

**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 _____

**MOTION OF THE DEBTORS FOR AN ORDER ESTABLISHING PROCEDURES FOR
INTERIM COMPENSATION AND REIMBURSEMENT
OF EXPENSES OF PROFESSIONALS**

The above captioned debtors and debtors in possession (collectively, “Debtors”), by this motion (the “Motion”), respectfully seek the issuance and entry of an order establishing procedures for interim compensation and reimbursement of expenses of professionals. This Motion is based on the Affidavit of John Casper filed contemporaneously herewith. In support of this 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, 331 and 1103 of title 11 of the United States Code (the “Bankruptcy Code”).

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^(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 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. Contemporaneously herewith the Debtors are seeking approval to retain Katten Muchin Zavis Rosenman, 525 West Monroe Street, Chicago, Illinois 60661-3693 and Coolidge,

Wall, Womsley & Lombard, 33 West First Street, Suite 600, Dayton, Ohio 45402, as general bankruptcy attorneys; Focus Management Group, USA, 5001 West Lemon Street, Tampa, Florida 33609 as financial advisor; and Houlihan Lokey Howard & Zukin, 123 Wacker Drive, 4th Floor, Chicago, Illinois 60608 as investment banker. By this Motion, the Debtors are requesting that the Court establish procedures for interim compensation and reimbursement of expenses of the Professionals.

V. BASIS FOR RELIEF

17. In short, the requested procedures will permit each Professional, subject to these procedures, to present to the Debtors and their counsel, the United States Trustee for the Southern District of Ohio (the “United States Trustee”), the Debtors’ Lenders and a detailed statement of services rendered and expenses incurred by the Professional for the prior month. If there is no timely objection, the Debtors will pay ninety percent (90%) of the amount of fees incurred for the month, with a ten percent (10%) holdback, and one hundred percent (100%) of disbursements for the month. These payments will be subject to the Court’s subsequent approval as part of the normal interim fee application process approximately every 120 days.

18. More specifically, the Debtors propose that the monthly payment of compensation and reimbursement of expenses of the Professionals be structured as follows:

(a) On or before the last day of the month following the month for which compensation is sought (the “Monthly Statement Date”), each Professional will submit a monthly statement to: (i) the Debtors at 907 West 5th Street, Dayton, Ohio 45407 (Attn: Stephen J. Perkins); (ii) counsel to the Debtors, Katten Muchin Zavis Rosenman, 525 West Monroe Street, Chicago, IL 60661-3693 (Attn: Matthew A. Olins, Esq.); (iii) counsel to the Debtors’ Lenders,

Winstead, Sechrist & Minick, PC, 5400 Renaissance Tower, 1201 Elm Street, Dallas, Texas 75270-2199 (Attn: Mark Brannum) and Thompson Hine, 2000 Courthouse Plaza, NE, PO Box 8801, Dayton, OH 45401-8801 (Attn: Lawrence Burick and (iv) the United States Trustee. Each such entity receiving such a statement will have twenty (20) days after the Monthly Statement Date to review the statement.

(b) At the expiration of the twenty (20) day period, the Debtors will promptly pay ninety percent (90%) of the fees and one hundred percent (100%) of the disbursements requested in such statement, except such fees or disbursements as to which an objection has been served as provided in paragraph (c) below. Any professional who fails to submit a monthly statement shall be ineligible to receive further payments of fees and expenses as provided herein until such time as the monthly statement is submitted.

(c) In the event that any of the Debtors, the United States Trustee or the Debtors' senior Lenders has an objection to the compensation or reimbursement sought in a particular statement, such party shall, within twenty (20) days of the Monthly Statement Date, serve upon the respective professional and the other persons designated to receive monthly statements, a written "Notice of Objection to Fee Statement" setting forth the precise nature of the objection and the amount at issue. Thereafter, the objecting party and the Professional whose statement is objected to shall attempt to reach an agreement regarding the correct payment to be made. If the parties are unable to reach an agreement on the objection within twenty (20) days after receipt of such objection, the objecting

party may file its objection with the Court and serve such objection on the respective professional and the other parties listed above and the Court shall consider and dispose of the objection at the next interim fee application hearing. The Debtors will be required to pay promptly those fees and disbursements that are not the subject of a Notice of Objection to Fee Statement.

(d) Approximately every four (4) months, each of the Professionals shall file with the Court and serve on the parties designated to receive monthly statements, on or before the 45th day following the last day of the compensation period for which compensation is sought, an application for interim Court approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses requested for the prior four (4) months. The first such application shall be filed on or before November 15, 2004 and shall cover the period from the commencement of these cases through September 30, 2004. Any professional who fails to file an application when due shall be ineligible to receive further interim payments of fees or expenses as provided herein until such time as the application is submitted.

(e) The pendency of an application for a Court order for compensation or reimbursement of expenses, and the pendency of any Notice of Objection to Fee Statement or other objection, shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above. Neither the payment of, nor the failure to pay, in whole or in part, monthly interim compensation and reimbursement as provided herein shall bind any party-in-

interest or this Court with respect to the final allowance of applications for compensation and reimbursement of Professionals.

19. Except as otherwise ordered by the Court, all parties who have filed a notice of appearance with the Clerk of the Court shall receive notice of the fee application hearings.

20. The Debtors request that all time periods relevant to the procedures proposed under this Motion be calculated in accordance with Bankruptcy Rule 9006(a).

VI. APPLICABLE AUTHORITY

21. Section 331 of the Bankruptcy Code provides, in relevant part, as follows:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the Court not more than once every 120 days after an order for relief in a case under this title, or more often if the Court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title...

11 U.S.C. § 331.

22. Section 105(a) of the Bankruptcy Code provides, in relevant part, as follows:

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 . . . 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...

11 U.S.C. § 105(a).

23. The Debtors submit that the procedures sought herein for compensating and reimbursing professionals retained under section 327 are comparable to those established in other large chapter 11 cases. *See, e.g., In re Spinnaker Industries, Inc., et al.*, Chapter 11 Case No. 01-38066 (Bankr. S.D. Ohio 2001); *In re Goss Holdings, Inc., et al.*, Chapter 11 Case No. 01-31751 (Bankr. N.D. Ill. 2001); *In re Ames Department Stores, Inc., et al.*, Chapter 11 Case No. 01-42217 (REG) (Bankr. S.D.N.Y. 2001); *In re Sun Healthcare Group, Inc.*, Chapter 11 Case No.

99-3657 (MFW) (Bankr. D. Del. 1999). Such an order will permit the Court, the United States Trustee and all other parties, to monitor effectively the fees and expenses incurred in these chapter 11 cases.

24. The procedures sought herein are further needed to avoid professionals funding the reorganization case. *See In re International Horizons, Inc.*, 10 B.R. 895, 897 (Bankr. N.D. Ga. 1981) (court established procedures for monthly interim compensations). Appropriate factors to consider include “the size of [the] reorganization cases, the complexity of the issues included, and the time required on the part of the attorneys for the debtors in providing services necessary to achieve a successful reorganization of the debtors.” *Id.* at 897. The Debtors submit that the procedures sought herein are appropriate considering the above factors.

25. The procedures suggested in this Motion will enable the parties to closely monitor the costs of administration, maintain a level cash flow, and implement efficient cash management procedures.

VII. NOTICE AND PRIOR MOTIONS

26. 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.

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

WHEREFORE, the Debtors respectfully request the Court enter an order substantially in the form annexed hereto and grant the Debtors such other and further relief as this Court may deem just and proper.

Dated: May 12, 2004

Respectfully Submitted,

DT INDUSTRIES, INC., ET AL.

By: s/ Julia Brand
One of their Attorneys

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