



4. On August 26, 2003 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtor is operating its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. An official committee of unsecured creditors has been appointed.

### **Background**

6. Plaintiff sustained amputation-type injuries to two fingers of his hand on January 8, 1998 during the course of his employment as a sheet metal worker for Airco Mechanical in Austin, Texas. Plaintiff allegedly sustained the injury while operating certain machinery that was used in the fabrication of sheet metal ducts and air conditioning equipment, including one allegedly manufactured by Iowa Precision Industries, a division of the Debtor ("IPI").

7. The machine at issue in the Case was sold by Red River, a machinery dealer, to Airco Mechanical in 1995. IPI has no knowledge about how Red River acquired the machine, or from where, prior to its sale to Airco Mechanical.

8. Plaintiff initiated the Case in the 53rd Judicial District Court of Travis County, Texas (the "Texas State Court") by filing a Citation and Original Petition on January 7, 2000 naming Red River and the Debtor, among others, as defendants.

9. The Debtor served and filed its Original Answer on or about February 9, 2000, which contained general denials of liability and appropriate affirmative defenses.

10. On or about June 15, 2000, the Debtor filed a motion for summary judgment, arguing that Plaintiff's claim against the Debtor was barred by Texas' 15-year statute of repose. On or about July 10, 2000, Plaintiff filed his response and objections to the

Debtor's motion for summary judgment. On or about August 30, 2000, the Debtor filed its Supplement to the Motion for Summary Judgment.

11. On or about June 21, 2001, while the aforementioned motion for summary judgment was still pending, Plaintiff and the Debtor entered into a settlement in the amount of nine thousand dollars (\$9,000), with neither party admitting liability. Plaintiff and the Debtor executed a Claim Release and Indemnity on or about July 7, 2001.

12. Upon information and belief, Plaintiff completed service of his Original Petition upon Red River in July 2001. Red River answered Plaintiff's Original Petition and filed and served its Original Third-Party Petition against the Debtor on July 2, 2003. The Debtor filed its Answer to the Original Third-Party Petition on or about August 1, 2003.

13. On or about August 20, 2003, the Debtor filed an Amended Answer and a cross-claim against the Plaintiff, seeking indemnity from Red River's claim arising from certain "hold harmless" language in the Plaintiff's Claim Release and Indemnity.

14. As a result of the Debtor's bankruptcy filing, the Case was stayed in its entirety.

15. Red River filed a proof of claim against the Debtor in the amount of \$619,131.53 for indemnification, to the extent that Plaintiff is successful against Red River in the underlying action.<sup>1</sup>

16. The Debtor respectfully requests that the Court modify the automatic stay solely to permit it to file a case dispositive motion or in the alternative, to allow the Case as between Plaintiff and Red River to proceed. To the extent that the Texas State Court rules in the Debtor's favor, the claim of Red River in the amount of \$619,131.53 will be resolved.

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<sup>1</sup> Due to the settlement, Plaintiff did not file a proof of claim against the Debtor.

17. Bankruptcy Code § 362(d)(1) provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section subsection (1) of this section, such as by terminating, annulling, modifying, or conditioning such stay – (1) for cause . . .

11 U.S.C. § 362(d)(1).

18. To determine whether "cause" exists to lift the automatic stay to allow the continuation of a lawsuit pending in another forum, courts often consider: (i) the likelihood of prejudice to the debtor or the estate from the continuation of the civil claim; (ii) whether the hardship to the non-bankruptcy party to the civil claim considerably outweighs the hardship to the debtor; and (iii) the likelihood that the creditor will prevail on the merits of the claim. See, e.g., In re Rexene Products Co., 141 B.R. 574, 576 (Bankr. D. Del. 1992).<sup>2</sup>

19. In balancing the equities involved in this case, it is appropriate to modify the automatic stay solely to permit the Texas State Court to rule on a case dispositive motion that the Debtor files or in the alternative, to allow the Case to proceed as against Red River only. No prejudice to the Debtor or its estate will result by allowing the stay to be lifted for these limited purposes. Further, the contingent \$619,131.53 claim of Red River may be eliminated, thus assisting with the administration of the Debtor's estate.

20. Given the foregoing, sufficient cause exists to lift the automatic stay for the limited purposes set forth herein.

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

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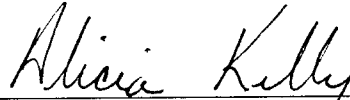
<sup>2</sup> The second and third factors are inapplicable in this situation.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order:

- (i) granting the Motion in its entirety; (ii) permitting the Debtor to file a case dispositive motion in the Case or to allow the Case to proceed solely as against Red River; and
- (iii) granting such other relief as this Court deems proper.

Dated: June 3, 2004

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