

**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 HEARING AND FOR ORDER (I) AUTHORIZING THE
DEBTORS TO PAY PREPETITION WAGES, SALARIES AND EMPLOYEE
BENEFITS; (II) AUTHORIZING THE DEBTORS TO CONTINUE THE
MAINTENANCE OF EMPLOYEE BENEFIT PROGRAMS IN THE ORDINARY
COURSE; AND (III) DIRECTING ALL BANKS TO HONOR PREPETITION CHECKS
FOR PAYMENT OF PREPETITION EMPLOYEE OBLIGATIONS**

DT Industries, Inc. and certain of its subsidiaries, debtors and debtors-in-possession in the above-referenced cases (collectively, the "Debtors"), hereby move this Court for entry of an order: (a) authorizing the Debtors to pay prepetition wages, salaries and employee benefits, (b) authorizing the Debtors to continue the maintenance of employee benefit programs in the ordinary course, and (c) directing all banks to honor prepetition checks for payment of prepetition employee obligations (the "Motion"). 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(a), 363(b) and (c), and 507(a)(3) and (a)(4) 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. PREPETITION EMPLOYEE OBLIGATIONS

A. Wages, Salaries and other Compensation

16. In the ordinary course of their businesses, the Debtors incur payroll obligations to approximately 481 persons ("Employees"). The Employees consist of: (a) approximately 256 salaried employees, and (b) approximately 225 full and part-time employees who work on an hourly basis.

17. Prior to the Petition Date, the Debtors paid some of their Employees on a semimonthly pay cycle, and others every week. The Debtors estimate that their accrued and unpaid wage and salary obligations as of the Petition Date aggregate approximately \$560,000 (the "Wage and Salary Obligations").

18. The Debtors are required by law to (a) withhold from their payrolls, and remit to the appropriate tax authorities, certain federal, state, and local income taxes, social security and medicare taxes (collectively, the "Payroll Tax Obligations"), and (b) directly pay state and local unemployment taxes and contributions ("Unemployment Taxes"). The Debtors estimate that as of the Petition Date, the amount of such Payroll Tax Obligations and Unemployment Taxes approximates \$55,000.

B. Vacation Obligations

19. The Debtors have a vacation and other paid-time-off policy with respect to their different operations. In general, the majority of the Employees accrue paid-time-off on a pay-period basis and such paid time off may be used as it is accrued. Upon termination or resignation, Employees can request a cash payout or payment of the vested hours over an extended period of time. As of the Petition Date, the Debtors' accrued and unpaid obligations in respect of vacation pay, holiday pay, sick time, and personal days is approximately \$1,306,000 (collectively, the "Vacation Obligations").

C. Employee Benefits

20. As is customary with most large companies, the Debtors have established various plans and policies for the benefit of their Employees, which include health insurance, life insurance, dental insurance, disability benefits and coverage, vision coverage, flexible spending programs for medical and dependent care, 401(k) plans, profit sharing, and other similar benefits (collectively, the "Employee Benefits"). Benefits such as 401(k) plan participant contributions, flexible spending contributions, supplemental AD&D, supplemental life insurance, health insurance premiums, dental insurance premiums and other similar Employee requested deductions are exclusively deducted from Employees' wages (the "Employee Requested Payroll Deductions").

21. The Debtors estimate that, as of the Petition Date, their accrued and unpaid obligations in respect of the Employee Benefits aggregate approximately \$200,000, which amount is comprised of the following: (a) payments for both Debtors' and employees' contributions to various group medical and health insurance plans and flexible spending accounts

aggregating approximately \$40,000; (b) payments of both the Debtors and employees' contributions in respect of disability, life, and accidental death and dismemberment insurance aggregating approximately \$50,000; (c) payments in respect of Employee 401(k) plan contributions aggregating approximately \$110,000. With respect to the Employee-Requested Payroll Deductions, the Debtors estimate that collected but not yet disbursed amounts should not exceed \$5,000.

D. Reimbursement

22. The Debtors customarily reimburse their Employees who incur a variety of business expenses in the ordinary course of performing their duties on behalf of the Debtors. These reimbursable business expenses include, among other expenses, those incurred in connection with travel, long-distance telephone charges, and cellular phone charges. In some instances, Employees may use personal credit cards for which the Employee pays the bill and upon submission of the receipt, is then reimbursed by the Debtors. Because the Employees do not always submit claims for reimbursement promptly, it is difficult for the Debtors to determine the exact amount outstanding at any particular time. The Debtors estimate that, as of the Petition Date, their obligations in respect of reimbursements to be made to Employees should not exceed \$100,000 (the "Reimbursement Obligations").

E. Administration of Employee Benefit Plans

23. As is customary in the case of most large companies, the Debtors utilize the services of administrators and consultants in the ordinary course of their businesses in order to facilitate the administration and maintenance of certain Employee Benefits. The Debtors estimate that approximately \$230,000 was accrued and unpaid on account of services provided to the Debtors

by such professionals and consultants prior to the Petition Date (the “Administrative Obligations”).

24. Additionally, the Debtors are self-insured with respect to Employees’ medical insurance. There is typically a 60 day lag between the time medical services are provided to the Employee and the adjudication of the medical claim. The Debtors estimate that approximately \$830,000 was accrued and unpaid on account of medical services provided Employees of the Debtors (the “Medical Insurance Obligations”).

V. RELIEF REQUESTED

25. By this Motion, the Debtors request that the Court enter an order authorizing the Debtors to continue paying the Wage and Salary Obligations and the Vacation Obligations in an amount not to exceed \$4,650 as to any Employee. By this Motion, the Debtors also request that the Court enter an order authorizing the Debtors to continue paying the Employee Benefits, the Reimbursement Obligations, the Payroll Tax Obligations, the Administrative Obligations, the Medical Insurance Obligations, and the Employee Requested Payroll Deductions (collectively, the “Prepetition Employee Obligations”), and request authority for the banks to receive, process, honor and pay all checks drawn on the Debtors’ payroll and general accounts related to such obligations, whether presented before or after the Petition Date, upon receipt by each bank and institution of notice of such authorization, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

VI. BASIS FOR THE RELIEF REQUESTED

26. If Prepetition Employee Obligations are not paid when due, these chapter 11 cases will be seriously jeopardized. Continued operations are, in large part, dependent upon Employee

continuity, dedication and performance. Any delay in paying such obligations would irreparably damage the Debtors' relationship with their Employees at a time where performance and cooperation are critical. If Employees do not receive regular paychecks for past services, it is likely the Debtors will lose a significant number of Employees with little or no notice.

27. The Debtors submit that because Payroll Tax Obligations constitute "trust fund" taxes, the payment of such taxes will not prejudice other creditors of these estates, given that the relevant taxing authorities would hold priority claims under section 507 of the Bankruptcy Code in respect to such obligations.

28. The Debtors further submit that all Employee Requested Payroll Deductions are made from amounts earned by, and otherwise payable to, the Employees. Accordingly, continuation of such deductions will not diminish the estates or otherwise prejudice creditors.

29. Thus, the Debtors submit that the amounts to be paid to the Employees pursuant to this Motion are reasonable compared with the importance and necessity of preserving Employee loyalty and morale, and with the difficulties and losses the Debtors likely will suffer if these amounts are not paid.

30. Finally, this Motion shall not be deemed an assumption or adoption of any policy, plan, program, or employment agreement pursuant to section 365 of the Bankruptcy Code. The Debtors are in the process of reviewing these matters and reserve all of their rights under the Bankruptcy Code with respect thereto.

VII. NOTICE AND PRIOR MOTIONS

31. 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.

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

WHEREFORE, the Debtors respectfully request that this Court enter an order substantially in the form attached to this Motion (a) authorizing the Debtors to pay prepetition wages, salaries and employee benefits; (b) authorizing the Debtors to continue the maintenance of employee benefit programs in the ordinary course; and (c) directing all banks to honor prepetition checks for payment of prepetition employee obligations; and (d) granting such other and further relief as is just and proper.

Dated: _____, 2004

Respectfully Submitted,

DT INDUSTRIES, INC., et 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) AUTHORIZING THE DEBTORS TO PAY PREPETITION
WAGES, SALARIES AND EMPLOYEE BENEFITS; (II) AUTHORIZING THE
DEBTORS TO CONTINUE THE MAINTENANCE OF EMPLOYEE BENEFIT
PROGRAMS IN THE ORDINARY COURSE; AND (III) DIRECTING ALL
BANKS TO HONOR PREPETITION CHECKS FOR PAYMENT OF
PREPETITION EMPLOYEE OBLIGATIONS**

The above captioned debtors and debtors in possession (collectively, the “Debtors”), submit this Memorandum of Law (“Memorandum”)² in support of the Motion for an Order: (a) Authorizing the Debtors to Pay Prepetition Wages, Salaries and Employee Benefits, (b) Authorizing the Debtors to Continue the Maintenance of Employee Benefits in the Ordinary Course; and (c) Directing All Banks to Honor Prepetition Checks for Payment of Prepetition Employee Obligations (the “Motion”).

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 defined, capitalized terms used herein shall have the meanings ascribed to them in the Motion.

II. LEGAL ARGUMENT

A. Cause Exists to Authorize the Payment of Prepetition Wages, Compensation and Employee Benefits

Pursuant to sections 507(a)(3) and 507(a)(4) of the Bankruptcy Code, a debtor's employees' claims for "wages, salaries or commission, including vacation, severance and sick leave pay" earned within 90 days before the petition date, and claims against the debtors for contributions to employee benefit plans arising from services rendered within 180 days of the petition date, are afforded unsecured priority status to the extent of \$4,650 per employee. 11 U.S.C. §§ 507 (a)(3), (a)(4).

Where payment of pre-petition debt at the outset of a case is vital to the case, courts have exercised their discretionary powers under section 105 of the Bankruptcy Code, and authorized debtors to pay selected prepetition claims, including wages, salaries and employee benefits which accrued prior to the bankruptcy filing. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175-176 (Bankr. S.D.N.Y. 1989) (court authorized payment of prepetition wages and benefits beyond § 507(a)(3) limit); *In re Gulf Air, Inc.*, 112 B.R. 152 (Bankr. W.D. La. 1989) (court applied "necessity of payment doctrine" and authorized payment of certain prepetition employee related expenses including wages, salary and employee benefits); *Michigan Bureau of Workers Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285 (S.D.N.Y. 1987) (district court affirmed bankruptcy court order authorizing payment of certain pre-petition wages and salaries, expense reimbursements and employee benefits). This Court may exercise its discretionary powers under section 105 of the Bankruptcy Code and grant the relief requested herein if the Court determines that such payments are in the best interest of creditors and necessary. *In re Gulf Air, Inc.*, 112 B.R. at 153.

Furthermore, section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors seek authority to pay the prepetition employee obligations that become due and owing during the pendency of these cases.

B. Cause Exists to Authorize the Continuance of Employee Benefit Plans in the Ordinary Course

The Debtors also request that authorization to continue various employee benefit plans and programs in effect immediately prior to the filing of these chapter 11 cases in the ordinary course of business. Section 363(c) of the Bankruptcy Code authorizes the trustee or debtor-in-possession engaged in business to use, sell or lease property of the estate in the ordinary course of business without the need for notice or a hearing, if the continued operation of the business was authorized and the court does not order otherwise. *See* 11 U.S.C. § 363.

Courts have consistently applied two tests to determine whether a transaction is in the ordinary course: (a) the horizontal dimension test, and (b) the vertical dimension test. *See, e.g. In re Roth American, Inc.*, 975 F.2d 949 (3d Cir. 1992); *Burlington N. R.R. Co. v. Dant & Russell, Inc. (In re Dant & Russell, Inc.)*, 853 F.2d 700 (9th Cir. 1988). The horizontal dimension test refers to whether the post-petition transaction is of a type that similar businesses would engage in as ordinary business. *See Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 618 (Bankr. S.D.N.Y. 1986). The vertical test views the transaction from the perspective of creditors, asking whether the transaction is one that creditors would reasonably expect the debtor or trustee to

enter into. See *WATFORD v. South Cent. Farm Credit (In re Waterford)*, 159 B.R. 597, 599 (M.D. Ga. 1993).

Under either test, the Debtors continuance of post-petition employee benefits qualifies as being in the ordinary course of business, as the practice of continuing employee benefits to ensure continued operation of a business is not uncommon, and is essential to the preservation of the going concern value of the business.

C. Payment of Prepetition Wages, Salaries and Related Benefits and Continuance of Employee Benefit Plans is in the Best Interest of Creditors

Payment of prepetition employee wage, salary and related benefit claims which accrued or arose prior to the filing date and the continuance of employee benefit plans is necessary to the Debtors' efforts and is in the best interests of their creditors. In order to proceed to sale of their assets, the Debtors must maintain their revenues and operating margins. Management and employee continuity, performance and cooperation are essential to the Debtors' efforts. If the relief requested herein is not granted, the Debtors submit that they will lose the services of many of their employees with little or no notice. If this were to occur, the disruption and business interruption will cause irreparable harm to the Debtor.

III. CONCLUSION

For the foregoing reasons, the Debtors respectfully request that this Court enter an order (a) authorizing the Debtors to pay prepetition wages, salaries and employee benefits, (b) authorizing the Debtors to continue the maintenance of employee benefit programs in the ordinary course, and (c) directing all banks to honor prepetition checks for payment of prepetition employee obligations.

Dated: _____, 2004

Respectfully Submitted,

DT INDUSTRIES, INC., at al.

By: _____ s/ Julia W. Brand
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