

**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 ESTABLISHING
CERTAIN NOTICE PROCEDURES**

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 establishing certain notice procedures in these chapter 11 cases (the “Motion”). This Motion is based on the Affidavit of John M. Casper filed contemporaneously herewith. In support of the Motion, the Debtors respectfully represent as follows:

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 102 and 105 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002(m) and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

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.

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 PeerTM) 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 Firstar 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. RELIEF REQUESTED

16. By this Motion, the Debtors seek entry of an order establishing certain notice procedures as more fully described herein.

V. NOTICE PROCEDURES

17. The Debtors propose that every notice, motion or application, and all briefs, memoranda, affidavits, declarations or other documents filed concurrently in support thereof in these chapter 11 cases (collectively, the “Filings”) be subject to the notice procedures described herein (the “Notice Procedures”).

18. The Debtors propose that all Filings shall be served on any entity with a particularized interest in the subject of the Filing. All Filings in these chapter 11 cases shall also be served upon the following (the “Master Service List”):

- (a) the Debtors and their counsel;
- (b) the Office of the United States Trustee;
- (c) counsel to any official committee(s) established in these cases;
- (d) counsel to the Debtors’ prepetition and postpetition lenders;
- (e) those parties who have formally appeared and requested service in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and
- (f) the Securities and Exchange Commission, the Internal Revenue Service, and other Government agencies to the extent required by the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

19. The Debtors propose that all complaints and other pleadings filed in any adversary proceeding commenced in these chapter 11 cases (the “Adversary Pleadings”) be served upon (a) – (d) above, as well as parties required to be served under any applicable Bankruptcy Rules or Local Rules.

20. With respect to all Filings for which particular notices are required by Bankruptcy Rules 2002(a)(2) and (3), 4001, 6004, 6006, 6007 or 9019, the Debtors propose that parties shall serve all such filings on the parties set forth on the Master Service List, and also in accordance with the following procedures, unless otherwise authorized by the Court:

- (a) filings relating to the use, sale, lease or abandonment of property other than in the ordinary course of business shall be served on each entity having an interest in the property;
- (b) filings related to relief from, or otherwise related to, the automatic stay shall be served on each entity having a lien or encumbrance on, or interest in, the property;
- (c) filings relating to the use of cash collateral or obtaining credit shall be served on each entity with an interest in the cash collateral or each entity with a lien or other interest in property on which a lien is proposed to be granted;
- (d) filings relating to approval of proposed compromises or settlements, shall be served on any entity that is a party to the compromise or settlement or which may be directly adversely affected thereby;
- (e) filings relating to rights under section 365 of the Bankruptcy Code shall be served on each party to the executory contract(s) or unexpired lease(s) affected thereby;
- (f) filings relating to applications for payment of compensation or reimbursement of expenses shall be served in accordance with any order entered by this Court; and
- (g) other matters for which the Bankruptcy Rules or Local Rules specifically require notice to all parties-in-interest shall be served on the Master Service List, unless otherwise authorized by this Court.

21. The Debtors request that, except as set forth herein or otherwise authorized by the Court, the noticing procedures set forth above not apply to notices of the matters or proceedings described in the following Bankruptcy Rules:

- (a) Bankruptcy Rule 2002(a)(1) (meeting of creditors pursuant to section 341 of the Bankruptcy Code);
- (b) Bankruptcy Rule 2002(a)(4) (a hearing on the dismissal of the case or cases, or the conversion of a case or the cases to another chapter);
- (c) Bankruptcy Rule 2002(a)(5) (the time fixed to accept or reject a proposed modification of a plan of reorganization);
- (d) Bankruptcy Rule 2002(b)(1) (the time fixed for filing objections and any hearing to consider approval of a disclosure statement);
- (e) Bankruptcy Rule 2002 (b)(2) (the time fixed for filing objections and any hearing to consider confirmation of a plan of reorganization);

- (f) Bankruptcy Rule 2002(d) (certain matters for which notice is to be provided to equity security holders);
- (g) Bankruptcy Rule 2002(f)(1) (the entry of an order for relief);
- (h) Bankruptcy Rule 2002(f)(2) (the dismissal or conversion of a case to another chapter of the Bankruptcy Code);
- (i) Bankruptcy Rule 2002(f)(3) (the time allowed for filing claims pursuant to Rule 2003);
- (j) Bankruptcy Rule 2002(f)(6) (the waiver, denial or revocation of a discharge as provided in Bankruptcy Rule 4006);
- (k) Bankruptcy Rule 2002(f)(7) (the entry of an order confirming a chapter 11 plan or plan of reorganization); and
- (l) Bankruptcy Rule 2002(f)(8) (a summary of any trustee's final report and account should a case be converted to chapter 7 of the Bankruptcy Code).

22. The Debtors propose that any Filing must include the title of the Filing, the time and date of any objection deadline, and the hearing date at which the Court will consider the Filing (the "Applicable Hearing Date").

23. The Debtors propose that nothing herein prejudice (a) the rights of any party-in-interest to move the Court to further limit or expand notice of such matters and proceedings upon a showing of good cause, including, but not limited to, the right to file a motion seeking emergency ex parte consideration or consideration upon shortened time; or (b) the rights of any party to seek an enlargement or reduction of a time period under Bankruptcy Rule 9006(b) or (c).

24. If any person makes any Filing in contravention of the Notice Procedures herein, the Debtors propose to forward a copy of the order granting the relief requested herein to such party within three (3) business days after receipt.

25. The Debtors request that all persons on the Master Service List shall be served with Filings by overnight mail and that all objections, responses or statements in support of

Filings as well as any replies thereto (collectively, “Responses”) need only be served on counsel who served such Filings and the parties described in (a) through (d) of paragraph 17 above, provided that all such Responses shall be served so as to be actually received by such parties by the applicable objection deadline.

26. The Debtors request that notice given in accordance with the foregoing procedures be deemed adequate pursuant to the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

27. The Debtors propose that on the last day of each calendar month, or as soon as is practicable, a copy of the proposed order granting the relief sought herein, as may be modified or amended from time to time, shall be served by the Debtors on each party that has filed a notice of appearance or request for notice in these chapter 11 cases during the preceding month.

28. By establishing the Notice Procedures, all parties will be assured of receiving appropriate notice of matters affecting their interests with ample opportunity to prepare and respond. 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.

29. If necessary, the Debtors will offer the testimony Stephen J. Perkins, President & CEO of DTI, in support of this Motion.

VI. NOTICE AND PRIOR MOTIONS

30. 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.

31. 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) establishing certain notice procedures described herein; and (b) 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
One of its attorneys

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

In re:) Chapter 11
)
DT INDUSTRIES, INC., et al.³) Case No. 04-_____
) (Jointly Administered)
Debtors.)
) Honorable _____

**DEBTORS’ MEMORANDUM OF LAW IN SUPPORT OF DEBTORS’ MOTION FOR
ORDER ESTABLISHING CERTAIN NOTICE PROCEDURES**

DT Industries, Inc. and certain of its subsidiaries, debtors and debtors-in-possession in the above-referenced cases (collectively, the “Debtors”), submit this Memorandum of Law (“Memorandum”) in support of the Motion for Order Establishing Certain Notice Procedures (the “Motion”).

I. FACTUAL BACKGROUND

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

II. LEGAL ARGUMENT

Bankruptcy Rule 2002(m) provides that “[t]he court may from time to time enter orders designating the matters in respect to which, the entity whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.” *See also*, FED. R. BANKR. P. 9007 (“When notice is to be given under these rules, the court shall designate, if not otherwise

³ 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.

specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given.”).

In addition, section 105(a) of the Bankruptcy Code grants broad authority and discretion to enforce the provisions of the Bankruptcy Code either under specific statutory fiat or under equitable common law principles. *See Mgmt. Tech. Corp.*, 56 B.R. 337, 339 (Bankr. D. N.J. 1985). Section 105(a) of the Bankruptcy Code states:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

Section 102(1) of the Bankruptcy Code provides, *inter alia*, that where the Bankruptcy Code provides for an action to occur “after notice and a hearing” that such action may occur “after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances....” 11 U.S.C. § 102(1).

There are over 1500 creditors and other parties-in-interest in these chapter 11 cases. The relief requested in the Motion will promote the efficient and orderly administration of these cases. By establishing the procedures detailed in the Motion, all parties will be assured of receiving appropriate notice of matters affecting their interests with ample opportunity to prepare and respond. Moreover, the administration of these cases will be eased and the economic burdens on the Debtors’ estates, as well as other parties-in-interest will be dramatically reduced.

The Debtors believe that the relief requested herein is consistent with, and an appropriate application of, the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. Similar relief

has been permitted in other large and complex chapter 11 cases. *See, e.g. In re Kmart Corporation, et al.*, Case No. 02-02474 (Bankr. N.D. Ill. 2002); *In re WorldCom, Inc. et al.*, Case No. 02-13533 (Bankr. S.D.N.Y. 2002); *In re The Warnaco Group, Inc. et al.*, Case No. 01-41643 (Bankr. S.D.N.Y. 2001); *In re Comdisco, Inc. et al.*, Case No 01-24795 (Bankr. N.D. Ill. 2001).

III. CONCLUSION

For the foregoing reasons, the Debtors respectfully request that this Court enter an order establishing certain notice and case management procedures.

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Dated: _____, 2004

Respectfully Submitted,

DT INDUSTRIES, INC., ET AL.

By: _____ s/ Julia W. Brand

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