

**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' APPLICATION FOR ORDER AUTHORIZING DEBTORS TO RETAIN
FOCUS MANAGEMENT GROUP USA, INC. AS FINANCIAL ADVISOR**

The above captioned debtors and debtors in possession (collectively, the "Debtors"), hereby submit this application (the "Application") for an order granting the employment and retention of Focus Management Group USA, Inc. ("Focus") as financial advisor to the Debtors in these chapter 11 cases. This Application is based on the Affidavit of John M. Casper filed contemporaneously herewith. In support of this Application, the Debtors respectfully represent as follows:

1. This court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Application is properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

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. The statutory predicates for the relief requested herein are sections 327(a) and 328 of title 11 of the United States Code (the “Bankruptcy Code”) and Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) 2014 and 2016.

I. 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 cases.

II. 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.

III. RELIEF REQUESTED

16. By this Application, the Debtors seek to employ Focus, as of the Petition Date, pursuant to section 327(a) of the Bankruptcy Code to perform financial advisory services for the Debtors in these chapter 11 cases. The Debtors are familiar with the professional standing and reputation of Focus, and understand that Focus has significant expertise in providing financial advisory services in bankruptcies, restructurings and reorganizations, and enjoys an excellent reputation for services it has rendered on behalf of debtors and creditors throughout the United States. Accordingly, the Debtors respectfully request entry of an order, substantially in the form attached hereto, authorizing the Debtors to employ Focus to perform the services described herein.

IV. SCOPE OF FINANCIAL ADVISORY SERVICES

17. The Debtors retained Focus pursuant to the Agreement for Consulting Services, dated April 15, 2004 (as supplemented by the Work/Project Authorization No.2, dated May 11, 2004 the "Focus Agreement," a copy of which is attached hereto as Exhibit A) pursuant to which Focus provided financial advice to the Debtors in connection with the filing of these bankruptcy cases and operating their business while in bankruptcy. Pursuant to the Focus Agreement, the Debtors provided Focus with a \$30,000 unapplied retainer on April 26, 2004, a \$125,000 unapplied retainer on May 6, 2004, and a \$20,000 unapplied retainer on May 12, 2004. Focus has not applied the retainer amounts to pay its fees or expenses. Focus began performing services for the Debtors on April 18, 2004 and has since received payments totaling \$135,600 for fees and \$11,204.53 for expenses. As of the Petition Date, Focus has been paid for all Pre-Petition Date fees and expenses associated with the performance of services for the Debtors.

18. Since being retained, Focus has performed extensive services for the Debtors in connection with these cases, including, *inter alia*:

- (a) Assisting the Debtors in negotiating and arranging post-petition Debtor in Possession financing;
- (b) Preparing detailed cash flow projections on a week-by-week basis for the immediate period proceeding the Debtors' bankruptcy petitions and for the immediate post petition financing period;
- (c) Establishing management budgetary controls over projected and actual cash receipts and disbursements;
- (d) Negotiating payment terms with vendors of materials and services;
- (e) Assisting the Debtors and their legal advisors in planning for the efficiency of the Debtors' bankruptcy cases; and
- (f) Communicating with the financial advisors for the Debtors' senior secured lenders on matters concerning the current status of the debtors financial affairs.

19. In connection with the prepetition services performed for the Debtors, Focus has become familiar with the Debtors' business affairs, assets, liabilities and financial structure. The Debtors believe that Focus's familiarity and knowledge of the Debtors' businesses will be critical to the Debtors' efforts. Furthermore, Focus's professionals have extensive experience with representing companies similar to the Debtors and are well-suited to provide financial guidance and to advise the Debtors through the chapter 11 process. The Debtors propose retention pursuant to the terms and conditions of the existing Focus Agreement.

V. SERVICES TO BE RENDERED

20. In its capacity as the Debtors' financial advisor, Focus is prepared to perform the following post-petition services (the "Financial Advisory Services"). Focus will provide such advisory, analytical and advisory services as Focus and the Debtors deem necessary, appropriate

and feasible in the course of the Debtors Chapter 11 cases, including, but not limited to the following:

- (a) Prepare weekly updates of Cash Budgets and other projections;
- (b) Assist Debtors in managing cash receipts and disbursement and reporting thereon;
- (c) Assist the Debtors in procuring materials and services from their vendors and advise Debtors employees involved in procuring materials and services on negotiating strategies and tactics for dealing with the Debtors' base of providers of materials and services;
- (d) Identify critical vendors and negotiate post-petition payments and terms including negotiating the extension of post-petition vendor credit terms;
- (e) Prepare weekly analyses of variances between projected and actual cash receipts and disbursements;
- (f) Assist Debtors in the preparation of reports to the United States Trustee and all related reports and schedules required in the Debtors' bankruptcy cases;
- (g) Prepare analyses for communicating Debtors' financial affairs and initiate communication to all appropriate parties of interest including ,but not limited to, Debtors' management and legal advisors and the agent for the Debtors' secured lending group, the financial advisors to Debtors' lending group, any professionals retained by any court-approved, unsecured lenders' committee and, where appropriate, key vendors;
- (h) As required, provide any expert testimony required by the Debtors' bankruptcy cases pertaining to Debtors' financial affairs that Focus and the Debtors deem Focus is qualified to provide; and
- (i) Assist Debtors by providing advice, counsel, financial analyses or financial advisory and consulting services required in Debtors' bankruptcy cases.

VI. DISINTERESTEDNESS OF PROFESSIONALS

21. As detailed in the Affidavit of Kenneth E. Naglewski in Support of Debtors' Application for Order Authorizing Debtors to Retain Focus Management Group USA, Inc. as Financial Advisor (the "Naglewski Affidavit," a copy of which is attached hereto as Exhibit B), to the best of the Debtors' current knowledge, information and belief, other than in assisting and advising the Debtors prior to the Petition Date, Focus has no conflicting connection with the

Debtors, their creditors or any other party in interest herein, or their respective attorneys or accountants, or the United States Trustee or any person employed in the Office of the United States Trustee.

22. To the best of the Debtors' knowledge, information and belief, Focus does not represent and does not hold any interest adverse to the Debtors or their estates, creditors, or equity security holders in the matters for which Focus is proposed to be retained. Further, Focus is a "disinterested person" within the meaning of sections 101(14) and 327 of the Bankruptcy Code, and its retention is in the best interests of the Debtors, their estates and their creditors.

VII. PROFESSIONAL COMPENSATION

23. For the Financial Advisory Services rendered to the Debtors during these chapter 11 cases, Focus's fees will be \$400.00 per hour plus reasonable expenses.

24. Focus's compensation arrangement with the Debtors is consistent with, and typical of, arrangements entered into by Focus and other such firms with respect to rendering similar services for clients such as the Debtors. In addition, Focus will seek reimbursement of all reasonable out-of-pocket expenses incurred in connection with the Financial Advisory Services rendered to the Debtors, including but not limited to meals, transportation and lodging, and other travel expenses associated with the performance of services by consultants living outside of Dayton, Ohio or other locations where the Debtors conduct business, computer research, messenger services, and long-distance communication charges.

VIII. NOTICE AND PRIOR MOTIONS

25. 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.

26. 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 Application: (a) granting the employment of Focus as financial advisors to the Debtors in these chapter 11 cases; 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.¹) Case No. 04-_____
) (Jointly Administered)
Debtors.)
) Honorable _____

**DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF APPLICATION
FOR ORDER AUTHORIZING DEBTORS TO RETAIN FOCUS MANAGEMENT
GROUP USA, INC. AS FINANCIAL ADVISOR**

The above captioned debtors and debtors in possession (collectively, the “Debtors”), submit this Memorandum of Law (“Memorandum”)² in support of their Application for Order Authorizing Debtors to Retain Focus Management Group USA, Inc. as Financial Advisor (the “Application”).

I. FACTUAL BACKGROUND

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

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 All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

II. LEGAL ARGUMENT

Section 327(a) of the Bankruptcy Code provides in pertinent part:

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a).

As an initial matter, financial advisors are considered to be professionals whose retention is subject to court approval under section 327 of the Bankruptcy Code. *In re Bartley Lindsay Co.*, 120 B.R. 507, 511 (Bankr. D. Minn. 1990), *aff'd*, 137 B.R. 305 (D. Minn. 1991).

Courts apply a two-part test to determine whether a particular professional may be employed by a bankruptcy debtor under section 327(a). First, the professional to be retained must hold no interest adverse to the bankruptcy estate. Second, the professional must be a "disinterested person." *In re Pierce*, 809 F.2d 1356, 1362 (8th Cir. 1987). Both of these two elements must be satisfied before the proposed retention can be approved by the bankruptcy court. *Id. citing, In re Leisure Dynamics, Inc.*, 32 B.R. 753 (D. Minn. 1983). *See also, In re Keller Fin. Servs. of Florida, Inc.*, 248 B.R. 859, 892 (Bankr. M.D. Fla. 2000); *In re Benjamin's-Arnolds, Inc.*, No. 4-90-6127, 1997 WL 86463 at *4 (Bankr. D. Minn. Feb. 28, 1997).

An interest adverse to the bankruptcy estates exists where: (1) the professional to be retained possesses or asserts any economic interest that would tend to lessen the value of the bankruptcy estate or (2) where the professional has a predisposition under circumstances that render a bias against the estate. *In re Prince*, 40 F.3d 356, 361 (11th Cir. 1994); *Benjamin's-Arnolds*, 1997 WL 86463 at *4 .

The Bankruptcy Code defines "disinterested person" as a:

person that – (A) is not a creditor, an equity security holder, or an insider; (B) is not and was not an investment banker for any outstanding security of the debtor; (C) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor; (D) is not and was not, within two years before the date of filing of the petition a director, officer or employee of the debtor or of an investment banker specified in subparagraphs (B) or (C) of the paragraph; and (E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraphs (B) or (C) of the paragraph, or for any other reason.

11 U.S.C § 101(14).

As explained in the accompanying Naglewski Affidavit, Focus does not hold an interest adverse to the Debtors’ estates, and Focus has no predisposition that would tend toward any bias against the estate. Furthermore, as detailed in the Application and accompanying Naglewski Affidavit, Focus is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code.

III. CONCLUSION

For the foregoing reasons, the Debtors respectfully request that this Court enter an order granting the employment of Focus as financial advisors to the Debtors in these chapter 11 cases.

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.¹) Case No. 04-_____
) (Jointly Administered)
Debtors.)
) Honorable _____

**AFFIDAVIT OF KENNETH E. NAGLEWSKI IN SUPPORT OF DEBTORS’
APPLICATION FOR ORDER AUTHORIZING DEBTORS TO RETAIN
FOCUS MANAGEMENT GROUP USA, INC. AS FINANCIAL ADVISOR**

I, Kenneth E. Naglewski, declare as follows:

I am a Principal of Focus Management Group, USA, Inc. (“Focus”), a financial advisory services firm conducting business throughout the country. I submit this Declaration on behalf of Focus (the “Affidavit”). I submit this Affidavit in support of the Application for Order Authorizing Debtors to Retain Focus Management Group USA, Inc. as Financial Advisor (the “Application”) in these chapter 11 cases, pursuant to section 327(a) and 328(a) of title 11 of the United States Code (the “Bankruptcy Code”) and in compliance with section 504 of the Bankruptcy Code and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). Except as otherwise noted, I have personal knowledge of the matters set forth herein.

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.

1. In connection with the preparation of this Affidavit, Focus professionals conducted a review of its contacts with the above captioned debtors and debtors in possession (collectively, the “Debtors”) , their affiliates and certain entities holding large claims against, or interests in, the Debtors that were reasonably known to Focus. Focus’s review, completed under my supervision, consisted of a review of (a) the Debtors; (b) the Debtors’ pre-petition secured lenders, Bank of America, National Association and other participating banks in the bank group; (c) the Debtors’ directors and officers; (d) the Debtors’ other professionals; and (e) the Debtors’ top twenty unsecured creditors.

2. Based on the results of its review, Focus does not have a relationship with any of the parties referred to in the paragraph above in matters related to these proceedings. Paul Porter of Focus Management Group, in a former capacity with a financial institution, underwrote and syndicated a loan in favor of DT industries approximately nine years ago. The loan has since been satisfied; therefore, his prior involvement does not represent a conflict of interest.

3. Focus is not a “creditor” of any of the Debtors within the meaning of § 101(10) of the Bankruptcy Code.

4. To the best of my knowledge, no one within Focus generally has any connection to the United States Trustee or any person employed in the Office of the United States Trustee in this District.

5. As such, to the best of my knowledge, Focus is a “disinterested person” as that term is defined in § 101(14) of the Bankruptcy Code, as modified by § 1107(b) of the Bankruptcy Code, in that Focus:

- (a) is not a creditor, equity security holder or insider of the Debtors;
- (b) is not and was not an investment banker for any outstanding security of the Debtors;

- (c) has not been, within three years before the date of the filing of the Debtors' chapter 11 petitions, (i) an investment banker for a security of the Debtors or (ii) an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the Debtors; and
- (d) was not, within two years before the date of filing of the Debtors' chapter 11 petitions, a director, officer, or employee of the Debtors or of any investment banker as specified in subparagraph (b) or (c) of this paragraph.

In addition, to the best of my knowledge, and based upon the results of the relationship search described above and disclosed herein, Focus neither holds or represents an interest adverse to the Debtors within the meaning of § 327(a) of the Bankruptcy Code.

6. If any new relevant facts or relationships are discovered or arise, Focus will promptly file a Bankruptcy Rule 2014(a) Supplemental Declaration.

Professional Compensation

7. Subject to Court approval, and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, applicable United States Trustee guidelines and the local rules of this District, Focus will seek payment for compensation on an hourly basis, plus reimbursement of actual and necessary expenses incurred by Focus. Focus's customary hourly rates as charged in bankruptcy and non-bankruptcy matters of this type by the professionals assigned to this engagement are outlined in the Application for the employment of Focus. These hourly rates are adjusted periodically. Such rate adjustments will be disclosed to this Court and the Debtors.

8. According to Focus's books and records, during the ninety (90) day period prior to the Debtors' petition date, Focus received \$146,804.53 from the Debtors for professional services performed and expenses incurred. All such amounts received were for services performed during the relevant time period and were paid in accordance with the consulting agreement attached to the Application. Further, Focus has received unapplied retainers from the

Debtors in the amount of \$175,000.00. The Debtors and Focus have agreed that any portion of the retainer not used to compensate Focus for its pre-petition services and expenses will be applied against its final post-petition fee application and will not be placed in a separate account.

9. To the best of my knowledge, (a) no commitments have been made or received by Focus, nor any employee thereof, with respect to compensation or payment in connection with these cases other than in accordance with the provisions of the Bankruptcy Code; and (b) Focus has no agreement with any other entity to share with such entity any compensation received by Focus in connection with these chapter 11 cases.

s/ Kenneth E. Naglewski
Kenneth E. Naglewski

SWORN TO AND SUBSCRIBED before
me this 12th day of May, 2004.

s/ Barbara B. Piatt
Notary Public
My Commission Expires: April 1, 2007