

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - DAYTON**

In re:) Chapter 11
)
DT INDUSTRIES, INC., et al.¹) Case No. 04-_____
) (Jointly Administered)
Debtors.)
) Honorable _____

**DEBTORS' MOTION FOR ORDER (I) PROHIBITING UTILITIES FROM
ALTERING, REFUSING, OR DISCONNECTING SERVICES ON ACCOUNT
OF PREPETITION CLAIMS; AND (II) DETERMINING ADEQUATE
ASSURANCE OF FUTURE PAYMENT**

The above captioned debtors and debtors in possession (collectively, the “Debtors”), hereby move this Court for entry of an order: (a) prohibiting the Debtors’ utility service providers (collectively, the “Utility Companies” and each a “Utility Company”) from altering, refusing, or discontinuing services to the Debtors or otherwise discriminating against the Debtors, on account of outstanding prepetition claims or the filing of these chapter 11 cases; and (b) determining that the Utility Companies have adequate assurance of future payment, without the need for payment of additional deposits or security, pursuant to the protections established herein. This Motion is based on the Affidavit of John M. Casper filed contemporaneously herewith. In support of this Motion, the Debtors respectfully represent as follows:

¹ The other debtors and debtors-in-possession include the following: Vanguard Technical Solutions, Inc., Mid-West Automation Enterprises, Inc., Mid-West Automation Systems, Inc., Assembly Technology and Test, Inc., Detroit Tool and Engineering Company, Advanced Assembly Automation, Inc., Assembly Machines, Inc., Hansford Manufacturing Corporation, DTI Leominster Subsidiary, Inc., DTI Pennsylvania Subsidiary, Inc., DTI Massachusetts Subsidiary, Inc., DTI Lebanon Subsidiary, Inc., and DT Resources, Inc.

I. JURISDICTION

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105 and 366 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

II. INTRODUCTION

3. On May 12, 2004 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their affairs as debtors-in-possession.

4. No trustee, examiner or committee has been appointed in these chapter 11 cases.

III. BACKGROUND

A. Company Overview

5. Debtor, DT Industries, Inc. (“DTI”) is an engineering-driven designer, manufacturer, and integrator of automated production equipment and systems used to manufacture a variety of industrial and consumer products. Headquartered in Dayton, Ohio, DTI is a Delaware corporation that was formed in 1992. Through its operating subsidiaries, DTI maintains operations throughout the Midwestern U.S., as well as the United Kingdom and Germany.

6. Customers of DTI are found in a wide variety of industries, including automotive, appliance and consumer products manufacturing, electronics, and computers, as well as a diverse group of other industrial manufacturers. DTI maintains a significant foothold in each of these

end-markets, serving a high quality customer base of Fortune 500 companies through its industry-leading product quality and engineering capabilities. In addition, DTI's custom machine building capabilities, which are a critical component of its customers' overall manufacturing processes, include engineering, project management, machining and fabrication of components, installation of electrical controls, and final assembly and testing.

7. DTI's operations are composed of two separate operating segments – Assembly and Test and Detroit Tool & Engineering. The Assembly and Test operating segment is composed of Advanced Assembly Automation, Inc. (“AAA”), Assembly Technology & Test, Inc. (“AT&T”) (both direct, wholly-owned subsidiaries of DTI), DT Assembly and Test GMBH, a German limited liability corporation that is a direct, wholly-owned subsidiary of DTI, and DT Assembly & Test Limited, an English corporation that is an indirect, wholly-owned subsidiary of DTI. The business units in the Assembly and Test segment design and build custom assembly systems, electrified monorail material handling systems, fuel injection, engine and transmission test systems, and lean assembly systems primarily for customers in automotive-related and heavy equipment markets. The businesses in DTI's Assembly and Test segment work closely with their customers to design, engineer, assemble, test, and install equipment that meets the customers' manufacturing objectives. Purchase contracts typically include equipment design, and customers often retain rights to the design after delivery of the equipment. However, DTI often reapplies the engineering and manufacturing expertise gained in designing and building equipment in projects for other customers.

8. The Detroit Tool & Engineering operating segment consists of Detroit Tool and Engineering Company (“DTE”), a direct, wholly-owned subsidiary of DTI which manufactures special machines, automated systems, tooling and fixturing, and the Peer^(TM) brand of automated

welding equipment. DTE's products serve a wide variety of markets, including appliances, electronics, building construction, hardware, cosmetics, healthcare, and automotive. DTE's special automation equipment incorporates engineering capabilities ranging from refining and replicating existing equipment, to designing and building new equipment. DTE provides systems integration and implements a wide range of applications including, dials, power and free, synchronous, indexing processes, metal forming, welding, and robotics.

9. The Debtors have approximately 481 employees, 15 of whom are at the corporate level. The Debtors' workforce is composed of 225 hourly and 256 salaried workers. The Debtors' workforce is highly skilled, with approximately one-third of its employees at all levels possessing an engineering background.

B. Prepetition Financing

10. DTI, DT Industries (UK) II, Limited, DT Assembly and Test GMBH, Kalish, Inc., and DT Canada, Inc., as borrowers (the "Borrowers"), and U.S. Bank National Association f/k/a Firststar Bank, N.A., Bear Sterns & Co., Hourglass Master Fund, Ltd., The Bank of Nova Scotia, William E. Simons & Sons Special Situation Partners, L.P., National City Bank and Oz Special Master Fund, Ltd., as lenders (collectively, with Bank of America, N.A. (formerly Nations Bank, N.A.), the "Lenders"), and Bank of America, N.A., as a lender and agent for the Lenders, are parties to that certain Fourth Amended and Restated Credit Facilities Agreement dated as of July 21, 1997 (as amended and supplemented from time to time, the "Credit Facilities Agreement"), pursuant to which the Lenders have provided to the Borrowers credit facilities and other financial accommodations. Under the terms of the Credit Facilities Agreement, the Borrowers had an aggregate commitment of \$175 million (\$10 million of term loans and \$165

million of revolving loans), which has, through subsequent amendments to the Credit Facilities Agreement, been reduced to \$33.182 million.

11. The Credit Facilities Agreement is secured by pledges of all of the shares of common stock of Borrowers' North American subsidiaries, 65% of the equity of Borrowers' European subsidiaries, and security interests in all of Borrowers' U.S. and Canadian assets including, but not limited to, all accounts, inventories, machinery, equipment and intangible assets, as well as mortgages on real property located in Saginaw, Michigan, Benton Harbor, Michigan, and Lebanon, Missouri.

12. The Credit Facilities Agreement requires quarterly commitment reductions of \$1.5 million with additional commitment reductions under certain circumstances. The Borrowers must repay amounts outstanding under the Credit Facilities Agreement to the extent the outstanding principal amount (including the face amount of outstanding letters of credit issued under the Credit Facilities Agreement) exceeds the Lenders' aggregate commitment after the required quarterly commitment reductions. As of May 10, 2004, there was a total of \$32.781 million outstanding under the Credit Facility Agreement, which amount includes \$1.967 million of letters of credit issued by the Lenders.

13. In addition to the credit facilities under the Credit Facilities Agreement, DTI, through DT Capital Trust, issued \$70 million in 7.16% Term Interest Deferrable Equity Securities ("Tides") in 1997, of which \$35 million in principal amount remain outstanding.

C. Events Leading to the Filing of these Chapter 11 Cases

14. Over the last several years, the Debtors have experienced deteriorating financial performance as a result of depressed economic activity and lower capital goods spending by their customers. As a result of their cash and revenue crisis, the Debtors have had difficulty meeting

the financial covenants under the Credit Facilities Agreement, and failed to make timely prepayments required under the Credit Facilities Agreement as of December 31, 2003 and March 31, 2004. As part of an effort to restructure its finances, in 2002, DTI converted \$35 million of the Tides to equity, raised approximately \$22 million in additional equity, repaid a portion of the debt owed under the Credit Facilities Agreement, and extended the maturity thereof to July 2, 2004. Beginning in 2002 and continuing thereafter, the Debtors executed additional significant restructuring strategies including expense reduction initiatives, facilities closings, and divestitures that resulted in the sale of substantially all of the assets of DTI's Converting Technologies and Packaging Systems businesses in early 2004 and application of the proceeds to reduce the debt under the Credit Facilities Agreement. The Debtors are currently in default under their Credit Facilities Agreement due to the above-referenced failure to make timely required principal payments on December 31, 2003 and March 31, 2004. The Debtors are also currently in violation of several financial and other covenants under the Credit Facilities Agreement. The Debtors have been unable to negotiate a waiver of defaults or forbearance from the Lenders or obtain a replacement credit facility to replace their existing Credit Facilities Agreement, which expires July 2, 2004. The Debtors have no availability under the Credit Facilities Agreement's revolving line and have been operating since January 1, 2004 through the management of their operating cash flow. The inability of the Debtors to access their credit facility has impaired their ability to obtain new customer orders and to pay vendors that have provided components and services on credit for completed projects. The Debtors' ability to meet their short-term liquidity needs and debt obligations have been materially adversely affected by a drop in new orders that are customarily accompanied by advance payments from customers.

15. The declining market and the Debtors' concomitant loss of revenue has made it difficult for the Debtors to continue operations and, at the same time, service their debt under the Credit Facilities Agreement. As a result, these chapter 11 filings were necessary.

IV. BACKGROUND ON UTILITY SERVICES

16. In connection with the operation of their businesses, the Debtors obtain electricity, natural gas, water, sewer, telephone, communications, trash collection and/or other services of this general character ("Utility Services") from the Utility Companies. Attached hereto as Exhibit "A," and incorporated herein by this reference, is a list of the Utility Companies that were providing services to the Debtors as of the Petition Date.

V. RELIEF REQUESTED

17. By this Motion, the Debtors seek entry of an order: (a) prohibiting the Utility Companies from altering, refusing or discontinuing services to the Debtors or otherwise discriminating against the Debtors on account of outstanding prepetition claims or the filing of these chapter 11 cases; and (b) determining that the Utility Companies have adequate assurance of future payment, without the need for payment of additional deposits or security, pursuant to the protections established herein.

VI. PROPOSED ADEQUATE ASSURANCE

18. The Debtors propose to provide adequate assurance to the Utility Companies as follows:

- (a) Administrative Expense Priority for Postpetition Services: Each of the Utility Companies shall be granted administrative expense priority status under section 503(b) of the Bankruptcy Code for services rendered to the Debtors following the Petition Date;
- (b) Timely Payment for Postpetition Services: The Debtors shall timely pay all undisputed (in good faith) amounts of each invoice for postpetition Utility Services rendered;

- (c) Information Exchange: At the request of a Utility Company, the Debtors and that Utility Company shall exchange contact information (names, addresses, phone and fax numbers) for employees with sufficient authority to deal with disputes, if any, regarding late or missed postpetition payments; and
- (d) Expedited Dispute Resolution: In the event of any dispute between the Debtors and a Utility Company with respect to postpetition payment, the Court will hear such dispute upon motion (as opposed to adversary proceeding) filed by either party, on ten days notice unless the parties agree to a longer period of time.

19. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

VII. NOTICE AND PRIOR MOTIONS

20. Notice of this Motion has been given to the United States Trustee, counsel for the Lenders, and each of the twenty largest unsecured creditors of each Debtor at their respective last known addresses. In light of the nature of the relief requested herein, the Debtors submit that no further notice of the Motion is necessary or required.

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

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached to this Motion: (a) prohibiting the Utility Companies from altering, refusing or discontinuing services to the Debtors or otherwise discriminating against the Debtors, on account of outstanding prepetition invoices or the filing of these chapter 11 cases; (b) determining that the Utility Companies are adequately assured of future payment, without the

need for payment of additional deposits or security, pursuant to the protections established by this Motion; and (c) granting such other and further relief as is just and proper.

Dated: _____, 2004

Respectfully Submitted,

DT INDUSTRIES, INC., at al.

By: s/ Julia W. Brand

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - DAYTON**

In re:) Chapter 11
)
DT INDUSTRIES, INC., et al.¹) Case No. 04-_____
) (Jointly Administered)
Debtors.)
) Honorable _____

**DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
FOR ORDER (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR
DISCONNECTING SERVICES ON ACCOUNT OF PREPETITION INVOICES; AND
(II) DETERMINING ADEQUATE ASSURANCE OF FUTURE PAYMENT**

The above captioned debtors and debtors in possession (collectively, the "Debtors"), through their undersigned counsel, submit this Memorandum of Law in support of the Motion for an Order (a) Prohibiting the Debtors' Utility Service Providers from Terminating Service; and (b) for Authorization to Provide Adequate Assurance of Future Payment to Utility Service Providers (the "Motion").²

I. FACTUAL BACKGROUND

The factual support for this Memorandum is set forth in the Motion, which may be supplemented by testimony at the hearing on the Motion.

¹ The other debtors and debtors-in-possession include the following: Vanguard Technical Solutions, Inc., Mid-West Automation Enterprises, Inc., Mid-West Automation Systems, Inc., Assembly Technology and Test, Inc., Detroit Tool and Engineering Company, Advanced Assembly Automation, Inc., Assembly Machines, Inc., Hansford Manufacturing Corporation, DTI Leominster Subsidiary, Inc., DTI Pennsylvania Subsidiary, Inc., DTI Massachusetts Subsidiary, Inc., DTI Lebanon Subsidiary, Inc., and DT Resources, Inc.

² Unless otherwise stated herein, Capitalized terms used herein shall have the meanings ascribed to them in the Utility Motion.

II. LEGAL ARGUMENT

Pursuant to section 366 of the Bankruptcy Code, within twenty (20) days after the commencement of a bankruptcy case, a utility service provider may not alter, refuse, or discontinue service to, or discriminate against a debtor solely on the basis of the commencement of the case or the failure of the debtor to pay a prepetition debt. Following this 20-day period, however, such services may be discontinued if the debtor does not provide “adequate assurance” of its future payment of postpetition obligations to utility service providers. In this regard, section 366 of the Bankruptcy Code provides:

- (a) Except as provided in subsection (b) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.
- (b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

11 U.S.C. § 366.

Section 366 of the Bankruptcy Code applies to entities providing electricity, natural gas, water, sewer and telephone services, as well as any other entity that supplies services that cannot be readily obtained elsewhere. *See, e.g., In re Coastal Dry Dock & Repair Corp.*, 62 B.R. 879, 883 (Bankr. E.D.N.Y. 1986).

Determinations of adequate assurance under section 366 of the Bankruptcy Code are fully within the Court’s discretion. *In re Marion Steel Co.*, 35 B.R. 188, 195 (Bankr. D. Ohio 1983). Furthermore, bankruptcy courts have the exclusive responsibility of determining what constitutes adequate assurance for payment of postpetition utility charges, and are in no way bound by local or state utility regulations. *In re Begley*, 41 B.R. 402, 405-06 (E.D. Pa. 1984).

“Adequate assurance” under section 366 is not synonymous with “adequate protection.” Rather, in determining what constitutes adequate assurance, the court is not required to give the utility company the equivalent of a guaranty of payment. *In re Caldor, Inc.--NY*, 199 B.R. 1, 3 (Bankr. S.D.N.Y. 1996) (“The statute does not require an ‘absolute guarantee of payment’”), *aff’d*, 117 F.3d 646 (2d Cir. 1997). Rather, the court need only determine that the utility company is not subject to an unreasonable risk of nonpayment for postpetition services. *In re Keydata Corp.*, 12 B.R. 156, 158 (1st Cir B.A.P. 1981) (“In our view, ‘adequate assurance of payment’ does not require an absolute guarantee of payment. What is required is that the utility be protected from an unreasonable risk of nonpayment.”). *See also, In re Santa Clara Circuits West, Inc.*, 27 B.R. 680, 685 (Bankr D. Utah 1982). Whether a utility service provider is subject to an unreasonable risk of nonpayment must be determined from the facts and circumstances of each case. *See In re Caldor--NY*, 117 F.3d 646, 650 (2d Cir. 1997).

III. PROPOSED ADEQUATE ASSURANCE

If the Utility Companies are permitted to terminate the Utility Services on the 21st day after the commencement of these cases, there will be severe disruptions to the Debtors’ businesses, causing substantial harm to the Debtors. Accordingly, and as detailed in the Utility Motion, the Debtors propose to provide adequate assurance to the Utility Companies as follows:

- (a) Administrative Expense Priority for Postpetition Services: Each of the Utility Companies shall be granted administrative expense priority under section 503(b) of the Bankruptcy Code for services rendered to the Debtors by the Utility Companies following the Petition Date;
- (b) Timely Payment for Postpetition Services: The Debtors shall timely pay all undisputed (in good faith) amounts of each invoice for postpetition Utility Services rendered;
- (c) Information Exchange: At the request of the Utility Company, the Debtors and the Utility Company shall exchange contact information (names, addresses, phone and fax numbers) for employees with sufficient authority to deal with disputes, if any, regarding late or missed postpetition payments; and

- (d) Expedited Dispute Resolution: In the event of any dispute between the Debtors and a Utility Company with respect to postpetition payment, the Court will hear such dispute upon motion (as opposed to adversary proceeding) filed by either party, on ten (10) days notice, unless the parties agree to a longer period of time.

The Debtors submit that these methods of furnishing adequate assurance of payment to the Utility Companies do not subject the Utility Companies to an unreasonable risk of nonpayment and are in keeping with the spirit and intent of section 366 of the Bankruptcy Code. *See Caldor*, 199 B.R. at 3. Furthermore, the Debtors submit that the proposed adequate assurances are sufficient to protect the Utility Companies without the requirement that the Debtors provide a security deposit to the Utility Companies. The United States Court of Appeals for the Second Circuit has recently approved certain adequate assurance safeguards very similar to those proposed here. *See Caldor*, 117 F.3d at 651. Accordingly, the proposed adequate assurances offered here are more than satisfactory under the circumstances of this case given the Debtors' good prepetition payment history to the Utility Companies. *In re Shirey*, 25 B.R. 247, 249 (Bankr. E.D. Pa. 1982) (“[W]e conclude that section 366(b) of the Code does not permit a utility to request adequate assurance of payment for continued service unless there has been a default by the debtor on a prepetition debt owed for services rendered.”). Rather, given the Debtors' prepetition payment history, the adequate assurances proposed here exceed what has been required in other cases. *See In re George C. Frye Co.*, 7 B.R. 856, 858 (Bankr. D. Me. 1980) (holding that an administrative expense priority coupled with the requirement that telephone bills be paid within 10 days after receipt was sufficient adequate assurance under section 366).

IV. CONCLUSION

For the foregoing reasons, the Debtors respectfully request this court enter an order: (a) prohibiting the Utility Companies from terminating service; and (b) approving the adequate assurances of future payment to the Utility Companies described above.

Dated: _____, 2004

Respectfully Submitted,

DT INDUSTRIES, INC., at al.

By: s/ Julia W. Brand

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