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 UNDER 11 U.S.C. §§ 105(a) AND 363(b) AUTHORIZING THE DEBTORS TO IMPLEMENT A KEY EMPLOYEE RETENTION PROGRAM

The above captioned debtors and debtors in possession (collectively, the "Debtors"), hereby move this Court for entry of an order authorizing the Debtors to implement a key employee retention program (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 this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 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 363(b) of title 11 of the United States Code (the "Bankruptcy Code").

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[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 Peer(™) 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. <u>Events Leading to the Filing of these Chapter 11 Cases</u>

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 authorizing the Debtors to establish a key employee retention program (the "KERP," a copy of the proposed KERP is

attached hereto as Exhibit A), for certain of the Debtors' officers and employees (collectively, the "Key Employees").

V. BASIS FOR THE RELIEF REQUESTED

17. Retaining the Key Employees is critical to the successful operation of the Debtors' businesses. Indeed, the Debtors consider the Key Employees to be one of their most valuable assets. The Key Employees possess unique skills, knowledge, and experience that are vital to the Debtors' businesses, and, in many cases, impracticable to replicate given their familiarity with the Debtors' operations and the difficult circumstances under which the Debtors are currently operating.

18. The Debtors seek authorization to pay to each Key Employee his or her respective base bonus as listed on Exhibit A upon the earlier of (i) ninety (90) days after the Petition Date; (ii) the conversion of DTI's bankruptcy case to chapter 7 case and (iii) the closing of the sale of the Debtors' operating assets. In addition, DTI's CEO and CFO, and the Division Presidents of Assembly & Test & DTE will be eligible for premium bonuses (collectively with the base bonus, the "Stay Bonus") in the event that the asset sales of their Divisions results in sales in excess of a certain amount as set forth on Exhibit A hereto.

19. Any Key Employee that voluntarily resigns from employment or is terminated for cause shall not qualify for payment of a Stay Bonus. If a Key Employee is terminated without cause, then such Key Employee shall be entitled to receive his or her Stay Bonus on the date such bonus is due hereunder.

20. The Debtors have reviewed this proposed retention program with their Lenders. The Lenders have stated that they will not object to the retention program and will consent to

payment of such amounts from their collateral. The maximum total cost of the base bonus portion of the retention program is $715,000.00 assuming all bonus obligations, other than premium bonus severance obligations, are triggered.

21. The continued employment, dedication, and motivation of the Key Employees is essential to preserving the value of the Debtors' estates by ensuring the continuing operation of the various ongoing businesses. The KERP provides the Key Employees with the necessary assurance that they will be rewarded for their dedicated service during these cases.

VI. NOTICE AND PRIOR MOTIONS

22. Notice this Motion has been given to the United States Trustee, counsel for the Lenders and each of the twenty largest unsecured creditors of the 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.

23. 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, authorizing the Debtors to implement the KERP and granting such other and further relief as is just and proper.

Dated: _____________ __, 2004

Respectfully Submitted,

DT INDUSTRIES, INC., ET AL.

By: s/ Julia Brand__________________
One of its attorneys

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DT INDUSTRIES, INC., et al.[1]	)	Case No. 04-_______
	)	(Jointly Administered)
Debtors.	)	
	)	Honorable ___________

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ORDER UNDER 11 U.S.C. §§ 105(a) AND 363(b) AUTHORIZING THE DEBTORS TO IMPLEMENT A KEY EMPLOYEE RETENTION PROGRAM

The above captioned debtors and debtors in possession (collectively, the "Debtors") submit this Memorandum of Law ("Memorandum")[2] in support of their Motion for Order under 11 U.S.C. §§ 105(a) and 363(b) Authorizing the Debtor to Implement a Key Employee Retention Program.

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.

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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 Motion.

II. LEGAL ARGUMENT

The Debtors seek authority pursuant to section 363(b) of the Bankruptcy Code to implement a key employee retention program (the "KERP"). The KERP provides incentives to the Key Employees (as designated in the Motion) to remain with the Debtors and to contribute to the Debtors' efforts in these cases.

Section 363(b) of the Bankruptcy Code provides in relevant part that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." A court can authorize a debtor to use property of the estate pursuant to section 363(b) of the Bankruptcy Code when such use is an exercise of the debtor's sound business judgment and when the use of the property is proposed in good faith. *See e.g., In re Delaware & Hudson R.R. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (adopting the "sound business purpose" test to evaluate motions brought pursuant to section 363(b)). *See also Stephen Indus., Inc. v. McClung*, 788 F.2d 386, 390 (6th Cir. 1986) (adopting the "sound business purpose" standard for sales proposed pursuant to section 363(b)); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986).

The debtor has the burden to establish that a valid business purpose exists for using estate property outside the ordinary course of business. *In re Lionel Corp.*, 722 F.2d 1063, 1070-1071 (2d Cir. 1983). Once the debtor has articulated such a valid business purpose, however, a presumption arises that the debtor's decision is made on an informed basis, in good faith, and in the honest belief that the action is in the best interest of the company. *See In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992).

The legal standard for approving key employee retention programs such as the KERP is clear and well established: "Bankruptcy courts will approve key employee retention programs if the debtor has used proper business judgment in formulating the program and the court finds the program to be fair and reasonable." *In re Aerovox, Inc.*, 269 B.R. 74, 80 (Bankr. D. Mass. 2001). *See also In re America West Airlines, Inc.*, 171 B.R. 674, 678 (Bankr. D. Ariz. 1994); *In re Interco Inc.*, 128 B.R. 229, 234 (Bankr. E.D. Mo. 1991). Here, both of these requirements are satisfied.

Generally, courts authorize debtors to implement key employee retention programs because key employees are an essential component of a debtor's continued operations. *See In re America West Airlines*, 171 B.R. at 678 (approving the award of success bonuses to certain officers and employees as within a debtor's sound business judgment); *In re Interco Inc.*, 128 B.R. at 234 (authorizing debtor to assume pre-petition severance contracts and approving performance based retention program to ensure critical employees remained with the debtor).

Implementing the KERP has a sound business purpose – maximizing the value of the Debtors' estates. The Key Employees are experienced and talented business people who are intimately familiar with the Debtors' businesses and can easily obtain employment elsewhere. Furthermore, it would be difficult and expensive without the KERP for the Debtors to attract and hire qualified replacements if any of the Key Employees were to leave. Moreover, such attrition would likely adversely affect the Debtors business operations leading to even further losses.

To maintain cohesive and motivated management teams during this bankruptcy process, particularly in large chapter 11 cases, debtors frequently implement various combinations of incentive compensation, retention and/or severance programs. Without such programs, essential key employees will leave a debtor's employ as a result of other employment opportunities offering greater financial rewards than the uncertainties inherent in the bankruptcy process. Recognizing these risks, similar employment and incentive plans have been authorized in other large chapter 11 cases. ***See In re Interco Inc.***, 128 B.R. 229 (Bankr. E.D. Mo. 1991); ***In re Kmart Corporation***, Case No. 02 B 02474 (Bankr. N.D. Ill. 2002); ***In re Comdisco, Inc.***, Case No. 01 B 24795 (Bankr. N.D. Ill. 2001); ***In re Humphreys. Inc.***, Case No. 01 B 13742 (Bankr. N.D. Ill. 2001); ***In re ZINC Capital, Inc.***, Case No. 01 B 03320 (Bankr. N.D. Ill. 2001).

The Debtors believe that the relief requested herein is consistent with, and an appropriate application of, the Bankruptcy Code. The KERP is designed to provide incentives sufficient to (a) retain the Key Employees and (b) to maximize the value of the Debtors' estates. At the same time, keeping in mind the financial constraints under which the Debtors operate, the KERP has been carefully structured to avoid unnecessary or excessive incentives. Thus, it is in the best interests of the Debtors' estates and their creditors to implement the KERP.

In light of the foregoing, the Debtors believe that the incentives provided under the KERP are both reasonable, appropriate, and enhance the prospect of both retaining the Key Employees and maximizing the values of the estates in these Chapter 11 cases. For all of the foregoing reasons, the KERP should be approved.

III. CONCLUSION

For the foregoing reasons, the Debtors respectfully request that this Court enter an order authorizing the Debtors to implement the KERP, as fully described in the Motion, and such other and further relief as may be just and proper under the circumstances.

Dated: _____________ __, 2004

Respectfully Submitted,

DT INDUSTRIES, INC., ET AL.

By: s/ Julia Brand_______________
One of its attorneys

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