire Insurance Company of Pittsburgh, PA; Hartford Accident and Indemnity Company; Century Indemnity Company (as successor to CCI Insurance Company, as successor to Insurance Company of North America), ACE Property & Casualty Company (f/k/a CIGNA Property and Casualty Company f/k/a Aetna Insurance Company), and Westchester Fire Insurance Company; Travelers Casualty and Surety Company, f/k/a The Aetna Casualty and Surety Company; and Allianz Global Risks US Insurance Company. In addition, Kentile had

Continued on following page

10. Based upon reports provided to Metex by the Kentile Insurers, as of the Commencement Date, there were approximately 6,000 active asbestos personal injury claims and over 20,000 inactive asbestos personal injury claims outstanding against Kentile,<sup>2</sup> all of which were limited to recovery solely from, and channelled to, available insurance under Kentile's 1998 Plan.

11. Beginning in the mid-2000's, a number of disputes arose among the Kentile Insurers and Metex regarding, among other things, the proper allocation of defense costs and indemnity, and the available limits of coverage under the various policies. The parties were unable to resolve these disputes through negotiation, and in 2008 one of the Kentile Insurers initiated an insurance-coverage action against Metex and the other Kentile Insurers in the New York Supreme Court styled *National Fire Insurance Company of Hartford, et al., v. Travelers Casualty and Surety Company, et al*, Index No. 105522/2008 (the "Coverage Action").

12. The Coverage Action directly impacts the ability of Kentile's asbestos claimants to recover under Kentile's 1998 Plan. Although the Coverage Action remains pending, it was stayed by the parties in mid-2012 to allow a consensual resolution of all coverage disputes and, as an integral part thereof, solicitation of a Metex prepackaged plan of reorganization (the "Prepackaged Plan").

13. The Prepackaged Plan was created through a series of negotiations by Metex with each of the eight solvent Kentile Insurers, three law firms that represented the largest

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Continued from previous page

coverage under policies issued by The Home Insurance Company which is in an insolvency proceeding, and Federal Insurance Company whose policies have been exhausted.

<sup>2</sup> Although the Debtor's name was changed to "Metex Mfg. Corporation" in 1998, the name "Kentile Floors, Inc." continued to be used by plaintiffs in connection with filings of asbestos related actions.



number of asbestos personal injury claimants against Kentile in the tort system (the “Prepetition Asbestos Claimants’ Committee”), and a representative of future claimants (the “Prepetition Future Claimants’ Representative”).

14. Central to the Prepackaged Plan – and central to this Chapter 11 case – were the settlement agreements between Metex (entered into with the consent and participation of the Prepetition Asbestos Claimants’ Committee and the Prepetition Future Claimants’ Representative) and the eight solvent Kentile Insurers (the “Insurance Settlement Agreements”), which, had the Prepackaged Plan been approved, would have resulted in excess of \$165 million being contributed by those Kentile Insurers to a section 524(g) trust for the benefit of current and future holders of Kentile asbestos claims.

15. On June 29, 2012 Metex began solicitation of its Prepackaged Plan. Although more than 84% of those voting on the Prepackaged Plan cast votes in support, only 66.15% in amount of the claims voted in favor by the voting deadline. Accordingly, the Prepackaged Plan could not be confirmed.<sup>3</sup>

16. Metex subsequently determined it was in its best interest to file this chapter 11 case in order to (i) continue the stay of the Coverage Action and preserve the Insurance Settlement Agreements, and (ii) seek confirmation of a plan in order to fund a 524(g) trust with the proceeds of the Insurance Settlement Agreements together with an assignment of the Debtor’s rights to other unresolved insurance assets.

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<sup>3</sup> After the voting deadline of August 28, 2012, Metex received additional votes which, if counted, met the two-thirds in amount standard of section 1126(c), thus making the Prepackaged Plan confirmable.

**A. THE DEBTOR'S INTEREST IN LIABILITY INSURANCE COVERAGE FROM THE HOME INSURANCE COMPANY**

17. As set forth more fully in the Declaration of Paul E. Breene, Esq. ("Breene Decl.") in support of this Motion and annexed hereto as **Exhibit A**, Kentile has coverage under five umbrella insurance policies ("The Home Policies") issued by The Home Insurance Company ("The Home"). Each of The Home Policies has a \$5 million limit, excess of five now exhausted \$1 million primary policies, bringing the total aggregate limits of The Home Policies to \$25 million. As noted above, The Home Policies provide coverage for Kentile asbestos personal injury claims. *See* Breene Decl., ¶ 3.

18. In 2003, The Home became (and remains) the subject of a liquidation proceeding in the Merrimack County Superior Court, State of New Hampshire ("The Home Liquidation Proceeding"). Roger A. Sevigny, the Commissioner of the Insurance for the State of New Hampshire, was appointed by the Superior Court as the liquidator for The Home (the "Liquidator"). On June 10, 2004, Metex filed a timely proof of claim in The Home Liquidation Proceeding seeking insurance coverage for, *inter alia*, the asbestos personal injury claims that have been made against Kentile. *See* Breene Decl., ¶ 6.

**B. THE CENTURY INDEMNITY COMPANY LITIGATION**

19. The Debtor recently learned that Century Indemnity Company (as successor to CCI Insurance Company, as successor to Insurance Company of North America) ("Century") has asserted in The Home Liquidation Proceeding a \$5.5 million contribution claim and a right of setoff against its obligations to The Home, contending that it is entitled to that remedy based upon its prior payment of Kentile asbestos claims.

20. The Liquidator denied Century's assertions on a number of grounds, including that Century's contribution claim, which Century uses to support its right to setoff, is

invalid. In accordance with the procedures established in The Home Liquidation Proceeding, Century sought review of the Liquidator's denial of its setoff. The matter is currently pending before Referee Melinda S. Gehris (the "Referee") (docketed as Disputed Claims Proceeding No. 2005-HICIL-14, hereinafter the "Disputed Claims Proceeding"). The Disputed Claims Proceeding was filed under seal and is subject to a confidentiality order.

21. Oral argument on the merits of Century's claims in the Disputed Claims Proceeding was originally scheduled for November 13, 2012. As a consequence of Metex's chapter 11 filing on November 9, 2012, the Referee ordered the Liquidator and Century to file a joint report by December 19, 2012 on whether the hearing on the merits could proceed. Upon learning of the Referee's order requiring the joint report, the Debtor sought Century's and the Liquidator's agreement to extend the deadline for such submission for 90 days. The Debtor's request was granted and the date for the joint submission on whether the Disputed Claims Proceeding could proceed was extended to March 19, 2013.

22. Prior to the March 19, 2013 submission date, Metex sought copies of each of the Liquidator's and Century's submissions in the Disputed Claims Proceeding to determine whether Century's assertion of a setoff against The Home affected property of the estate. The parties provided Metex with redacted copies of their submissions.

23. After reviewing the redacted submissions, Metex believed it needed additional information to further assess Century's claim and so it sought from the parties copies of their unredacted submissions in the Disputed Claims Proceeding. The Liquidator, agreeing with Metex, filed a motion with the Referee to disclose the unredacted materials to Metex. Century objected to the Liquidator's motion. The Liquidator's request was denied by the

Referee in an order dated April 2, 2013, a copy of which is attached as **Exhibit B** (the “April 2 Order”).

24. In her April 2 Order the Referee renewed her request that the Liquidator and Century submit a joint statement by May 13, 2013 as to whether the Disputed Claims Proceeding may continue in light of the Debtor’s chapter 11 filing. As more fully set forth below, although the Debtor believes Century’s assertion of a setoff in the Disputed Claims Proceeding affects the Debtor’s property interests in The Home Policies, the Debtor believes that the Disputed Claims Proceeding should not be stayed provided the Debtor is permitted to intervene in the proceeding in order to protect its rights.

**C. THE NYLB PROPOSAL; THE EFFECT OF THE DISPUTED CLAIMS PROCEEDING ON PROPERTY OF THE ESTATE**

25. Prior to the filing of this chapter 11 case, the New York Liquidation Bureau (“NYLB”), as agent for the Superintendent of Financial Services of the State of New York as Administrator of the New York Property/Casualty Insurance Fund, paid on behalf of The Home \$14,016,147.38 on account of Kentile asbestos personal injury claims arising from injuries alleged to have been sustained in New York. *See* Breene Decl., ¶ 7.

26. The Debtor has been advised by the NYLB that it believes unresolved New York-based asbestos personal injury claims against Kentile are sufficient to exhaust the remaining coverage under The Home Policies. *See* Breene Decl., ¶ 8.

27. In light of the NYLB’s analysis of the likely exhaustion of the remaining limits under The Home Policies, the NYLB has proposed a settlement whereby in exchange for a release by the Debtor and protection of a 524(g) channeling injunction for the NYLB, the Liquidator and The Home issued on the effective date of the Debtor’s plan of reorganization, the NYLB will pay to an asbestos trust formed under the Debtor’s plan of reorganization, the full

remaining limits of The Home Policies (\$10,963,852.62), less amounts paid under The Home Policies prior to the effective date of the Debtor's plan<sup>4</sup> (the "Settlement Payment"). *See* Breene Decl., ¶ 9. A copy of a settlement agreement proposed by the NYLB (the "Proposed NYLB Settlement Agreement") is annexed to the Breene Declaration as **Attachment 3**.

28. Under the Proposed NYLB Settlement Agreement, should Century prevail in the Disputed Claims Proceeding, any amounts recovered by Century on account of its \$5.5 million contribution claim will impair the limits of The Home Policies and, therefore, result in a dollar for dollar reduction in the amount that will be paid by the NYLB to the Debtor. *See* Breene Decl., ¶ 10; section I.R.R. of the Proposed NYLB Settlement Agreement.

29. Although the Debtor's insurance rights under The Home Policies are property of the estate within the jurisdiction of this Court, given that the Disputed Claims Proceeding was commenced in February, 2011, involves state law matters and considering that the Referee and the New Hampshire courts are familiar with the facts, circumstances, and controlling law, the Debtor believes that the New Hampshire Superior Court where The Home Liquidation Proceeding is pending is the appropriate forum to adjudicate Century's claims – provided the Debtor is given an opportunity to appear and be heard therein. The Debtor has been informed by the Liquidator's counsel that the Liquidator will support the Debtor's efforts to intervene in the proceeding. *See* Breene Decl., ¶ 11.

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<sup>4</sup> Contemporaneously herewith the Debtor is seeking Court approval of a Stipulation with Liberty Mutual Insurance Company whereby the NYLB will pay \$408,849.50 to the McGiveny & Kluger Trust Account (National Coordinating counsel for Kentile asbestos claims) which represents funds paid to settle Kentile asbestos claims by Liberty Mutual on account of The Home. Under the Stipulation, Liberty Mutual has agreed to turn over the \$408,849.50 to the NYLB Escrow Account to be used as provided by the NYLB Escrow Agreement (as defined in the *Motion of the Debtor for an Order Authorizing the Continued Use of Bank Accounts and Business Forms* [Dkt. 7]). If the Stipulation is approved, the \$10,963,852.62 remaining limits under The Home Policies will be reduced by \$408,849.50 payment to the NYLB Escrow Account under the Stipulation.

**RELIEF REQUESTED**

30. By this Motion, the Debtor seeks an order authorizing the Debtor, pursuant to section 363(b) of the Bankruptcy Code, to use estate assets to seek leave to intervene and, if intervention is granted, to participate in The Home Liquidation Proceeding and, in particular, in the Disputed Claims Proceeding in order to defend its rights vis-à-vis The Home Policies.

**BASIS FOR RELIEF REQUESTED**

31. Pursuant to Local Bankruptcy Rule 9013-1, the basis for the relief requested herein and the legal and statutory authorities upon which the Debtor relies are set forth in the Memorandum of Law filed in support hereof and filed concurrently with this Motion.

**NO PRIOR REQUEST**

32. No previous request for the relief sought herein has been made to this Court or any other court.

**NOTICE**

33. Notice of this Motion has been provided by either electronic transmission, facsimile, overnight delivery, or hand delivery to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the Debtor; (c) Caplin & Drysdale, Chartered, Attn: Peter Van N. Lockwood, Esq., counsel to the Official Committee of Unsecured Creditors; (d) Young Conaway Stargatt & Taylor, LLP, Attn: Edwin J. Harron, counsel for the Future Claimants' Representative; (e) counsel to the New York Liquidation Bureau; (f) counsel for Century; (g) counsel for the Liquidator; and (h) each other person listed on the Master Service List.

WHEREFORE, for the reasons set forth herein, the Debtor, Metex Mfg. Corporation, respectfully requests that the Court enter an order (i) authorizing the Debtor to use property of the estate to seek leave to intervene in the Disputed Claims Proceeding, and if

permitted to intervene, to participate in and defend its rights vis-à-vis The Home Policies<sup>5</sup>, and  
(ii) granting such other and further relief as is just and proper.

Dated: May 9, 2013

**REED SMITH LLP**

By: /s/ Paul M. Singer

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<sup>5</sup> The relief requested herein shall be without prejudice to the Debtor's rights, including the Debtor's right to imposition of the automatic stay under section 362(a), should intervention in the Disputed Claims Proceeding not be forthcoming.