

01-1158-CD
DAVID G. FULLERDAY et al -vs- ELMCO PA, INC.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID G. FULESDAY and
ELIZABETH W. FULESDAY,

: No. 2001- 1158-CD

Plaintiffs

vs.
ELMCO PA, INC.,

: Type of Case:
CIVIL

Defendant

: Type of Pleading:
COMPLAINT

: Filed on Behalf of:
PLAINTIFFS

: Attorney for this party:
Peter F. Smith, Esquire
Supreme Court No. 34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

:
: **JURY TRIAL DEMANDED**

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FILED

JUL 19 2001

William A. Shaw
F. Secretary

AMERICANS WITH DISABILITIES ACT OF 1990

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Clearfield County Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID G. FULESDAY and :
ELIZABETH W. FULESDAY, : No. 2001- -CD
Plaintiffs :
vs. :
ELMCO PA, INC., :
Defendant :
.

COMPLAINT

COMES NOW, the Plaintiffs by their attorney, Peter F. Smith, who aver as follows:

1. The Plaintiffs' full names are DAVID G. FULESDAY and ELIZABETH W. FULESDAY. They are husband and wife and reside at 622 High Street, Curwensville, Pennsylvania, 16833. Hereinafter referred to as "FULESDAYS."
2. The name of the Defendant is ELMCO PA, INC., a Pennsylvania business corporation with principal office at 700 Bigler Avenue, Clearfield, Pennsylvania, 16830. Hereinafter referred to as "ELMCO."

***COUNT ONE
BREACH OF LEASE***

3. The preceding paragraphs are incorporated herein by reference as those set forth in full.
4. The parties entered a Lease on June 28, 1999, under which ELMCO rented from FULESDAYS a commercial building at 700 Bigler Avenue, Clearfield, Pennsylvania. A true and correct copy of said Lease is attached hereto and incorporated herein by reference.

5. The Lease commenced on June 28, 1999, for an initial term of five years ending June 28, 2004.

6. Paragraph 3.01(a) requires ELMCO to pay rent in the amount of \$5,000.00 per month.

7. Rent commenced on July 1, 1999.

8. On or about February 1, 2001, ELMCO failed to pay the full rent of \$5,000.00 since that date has tendered only \$2,500.00 per month except for May 2001 when ELMCO paid the full rent of \$5,000.00.

9. The failure to pay rent in full constitutes a default under Paragraph 11.01(b) of the Lease.

10. Paragraph 11.04 of the Lease entitles the FULESDAYS to a late charge of 5% of the overdue amount accruing 20 days after the date on which payment of the rent was due.

11. Paragraph 14.04 of the Lease also entitles the FULESDAYS to interest at the rate of 10% per annum on all amounts due.

12. Paragraph 14.16 of the Lease also entitles the prevailing party to attorney fees.

13. Demand has been made on ELMCO to pay the delinquent rent, interest and late charge, but ELMCO has failed to do so.

WHEREFORE, FULESDAYS pray this Honorable Court to enter judgment in their favor and against ELMCO for delinquent rent of \$10,000.00 for the months of February, March, April and June of 2001 plus \$5,000.00 for every month thereafter together with a late charge of 5%, interest of 10% per annum and attorney's fees.

COUNT TWO
BREACH OF ASSET PURCHASE AGREEMENT AND EMPLOYMENT CONTRACT

14. Paragraphs 1-13 above are incorporated herein by reference as though set forth in full.

15. The parties also entered an Asset Purchase Agreement dated June 1, 1999, according to which ELMCO purchased selected assets of Fulesday Machine Company, which are listed on Exhibit "A" of the Asset Purchase Agreement, which was a closely held Pennsylvania business corporation owned by the FULESDAYS. A true and correct copy of said Asset Purchase Agreement is attached hereto and incorporated herein by reference.

16. Section 2.01(a) obligated ELMCO to pay FULESDAYS \$370,000.00.

17. To date ELMCO has paid the FULESDAYS \$310,000.00.

18. It was the parties' understanding that this \$60,000.00 would be paid to the FULESDAYS via an Employment Agreement entered between Plaintiff David G. Fulesday and ELMCO which was made effective June 7, 1999. A true and correct copy of said Employment Agreement is attached hereto and incorporated herein by reference.

19. On June 6, 2001, David E. Lilly, President of ELMCO advised David G. Fulesday that his employment with ELMCO was terminated immediately.

20. Section 10.08 of the Asset Purchase Agreement entitles the prevailing party in the event of litigation to reasonably attorney's fees.

21. Either ELMCO is obligated to pay FULESDAYS an additional \$60,000.00 under the Asset Purchase Agreement, or pay an additional \$60,000.00 via the Employment Agreement with Mr. Fulesday.

WHEREFORE, FULESDAYS pray this Honorable Court to enter judgment in their favor and against ELMCO in the amount of \$60,000.00, together with interest at the statutory rate and reasonable attorney's fees.

COUNT THREE
SALE OF 300-ton BLISS PRESS

22. Paragraphs 1-21 are incorporated herein as though set forth in full.
23. FULESDAYS owned a 300-ton Bliss Press in June of 1999.
24. This Press was not included in the sale of Fulesday Machine Company's assets to ELMCO and does not appear on the list of assets sold to ELMCO, which is attached as Exhibit A to the Asset Purchase Agreement.
25. The parties entered a side agreement that if ELMCO could sell this 300-ton Bliss Press, it would pay FULESDAYS \$40,196.00 for it.
26. On or about November 1, 2000, ELMCO sold the 300-ton Bliss Press to GKN Sinter Metals.
27. ELMCO has failed to pay FULESDAYS the \$40,196.00, which it owes them for this Press. Attached hereto and incorporated herein by reference is a copy of Fulesday's invoice to ELMCO for this press.
28. Demand has been made upon ELMCO to pay this amount, but it has failed to do so.

WHEREFORE, FULESDAYS pray this Honorable Court to enter judgment in their favor and against ELMCO in the amount of \$40,196.00 together with interest at the statutory rate from November 1, 2000, and costs.

COUNT FOUR
FAILURE TO PAY FOR SERVICES

29. Paragraphs one through twenty-eight are incorporated herein as those set forth in full.
30. Prior to the execution of the Asset Purchase Agreement and Employment Agreement between the parties discussed in Count Two of this complaint, Mr. Fulesday worked for ELMCO as an independent contractor from May 12, 1999 through June 6, 1999.
31. Mr. Fulesday provided engineering services pursuant to ELMCO.
32. On May 12, 1999 and May 14, 1999 Mr. Fulesday traveled to Windfall Products in St. Mary's, Pennsylvania to perform some of these duties on behalf of ELMCO.
33. The distance from ELMCO'S Clearfield facility to Windfall in St. Mary's round trip is approximately seventy-two (72) miles for a total of one hundred forty-four (144) miles for both trips.
34. ELMCO agreed to compensate Mr. Fulesday for his services and reimburse him for his expenses.
35. ELMCO customarily bills its employee's time at the rate of \$95.00 per hour.
36. Mr. Fulesday believes the rate \$95.00 per hour is reasonable compensation for his engineering services.
37. The federal government allows taxpayers to deduct 31¢ per mile.
38. Mr. Fulesday believes that 31¢ is reasonable reimbursement for his mileage in this instance.
39. Mr. Fulesday kept a log of the time he dedicated to ELMCO as a independent contractor. A true and correct copy of said log is attached hereto and incorporated herein by

reference.

40. Mr. Fulesday expended 148.5 hours on behalf of ELMCO which when compensated at the rate of \$95.00 per hour results in total compensation due to Mr. Fulesday of \$14,107.50 Cents.

41. One hundred forty-four (144) miles reimbursed at the rate of 31¢ per mile totals \$44.64

WHEREFORE, Mr. Fulesday prays this Honorable Court to enter judgment in his favor and against ELMCO in the amount of \$14,152.14 together with interest at the statutory rate and costs.

Respectfully submitted,

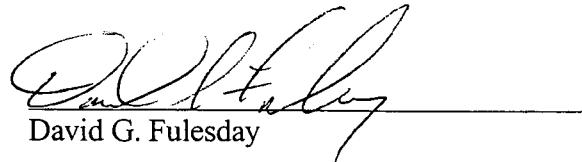
Date: 7-18-01


Peter F. Smith, Esquire
Attorney for Plaintiffs

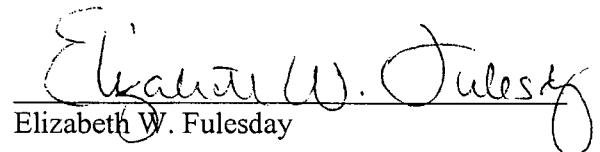
AFFIDAVIT

STATE OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

DAVID G. FULESDAY and ELIZABETH W. FULESDAY, husband and wife, being duly sworn according to law, deposes and says that they are duly authorized to make this Affidavit, and further, that the facts set forth in the foregoing Complaint are true and correct to the best of their knowledge, information and belief.



David G. Fulesday

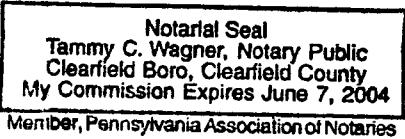


Elizabeth W. Fulesday

SWORN TO AND SUBSCRIBED
before me this 18th day of July, 2001.



Tammy C. Wagner
Notary Public



LEASE

THIS LEASE, made and entered into as of this 28th day of June, 1999 by and between David G. and Elizabeth W. Fulesday, an Pennsylvania corporation (hereinafter referred to as "Landlord") and ELMCO PA, INC., a Pennsylvania corporation (hereinafter referred to as "Tenant").

ARTICLE I PREMISES

Landlord hereby leases to Tenant and Tenant leases from Landlord for the term, at the rental, and upon all of the conditions set forth herein, that certain real property situated in the County of Clearfield, State of Pennsylvania, commonly known as 700 Bigler Avenue, together with all improvements, land and parking access, excluding the metal storage shed. The metal storage shed can be included together with the Premises upon six (6) months notice to Landlord.

ARTICLE II TERM

2.01 Original Term. The original term of this Lease shall be for five (5) years commencing on June 28, 1999 and ending on June 28, 2004 (the Original Term unless sooner terminated pursuant to any provision hereof.)

2.02 Delay in Commencement. Notwithstanding said commencement date, if for any reason Landlord cannot deliver possession of the Premises to Tenant on said date, Landlord shall not be subject to any liability therefore, nor shall such failure affect the validity of this Lease or the obligations of Tenant hereunder or extend the term hereof, but in such case Tenant shall not be obligated to pay rent until possession of the Premises is tendered to Tenant: provided, however, that if Landlord shall not have delivered possession of the Premises within sixty (60) days from said commencement date, Tenant may, at Tenant's option, by notice in writing to Landlord within ten (10) days thereafter, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder. If Tenant occupies the Premises prior to said commencement date, such occupancy shall be subject to all provisions hereof, such occupancy shall not advance the termination date, and Tenant shall pay rent for such period at the initial monthly rates set forth below.

2.03 Option to Extend. Tenant shall have the option to extend the term of this Lease for one (1) additional term of five (5) years commencing on the expiration of the Original Term, provided (a) Tenant is not then in default under the Lease at the time Tenant gives written notice of its exercise of its option to extend the term and at the commencement of the Renewal Term, (b) Tenant is in possession of the Premises, and (c) Tenant gives written notice of its exercise of its option to extend the term at least three (3) months prior to the expiration of the Original Term. Such extension shall be upon the same terms, conditions and provisions, except as specifically provided hereafter. The

option to extend the Lease shall not be exercisable by Tenant's successors, assigns or subtenants.

2.04 Option to Purchase. The Tenant shall have the option to purchase the leased property upon termination of the Original Term, or at any time during the Renewal Term. The Purchase Price shall be at a mutually agreed upon "Fair Market Value" of the leased property. In the event the parties can not agree upon a Purchase Price, each party shall provide independent appraisals for the "Fair Market Value" of the leased property, and the Purchase Price shall be the average of the two appraisals.

ARTICLE III RENT

3.01 Payment of Rent.

(a) During the Original Term, Tenant shall pay to Landlord as rent for the Premises an amount equal to \$5,000.00 per month. Tenant shall pay landlord upon the execution hereof \$5,000.00 as rent for the first month of the term of this Lease. Rent for any period during the term hereof which is for less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate in writing. The rent shall increase by \$600.00 monthly when tenant exercises the option to include the metal storage building.

(b) For each year during any Renewal Term of this Lease, the annual rent payable hereunder shall be adjusted as of the applicable "Rent Adjustment Date" (as hereinafter defined) to be equal to the annual rental payable during the year immediately preceding the Rent Adjustment Date multiplied by as fraction, the denominator of which is the CPI Number (as hereinafter defined) for the first month of the Original Term or Renewal Term immediately preceding the applicable Rent adjustment Date, as the case may be, and the numerator of which is the CPI Number for the third month immediately preceding the applicable Rent Adjustment Date. Notwithstanding the foregoing, the annual rent payable for any year during the term of this Lease shall not be less than the annual rent payable for the immediately preceding year.

For purposes of this Lease, the term "CPI Number" shall mean the United States Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics of the Department of Labor, All Items Index, U.S. City Average, 1982-84 = 100. In the event that the CPI Number shall be converted to a different standard reference base or otherwise revised, the determination of rent adjustment shall be made with the use of such conversion factor, formula or table converting the CPI Number as may be published by the Bureau of Labor Statistics or if not published by the Bureau of Labor Statistics, then as determined by Landlord. If the CPI Number ceases to be published or if no conversion factor, formula or table is reasonably available, then there shall be substituted such other index as Landlord shall reasonably determine.

The term "Rent Adjustment Date" shall mean the first day of each Renewal Term during the term of this Lease.

ARTICLE IV

USE

4.01 Use. The Premises shall be used and occupied only for the manufacture, repair and restoration of tools, dies and machinery rebuilding and for any other lawful purpose.

4.02 Compliance with Law. Tenant shall, at Tenant's expense, comply promptly with all applicable statutes, ordinances, rules regulations, orders, restrictions of record and requirements in effect during the term or any part of the term hereof regulating the use by Tenant of the Premises. Tenant shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance.

4.03 Condition of Premises. Tenant hereby accepts the Premises in their condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the suitability of the Premises for the conduct of Tenant's business.

ARTICLE V MAINTENANCE, REPAIRS AND ALTERATIONS.

5.01 Tenant's Obligations. Tenant shall keep in good order, condition and repair the Premises and every part thereof, structural and nonstructural (whether the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises) including, without limiting the generality of the foregoing, all plumbing, heating, air conditioning, ventilating, electrical, lighting facilities and equipment within the Premises, fixtures, and walls (interior), located within the Premises, and all landscaping, driveways, parking lots, fences and signs located on the Premises and sidewalks and parkways adjacent to the Premises, and whether requiring repair or replacement.

5.02 Surrender. On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the Premises to Landlord in the same condition as when received, broom clean, ordinary wear and tear excepted. Tenant shall repair any damage to the Premises occasioned by the removal of Tenant's trade fixtures, furnishings and equipment pursuant to Paragraph 5.05 (d), which repair shall include the patching and filling of holes and repair of structural damage.

5.03 Landlord's Rights. If Tenant fails to perform Tenant's obligations under this Article, Landlord may at its option (but shall not be required to) enter upon the Premises, after ten (10) days prior written notice to Tenant, and put the same in good order, condition and repair, and the cost thereof together with interest thereon at the rate of ten percent (10%) per annum shall become due and payable as additional rental to Landlord together with Tenant's next rental installment.

5.04 Landlord's Obligations. It is intended by the parties hereto that Landlord's only obligation is to repair and maintain the structural components of the Premises.

5.05 Alterations and Additions.

(a) Tenant shall not, without Landlord's prior written approval, make any alterations, improvements or additions in, on or about the Premises. Landlord may require that Tenant remove any or all alterations, improvements or additions made by Tenant at the expiration of the term hereof, and restore the Premises to its prior condition. Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, a bond in an amount equal to one and one-half times the estimated cost of any alteration improvement or addition, to insure Landlord against any liability for mechanics and materialmen's liens and to insure completion of the work.. Should Tenant make any alteration, improvement or addition without the prior written approval of Landlord, Landlord may require that Tenant immediately remove any or all of the same.

(b) Any alterations, improvements or additions in or about the Premises that Tenant shall desire to make which require form, with proposed detailed plans. If Landlord approves, such approval shall be deemed conditioned on Tenant acquiring a permit from appropriate governmental agencies furnishing of a copy thereof to Landlord prior to commencement of the work, and full compliance by Tenant with all conditions of said permit in a prompt and expeditious manner.

(c) Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use in, on or about the Premises, which claims are or may be secured by any mechanics or materialmen's lien against the Premises or any interest therein. Tenant shall give Landlord not less than ten (10) days' notice prior to the commencement of any work in, on or about the Premises, and Landlord shall have the right to post notices of non-responsibility. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense defend itself and Landlord against the same and shall pay and satisfy any adverse judgement that may be rendered thereon before the enforcement thereof against the Landlord or the Premises, on the condition that if Landlord shall require, Tenant shall furnish to Landlord a surety bond satisfactory to Landlord indemnifying Landlord against liability for the same and holding the Premises free from the effect of judgment, lien or claim. In addition, Tenant shall pay Landlord's attorneys' fees and costs.

(d) All alterations, improvements and additions, which may be made in, on or about the Premises, at the expense of the Tenant shall remain the property of Tenant and remain on and be excluded from the Fair Market Value of the Premises at the expiration of the Term. Tenant's machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Tenant and may be removed by Tenant subject to the provisions of paragraph 5.02.

ARTICLE VI INSURANCE AND INDEMNITY

6.01 Insuring Party. Tenant shall have the obligation to obtain and pay the cost of all insurance required hereunder.

6.02 Liability Insurance. Tenant shall, at Tenant's expense obtain and keep in force during the term of this Lease a policy of Combined Single Limit, Bodily Injury and Property Damage Insurance insuring Landlord and Tenant against any liability arising out

of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be a combined single limit policy in an amount reasonably required by Landlord. The policy shall contain cross liability endorsements and shall insure performance by Tenant of the indemnity provisions of this Article. The limits of said insurance shall not, however, limit the liability of Tenant hereunder. If Tenant shall fail to procure and maintain said insurance, Landlord may, but shall not be required to, procure and maintain the same, but at the expense of Tenant. If, in the reasonable opinion of Landlord, the amount of liability insurance required hereunder is not adequate, Tenant shall increase said insurance coverage as requested by Landlord, provided, however, the failure of Landlord to require any additional insurance coverage shall not be deemed to relieve Tenant from any obligations under this Lease.

6.03 Property Insurance.

(a) Tenant shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises, in the amount of the full replacement perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk) and sprinkler leakage. Said insurance shall provide for payment of loss thereunder to Landlord or to the holders of mortgages or deeds of trust on the Premises. Tenant shall, in addition, obtain and keep in force during the term of this Lease a policy of rental income insurance covering a period of six months, with loss payable to Landlord, which insurance shall also cover all real estate taxes and insurance costs for said period. If Tenant shall fail to procure and maintain said insurance, Landlord may, but shall not be required to, procure and maintain the same, but at the expense of Tenant. If such insurance coverage has a deductible clause, Tenant shall be liable for the deductible amount.

(b) Not more frequently than each year, if, in the reasonable opinion of Landlord, the amount of property insurance required hereunder is not adequate, Tenant shall increase said insurance coverage as required by Landlord. However, such increase may be more frequent than each year if required by the insurance carrier in order to maintain insurance for the full replacement value of the Premises.

6.04 Insurance Policies. Insurance required hereunder shall be provided by insurers of recognized responsibility authorized to do business in the State of Pennsylvania having an equivalent to a Best's financial rating of V or higher and a policyholder's rating of at least an A, and reasonably satisfactory to Landlord. The Tenant shall deliver to the Landlord. The Tenant shall deliver to the Landlord copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Landlord. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to each insured and each mortgagee to whom losses may be payable. The proceeds of property insurance shall be payable to Landlord to be applied toward Tenant's obligations of repair, restoration or reconstruction as provided in Article VII hereof. Tenant shall, not less than thirty (30) days prior to the expiration of such policies, furnish Landlord with renewals or "binders" thereof, or Landlord may order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant on demand. Tenant shall not do or permit to be done anything which shall invalidate the insurance. If Tenant does or permits to be done anything which shall increase the cost of insurance, then Tenant shall pay for any additional premiums

attributable to any act or omission or operation of Tenant causing such increase in the cost of insurance.

6.05 Waiver of Subrogation. Tenant and Landlord each hereby waive any and all rights of recovery against the other, or against the other, or against the officers, employees, agents and representatives of the other, for loss of or damage to such waiving party or its property or the damage is insured against under any insurance policy in force at the time of such loss or damages. Tenant shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

6.06 Indemnity. Except as otherwise provided herein, Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims arising from Tenant's use or occupancy of the Premises or from the conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant in or about the Premises or elsewhere and shall further indemnify and hold harmless Landlord from and against any and all claims arising from Tenant's part to be performed, or arising from any negligence of the Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant, on notice from Landlord, shall defend the same at Tenant's expense by counsel satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, on or about the Premises arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord.

6.07 Exemption of Landlord from Liability. Landlord shall not be liable for injury to the person, property or business of Tenant, Tenant's employees, agents, contractors, invitees, customers or other persons in or about the Premises howsoever caused, including, by way of illustration and not by way of limitation, injury caused by or resulting from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, whether on account of conditions arising on the Premises, or on other portions of any property of which the Premises are a part, or from other sources or places, and regardless of whether the cause of such injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any injury arising from any act or omission of any other occupant, if any, of the property of which the Premises are part.

ARTICLE VII DAMAGE OR DESTRUCTION

7.01 Obligation to Rebuild. In the event any improvements on or forming part of the Premises are damaged or destroyed, partially or totally, from any cause whatsoever whether or not such damage or destruction is covered by any insurance required to be maintained under this Lease, Tenant shall repair, restore, and rebuild the improvements to at least as good condition as existed immediately prior to such damage or destruction and this Lease shall continue in full force and effect. Such repair, restoration and rebuilding (all of which are herein called "repair") shall be commenced within a diligently pursued

to completion. Unless such casualty shall be a consequence of Landlord's act or omission, there shall be no abatement of rent or of any other obligation of Tenant hereunder by reason of such damage or destruction. Tenant hereby waives any and all rights provided by law to terminate this Lease, upon the partial or total destruction of the Premises, now existing or hereafter enacted.

7.02 Use of Insurance Proceeds. In the event of damage or destruction the proceeds of insurance shall be paid to Landlord, shall be applied toward Tenant's obligations of repair of improvements damaged or destroyed by casualty giving rise to the insurance claim, and shall be paid out by Landlord from time to time as said work shall progress, in amounts designated by certification by independent architects licenses to do business in the state where the Premises are located, showing the application of said amounts as payments for said work, provided, however, that if the net proceeds from insurance are not adequate for said work, Tenant shall pay, out of funds other than such net insurance proceeds, the amount by which the cost of said work will exceed the net proceeds from insurance and shall furnish proof to Landlord of the payment of such excess for work performed before Landlord shall release any part of the insurance proceeds.

7.03 Plans and Specifications. Prior to commencing repair, Tenant shall provide Landlord with written plans and specifications, which shall be subject to Landlord's prior approval. Landlord's approval shall not be unreasonably withheld. If available, the original plans and specifications shall be used, provided that the parties may make modifications and substitutions in materials and construction upon mutual consent.

7.04 Mechanic's Liens. Tenant shall not create or permit to be created or remain, and will discharge, any lien, encumbrance or charge which might be or become a lien, encumbrance or charge upon the Premises or upon any improvements thereon, or upon any income therefrom. If any mechanic's, laborer's or materialmen's lien shall at any time be filed against the Premises or any improvements thereon, Tenant, within ten (10) days after notice of the filing thereof, shall cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

ARTICLE VIII REAL PROPERTY TAXES

8.01 Payment of Taxes. Landlord shall pay all real property taxes applicable to the Premises during the term of this Lease. All such payments shall be made at least ten (10) days prior to the applicable delinquency date. Landlord shall promptly furnish Tenant with satisfactory evidence that such taxes have been paid. If any such taxes paid by Landlord shall cover any period of time prior to or after the expiration of the term hereof, Landlord's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year during the term of this Lease, and Tenant shall reimburse Landlord to the extent required. If Landlord shall fail to pay any such taxes, Tenant shall have the right to pay the same, in which case Landlord shall repay such amount to Tenant by way of deduction from next rent installment together with interest at the rate of ten percent (10%) per annum.

8.02 Definition of Real Property Taxes. As used herein, "real property taxes" shall include any form of assessment, license fee, commercial rental tax, ad valorem tax, gross receipts tax, levy, penalty, or tax (other than net income, inheritance or estate taxes), imposed by any public or private authority having the direct or indirect power to tax or impose assessments against any legal or equitable interest of Landlord in the Premises or in the real property of which the Premises are a part, or against Landlord's right to rent or other income therefrom, or against Landlord's business of leasing the Premises, or any tax or assessment imposed in substitution, partially or totally, or any tax or assessment previously included within the definition of real property taxes, or any additional tax or assessment the nature of which was previously included within the definition of real property taxes.

8.03 Personal Property Taxes.

(a) Tenant shall pay prior to delinquency all taxes assessed against and levied on trade fixtures, furnishings, equipment and all other personal property of Tenant in, on or about the Premises. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

(b) If any of Tenant's personal property shall be assessed with Landlord's real property, Tenant shall pay the same as part of Tenant's obligation to pay all personal property taxes.

ARTICLE IX
UTILITIES

Tenant shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any taxes thereon.

ARTICLE X
ASSIGNMENT AND SUBLETTING

10.01 Landlord's Consent Required. Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises, without Landlord's prior written consent, which Landlord shall not unreasonably withhold. Any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void, and shall constitute a breach of this Lease. Notwithstanding the foregoing, in no event shall Tenant's successors, assigns or subtenants be entitled to exercise the option to extend described in Paragraph 2.03 hereof.

10.02 No Release of Tenant. Regardless of Landlord's consent, no subletting or assignment shall release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Tenant or any successor of Tenant, in the performance of any of the terms hereof, Landlord may proceed directly against Tenant

without the necessity of exhausting remedies against any assignee. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto and such action shall not relieve Tenant of liability under this Lease.

10.03 Attorneys' Fees. In the event Tenant shall assign or sublet the Premises or request the consent of Landlord to any assignment or subletting or if Tenant shall request the consent of Landlord for any act that Tenant proposes to do, then Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection therewith.

ARTICLE XI DEFAULTS; REMEDIES

11.01 Default by Tenant. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

- (a) The vacating or abandonment of the Premises by Tenant.
- (b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three days after written notice thereof from Landlord to Tenant.
- (c) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in Paragraph (b) above, where such failure shall continue for a period of thirty (30) days after written notice hereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than 30 days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said 30-day period and thereafter diligently pursues such cure to completion.
- (d) (i) The making by Tenant of any general assignment, or general arrangement for the benefit of creditors; (ii) filing by or against Tenant of a petition to have Tenant adjusted a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days.
- (e) The discovery by Landlord that any financial statement given to Landlord by Tenant, any assignee of Tenant, any subtenant of Tenant, any successor in interest of Tenant or any guarantor of Tenant's obligations hereunder, and any of them, was materially false.

11.02 Remedies. In the event of any such material default or breach by Tenant, Landlord may at any time thereafter, with or without notice or demand and without

limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default or breach:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and any real estate commission actually paid; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; that portion of the leasing commission paid by Landlord applicable to the unexpired term of this Lease.

(b) Maintain Tenant's right to possession in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the State of Indiana.

11.03 Default by Landlord. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

11.04 Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any mortgage or deed of trust covering the Premises. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within twenty (20) days after such amount shall be due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

ARTICLE XII
CONDEMNATION

If more than twenty-five percent (25%) of the interior floor area of the buildings on the Premises, or more than fifty percent (50%) of the land area of the Premises, which is not occupied by any improvements, is taken under the power of eminent domain or sold under the threat of the exercise of said power (herein called "condemnation"), Landlord shall promptly notify Tenant, and either party may within thirty (30) days thereafter terminate this Lease by notice of the other party. In the event that a condemnation of less than twenty-five percent (25%) of the floor area of the buildings on the Premises and less than fifty percent (50%) of the land area is made, or neither party terminates this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area taken bears to the total floor area of the building situated on the Premises. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any award for loss of or damage to Tenant's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall, to the extent of severance damages received by Landlord in connection with such condemnation, repair any damage to the Premises caused by such condemnation except to the extent that Tenant has been reimbursed therefor by the condemning authority. Tenant shall pay any amount in excess of such severance damages required to complete such repair.

ARTICLE XIII REAL ESTATE BROKER

Tenant represents that Tenant has dealt with no broker in connection with this Lease, and that insofar as Tenant knows no broker or finder negotiated this Lease or is entitled to any commission or fee in connection herewith. Tenant agrees to indemnify, defend and hold Landlord free and harmless from and against all claims for broker's commissions or finder's fees by any person claiming to have been retained by Tenant in connection with this transaction or to have caused this transaction.

ARTICLE XIV GENERAL PROVISIONS

14.01 Estoppel Certificate.

(a) Tenant shall at any time upon not less than ten (10) days' prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any

are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

(b) Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one month's rent has been paid in advance or such failure may be considered by Landlord as a default by Tenant under this Lease.

(c) If Landlord desires to finance or refinance the Premises, or any part thereof, Tenant hereby agrees to deliver to any lender designated by Landlord such financial statements of Tenant as may be reasonably required by such lender. Such statements shall include the past three years' financial statements of Tenant. All such financial statements shall be received in confidence and shall be sued only for the purposes herein set forth.

14.02 Landlord's Liability. The term "Landlord" as used herein shall mean only the owner or owners at the time in question of the fee title or a lessee's interest in a ground lease of the Premises, and in the event of any transfer of such title or interest, Landlord herein names (and in case of any subsequent transfers the then grantor) shall be relieved from and after the date of such transfer of all liability as respects Landlord's obligations thereafter to be performed, provided that any funds in the hands of Landlord or the then grantor at the time of such transfer, in which Tenant has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Landlord shall, subject as aforesaid, be binding on Landlord's successors and assigns, only during their respective periods of ownership.

14.03 Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

14.04 Interest on Past-Due Obligations. Except as expressly herein provided, any amount due Landlord not paid when due shall bear interest at ten percent (10%) per annum from the date due. Payment of such interest shall not excuse or cure any default by Tenant under this Lease, provided, however, that interest shall not be payable on late charges incurred by Tenant nor on any amounts upon which late charges are paid by Tenant.

14.05 Time of Essence. Time is of the essence of this Lease.

14.06 Captions. Article and paragraph captions are not a part hereof

14.07 Incorporation of Prior Agreements; Amendments. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Tenant hereby acknowledges that neither any real estate broker nor any cooperating broker on this transaction nor the Landlord or any employees or agents of any of said persons has made any oral or written warranties or representations to Tenant relative to the condition or use by Tenant of said Premises.

14.08 Notices. Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified mail, and if given

personally or my mail, shall be deemed sufficiently given if addressed to Tenant or to Landlord at the address noted below:

If to Landlord: David G. and Elizabeth W. Fulesday
 622 High Street
 Curwensville, PA 16833

If to Tenant: ELMCO PA, INC.
 700 Bigler Avenue
 Clearfield, PA 16830

Either party may by notice to the other specify a different address for notice purposes except that upon Tenant's taking possession of the premises, the Premises shall constitute Tenant's address for notice purposes. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by notice to Tenant.

14.09 Waivers. No waiver by Landlord of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

14.10 Recording. Tenant shall not record this Lease without Landlord's prior written consent, and such recordation shall, at the option of Landlord, constitute a non-curable default of Tenant hereunder.

14.11 Holding Over. If Tenant remains in possession of the Premises or any part thereof after the expiration of the term hereof without the express written consent of Landlord, such occupancy shall be a tenancy from month to month at a rental double the amount of the last monthly rental plus all other charges payable hereunder, and upon all the terms hereof applicable to a month-to-month tenancy.

14.12 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible be cumulative with all other remedies at law or in equity.

14.13 Covenants and Conditions. Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

14.14 Binding Effect; Choice of Law. Subject to any provisions whereof restricting assignment or subletting by Tenant, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Pennsylvania.

14.15 Subordination.

(a) This lease, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation for security now or hereafter

placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease is dated prior to subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

(b) Tenant agrees to execute any documents required to effectuate such subordination or to make this Lease prior to the lien or any mortgage, deed of trust or ground lease, as the case may be, and failing to do so within ten (10) days after written demand, does hereby make constitute and irrevocably appoint Landlord as Tenant's attorney in fact and in Tenant's name, place and stead, to do so.

14.16 Attorney's Fees. If either party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorneys' fees to be paid by the losing party as fixed by the court.

14.17 Landlord's Access. Landlord and Landlord's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, or lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises or to the building of which they are a part as Landlord may deem necessary or desirable.

14.18 Signs and Auctions. Tenant shall not place any sign upon the Premises or conduct any auction thereon without Landlord's prior written consent except that Tenant shall have the right, without the prior permission of Landlord to place ordinary and usual for rent or sublet signs thereon.

14.19 Merger. The voluntary or other surrender of this Lease by Tenant, or mutual cancellation thereof, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

14.20 Corporate Authority. If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. If Tenant is a corporation, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Lease.

14.21 Legal Fees.

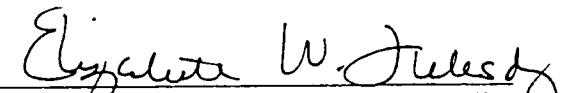
(a) In the event of legal action between Landlord and Tenant on account of any alleged default of either hereunder, the prevailing party in such action shall be entitled to be reimbursed by the other party in the amount of all reasonable attorneys' fees and other costs incurred by the prevailing party in connection with such action.

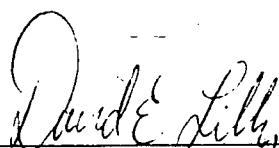
(b) In the event Landlord shall, without fault on its part, be made a party to any action commenced against Tenant or on account of any acts or omissions of Tenant, Tenant shall pay all costs and reasonable

14.22 Force Majeure. Except as provided otherwise in this Lease, Landlord shall be excused from performing any obligation under this Lease, and any delay in the performance of any of Landlord's obligations under this Lease shall be excused, if and so long as the performance of the obligation is prevented, delayed or otherwise hindered by acts of God, fire, earthquake, floods, explosion, acts of the elements, war, riots, mob violence, inability to procure or a general shortage of skilled labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, laws or orders of governmental or military authorities or any other cause, whether similar or dissimilar to the foregoing, not within the control of Landlord.

The parties hereto have executed this Lease the date first shown above.


DAVID G. FULESDAY ("Landlord")


ELIZABETH W. FULESDAY ("Landlord")

By 
David E. Lilly President
ELMCO PA, INC. ("Tenant")

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("AGREEMENT") is made and entered into effective this 1st day of June, 1999, by and between Fulesday Machine Company, 700 Bigler Avenue, Clearfield, PA 16830 a Pennsylvania corporation (hereinafter referred to as "Seller") and ELMCO PA, INC. 249 Main Street, Falls Creek, PA 15840, a Pennsylvania corporation (hereinafter referred to as "Buyer").

WITNESSETH

WHEREAS, Seller desires to sell and transfer to Buyer, and Buyer desires to purchase from Seller, substantially all the assets and rights utilized in the operation of Fulesday Machine Company upon the provisions set forth in this agreement.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

ARTICLE I

PURCHASE AND SALE

SECTION 1.01. Purchased Assets. Pursuant to the provisions hereinafter set forth, Seller hereby agrees to sell, assign, transfer and deliver to Buyer, and Buyer hereby agrees to purchase from Seller, substantially all the assets of the Seller described below (the "Purchased Assets"):

The Purchased Assets sold and purchased hereunder include the following:

- (a) All machinery, equipment, office furnishings, computers, product designs and fixed assets used in the manufacturing operations of Fulesday Machine Company Inc., including but not limited to the items per attached "Exhibit A".
- (b) All miscellaneous property, whether tangible or intangible, of Fulesday Machine Company, as outlined in the Security Agreement, including Exhibit "A", including jigs, tools, dies, molds, manuals, patents, processes, trade names, trademarks, copyrights, general intangibles, patterns, computer software programs, plans and specifications, technical material and knowhow of every kind or character, used in connection with the manufacturing operations of Fulesday Machine Company, Inc.

Section 1.02. Excluded Assets. Buyer shall not purchase, and Seller shall not sell to Buyer, any of Seller's assets not specifically identified in Section 1.01, including work in process inventory and accounts receivable.

Section 1.03. Liabilities. Except as otherwise provided in this Agreement, Buyer is not assuming, and upon consummation of the transaction contemplated by this Agreement, shall not assume, any debt, liability or other obligation of Seller (collectively "Liabilities") and shall not be liable or responsible for any liabilities of any kind of nature whatsoever, irrespective of whether such Liabilities are known, unknown, contingent, absolute or otherwise.

ARTICLE II

PURCHASE PRICE AND ALLOCATION

Section 2.01. Purchase Price.

- (a) The purchase price, \$370,000.00 (the "Purchase Price") to be paid by Buyer to Seller for all of the Purchased Assets is subject to prorations and adjustments as provided herein.
- (b) The parties hereby agree that the Purchased Assets are all Class III Assets, as defined by Section 1060 and Section 338 of the Internal Revenue Code of 1986, as amended, and the accompanying Regulations thereto.

Section 2.02. Payment of Purchase Price.

The Purchase Price shall be paid by the Buyer in cash, in immediately available funds, at Closing. CSB Bank will handle all necessary disbursements to provide ELMCO PA with free and clear title for all assets.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.01. Representations, Warranties and Covenants of Seller.

Except as set forth on a Disclosure Statement (attached hereto as Exhibit B and signed by Seller), Seller hereby represents, warrants and covenants to Buyer as follows:

- (a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Pennsylvania, and, has all necessary corporate power to execute this Agreement and to consummate the transactions contemplated herein. Seller is duly qualified or otherwise authorized to transact business and is in good standing in each jurisdiction in which Seller transacts business.
- (b) The execution and delivery of this Agreement by Seller and the performance by Seller of all obligations to be performed by it hereunder have been duly authorized by all necessary and appropriate corporate action. This Agreement constitutes a valid and legally binding obligation of the Seller in accordance with the provisions hereof.
- (c) Neither the execution and delivery of this Agreement by Seller, nor the consummation of the transactions contemplated herein will:
 - (i) Violate any provision of any Seller's Articles of Incorporation or Bylaws.
 - (ii) Violate any provision of, or cause a termination of or accelerate the performance required by, any contract or agreement, whether oral or written, to which Seller is a party.
 - (iii) Result in the creation of a lien upon any Purchased Assets, or cause a material defect or breach under any of the provisions of any agreement to which the Seller is a party, or by which Seller is bound.
- (d) There is no suit, action, arbitration or legal, administrative or other proceeding, controversy or investigation pending, or threatened, against the Seller relating to the Business or the Purchased Assets or which would restrain or prohibit the consummation of the transactions contemplated herein.

- (e) Seller is sole and exclusive owner of the Purchased Assets and, subject to release by secured creditors, Seller has good, marketable and indefeasible title to the Purchased Assets, free and clear of all Adverse Claims. The Seller is not infringing on any right of any other person with respect to the ownership or use of the Purchased Assets, and the ownership and use of such Purchased Assets by Buyer will not infringe on any right of any other person.
- (f) To the best of Seller's knowledge, Seller is not in violation, nor has Seller received notice of any alleged violation, or any federal, state or local law or regulation relating to the Purchased Assets.
- (g) To the best of Seller's knowledge, all taxes and assessments against the Purchased Assets or Seller which are now due or have accrued have been or will be paid in full by Seller, or, incident to this sale, all taxes or assessments against the Purchased Assets have been extinguished so that the Purchased Assets are being transferred to Buyer free and clear of any liens, encumbrances claims pertaining to taxes.
- (h) The existing use and condition of the Leased Real Estate does not violate any zoning, building, health, safety, environmental, fire or similar statute, ordinance, regulation or code, nor has Seller received any notice, written or otherwise, from any government agency alleging violation of building codes, building or use restrictions, zoning ordinances, rules and regulations, or any such matters.
- (i) There are no pending or threatened matters of litigation, administrative action or examination, claim or demand whatsoever relating to the Leased Real Estate.
- (j) There is no pending or contemplated eminent domain, condemnation or other governmental taking of the Leased Real Estate or any part thereof.
- (k) The Leased Real Estate is adjacent to and has full and free access on all perimeter areas to and from public roads and ways, such that no private easements or agreements are necessary to afford access to or from Leased Real Estate. No fact or condition exists which would result in the termination or impairment or access to the Leased Real Estate from adjoining public or private streets or ways or which could result in discontinuation of presently available or otherwise necessary sewer, water, electric, gas, telephone or other utilities or services.
- (l) There are no public improvements in the nature of off-site improvements, or otherwise, which have been ordered to be made and/or which have not heretofore been assessed and there are no special or general assessments pending against or affecting the Leased Real Estate.

Section 3.02. Representations, Warranties and Covenants of Buyer.

Buyer hereby represents, warrants and convenience as follows:

- (a) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the state of Pennsylvania and has all necessary authority to execute this Agreement as consummate the transactions contemplated herein.
- (b) Buyer has full power and authority to enter into and perform the transactions contemplated by this Agreement. This Agreement has been, and the documents to be delivered at Closing will be, duly authorized, executed and delivered by Buyer and constitute the lawful, valid and legally binding obligation of Buyer. Subject only to Bankruptcy, insolvency and similar laws affecting creditors' rights generally and to principles of equity regarding the availability of equitable remedies.
- (c) Buyer is not a party to, subject to, or bound by any agreement, debt instrument, trust or other judgment, order writ injunction or decree of any court of government body, which prevents, nor is any consent or authorization of any government body required for, performance by Buyer of its obligations hereunder.
- (d) Buyer, its respective officers, directors and shareholders, are not "insiders" to Seller.

- (e) No representation or warranty made by Buyer contained in this Agreement, or any statement, exhibit, certificate, or other document furnished to or to be furnished to Seller pursuant hereto in connection with the transactions contemplated herein, contains or will contain any untrue statement of material fact or omits or will omit to state of a material fact necessary to make the statements contained herein or therein not misleading.
- (f) Buyer has had the opportunity to inspect and did inspect the assets to be purchased under the terms of this agreement, and has made up its mind as to said assets usefulness, as to said assets need of repair, and take said Purchased Assets as is" without reliance upon any opinions or statements of Seller or any agent of Seller not contained herein. Buyer and Seller acknowledge that Seller agreed to the purchase price, terms and conditions of this Agreement by reason of such understanding.

ARTICLE IV

CLOSING

Section 4.01. Time

The closing of the transactions contemplated herein ("Closing") shall occur on or as soon as practicable following the fulfillment or waiver in writing by Buyer of all of the Closing Conditions provided in Section 6.01 of this Agreement but in no event shall the Closing occur after June 28, 1999.

Section 4.02. Place

Closing will take place at such location as is mutually agreed upon by the parties.

Section 4.03. Deliveries by Seller At Closing

At the Closing, Buyer shall deliver the Purchase Price, in accordance with the provisions of Section 2.02 hereof. In addition, Buyer shall execute and deliver such other documents, instruments or certificates as may be necessary to effectuate the transactions contemplated by this Agreement or as may be reasonably requested by Seller's legal counsel.

Section 4.04. Deliveries by Seller at Closing

At or prior to the Closing, Seller shall deliver to Buyer the following:

- (a) An assignment and Bill of Sale in substantially the form of Exhibit A attached hereto and incorporated herein by this reference, duly executed by Seller.
- (b) A certified copy of the Board of Directors' and shareholders' resolutions necessary to consummate the transactions contemplated by this Agreement.
- (c) Executed Lease Agreement between ELMCO PA, INC. and David and Elizabeth Fulesday.
- (d) Executed Employment Agreement between ELMCO PA, INC. and David Fulesday.
- (e) Such other documents of conveyance of instruments as may be necessary to effectuate the transactions contemplated by this Agreement.

ARTICLE V

AFFIRMATIVE COVENANTS OF THE SELLER

Seller hereby agrees to keep, perform and fully discharge the following affirmative covenants:

Section 5.01. Best Efforts to Protect and Maintain Assets; Possession.

As of the date hereof through the date of Closing (the "Interim Period"), Seller shall use its best efforts to protect, preserve and maintain the Purchased Assets in good repair, order and condition, ordinary wear and tear expected.

Section 5.02. No Disposition of Purchased Assets.

No sales, transfers or other dispositions of the Purchased Assets will be consummated without prior written consent of Buyer.

ARTICLE VI

CONDITIONS OF PRECEDENT TO CLOSING

Section 6.01. Conditions precedent to Obligations of Buyer.

- (a) Closing Deliveries. On or prior to Closing, Seller shall deliver to Buyer each of the items described in Section 4.04 hereof.
- (b) Accuracy of Representations and Warranties. All of the representations and warranties of Seller described in this Agreement shall be true, correct and complete as of Closing.
- (c) Affirmative Covenants. Seller shall comply with each affirmative covenant described in Section V hereof.

Section 6.02. Conditions Precedent to Obligations of Seller.

- (a) Delivery Items. Buyer shall deliver to Seller each of the items described in Section 4.03 hereof on the date of Closing.
- (b) Accuracy of Representations and Warranties. All of the representations and warranties of Buyer described in this Agreement shall be true, correct and complete as of the Closing.

ARTICLE VII

TERMINATION

Section 7.01. Termination and Abandonment. This Agreement may be terminated by Buyer at any time prior to the Closing if the conditions set forth in Section 6.01 have not been fulfilled or waived and such noncompliance or nonperformance may not be cured or eliminated (or by its nature cannot be cured or eliminated) by Seller on or prior to the date of closing and within five (5) day's notice thereof to Seller from Buyer specifying such noncompliance's or nonperformance.

Section 7.02. Effect of Termination. In the event of the termination or abandonment of this Agreement pursuant to the provisions of Section 7.01, this Agreement shall thereafter become null and void and no further effect.

ARTICLE VIII

NOTICE

Section 8.01.

- (a) Any notice, request, approval, demand, consent, and instruction or other communication to be given by any party hereunder ("Notice"), except those required to be delivered at Closing, shall be in writing, and shall be personally delivered, sent by overnight courier or sent by the U.S. certified mail, return receipt requested, shall be the date of receipt by the party receiving such Notice as evidence by a signed receipt and the date of Notice in the event of Notice sent certified mail, return receipt requested, shall be the date of depositing same in the email as evidence by postmark thereon.
- (b) Notices. Whenever any party shall be required to give notice or demand to another party according to the provisions of this Agreement, such notice or demand shall be as follows:
 - (i) In the case of Buyer, to: David E. Lilly, President, ELMCO PA, 249 Main Street, Falls Creek, PA 15840.
 - (ii) In the case of the Seller, to: David G. Fulesday, President Fulesday Machine Company, 700 Bigler Avenue, Clearfield, PA 16830
 - (iii) Any party may change the address to which such notices are to be addressed by giving the other party notice in the manner herein set forth.

ARTICLE IX

BROKER'S COMMISSIONS

Neither Buyer, nor Seller have dealt with any finder or broker in connection with this transaction and no such fee, commissions, expenses or other consideration are payable with respect thereto. The parties hereto each agree to defend, indemnify, protect and hold harmless the other and the Purchased Assets with respect to any action, claim or liability for such fee, commissions or expenses claimed as a result of the acts or conduct of the indemnifying party to this transaction.

ARTICLE X

MISCELLANEOUS

Section 10.01. Neither party may assign any of its rights or obligations hereunder without the express written consent of the other party.

Section 10.02. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and permitted assigns.

Section 10.03. This Agreement, including the Exhibits and Schedules hereto, constitutes the entire Agreement between the parties hereto, and there are no other covenant, agreements, promises, terms and provisions, conditions, undertakings or understandings that are oral or written, between them concerning the transactions contemplated herein other than those set forth. No subsequent alteration, amendment, change, deletion or addition of this Agreement shall be binding upon the parties hereto unless in writing and signed by the parties hereto.

Section 10.04. The word "person" as used herein shall include all individuals, partnerships, corporations, or any entities whatsoever.

Section 10.05. Any reference herein to an Exhibit or Schedule refers to the applicable Exhibit or Schedules that are attached to this Agreement and such Exhibits and Schedules shall constitute a part of this Agreement and are expressly made part hereof.

Section 10.06. If any provision hereof is for any reason unenforceable and inapplicable, the other provisions hereof shall remain in full force and effect in the same manner as if such unenforceable or inapplicable provision has never been contained.

Section 10.07. This Agreement shall be construed under and in accordance with the laws of the State of Pennsylvania, without giving effect to conflicts of laws principals.

Section 10.08. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to all costs incurred, including reasonable attorney's fees.

Section 10.09. The representations, warranties and covenants contained in this Agreement, or in any Exhibit or Schedule attached hereto, or any instruments of transfer, certificates, or other documents delivered pursuant hereto, shall survive the Closing.

Section 10.10. The article, section and paragraph headings contained in this Agreement are for the reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.11. This agreement may be executed in counterparts, all of which together shall be considered one and the same and shall be effective when one or more counterparts have been signed by each of the parties and delivered to all of the parties.

Section 10.12. The parties hereto each agree to execute and deliver such documents, certificates, agreements, and other writing and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement.

Section 10.13. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver hereof. Nor shall any waiver on the part of any party of such right, power or privilege, nor any single or partial exercise of any such right power or privilege, preclude any further exercise thereof or the exercise thereof or the exercise of any other such right, power or privilege.

Section 10.14. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first above written.

BUYER:

ELMCO PA INC.

BY David E. Liily

David E. Liily, President

SELLER:

Fulesday Machine Company, Inc.

BY David G. Fulesday

David G. Fulesday, President

BY Elizabeth W. Fulesday

Elizabeth W. Fulesday

Report 1

Substantially all the assets of Fulesday Machine Company

Description

MONARCH LATHE 27.5 X 84
HOLBROOK LATHE 18 X 48
DEAN, SMITH & GRACE (MONARCH) 18 X 48
RIVETTE TOOL ROOM LATHE 10 X 24
WARNER & SWASEY #2A TURRET LATHE
MILWAUKEE #3 HORT. MILL
AREX #2 HORT. MILL W/ VERT. HEAD
ACRA VERT. MILL (BRIDGEPORT STYLE) W/ FEED & DRO
BRIDGEPORT SERIES 2 CNC MILL
BRIDGEPORT SERIES 2 MILL
CINCINNATI HORT BED MILL W/ POWER OVERARM
ROCKFORD HYDRAULIC SHAPER 24"
MANLEY 40 TON SHOP PRESS W/ POWER UNIT
KING 42" VERT. BORING MILL
THOMPSON SURFACE GRINDER 12 X 40
LANDIS CYLINDRICAL GRINDER 16 X 48
ARCHDALE RADIAL DRILL 36"
AMERICAN RADIAL DRILL 48"
CRAFTSMAN DRILL PRESS
RACINE POWER HACK SAW
ROLL-IN VERT. BAND SAW
HENDLEY FORMING ROLLS 48 X 11 GA.
DREIS & KRUMP APRON BRAKE 96 X 16 GA.
PEXTO POWER SHEAR 120" X 16 GA.
CHICAGO PAN BRAKE 36" X 16 GA.
BAR AND ANGLE SHEAR (HAND OPERATED)
LUCAS 5" HBM
GIDDINGS & LEWIS 5" HBM W/ ROTARY
GIDDINGS & LEWIS 4" HBM
MILLER 650 AMP WELDER W/ FEEDERS
MILLER TIG WELDER 250 AMP
WESTINGHOUSE WELDER 500 AMP
LINCOLN WELDER 250 AMP
WILTON BELT GRINDER W/ DUST COLLECTOR
CARBIDE TOOL GRINDER 6"
CRAFTSMAN GRINDER 6"
TAYLOR FORK LIFT 14000# W/ GIB
YALE FORK LIFT 6000#
PETTIBONE SUPER 60 W/ GIB
CHEVY 2500 SERIES 1988 PICKUP 4WD 3/4 TON
PLASMA CUTTING MACHINE
BALANCING ROLLS - (2) SETS
CUTTING TORCHES - TRACK TYPE- (2)
TORCHES, HOSE, WELD CABLE, ETC.
CHIP DUMPSTERS (2)
ROTARY TABLE 18"
HOSSFELD BENDER

Report 1

Description

SPENCER INDUSTRIAL VACUUM
PLATFORM SCALES 2000 LBS.
AIR COMPRESSORS (2)
DIVIDING HEAD, MILLING
TOOLING - DRILLS, CUTTERS, ETC.
KEYWAY BROCHES AND GUIDE BUSHINGS
METAL STORAGE CABINETS (6)
PAINT GUNS (2)
SHOP CARTS - HEAVY DUTY (4)
MISC. POWER TOOLS, CHAINS, WRENCHES, ETC
GAGES, GIGS AND FIXTURES
PRECISION LEVEL
JOB CARTS (10)
STEEL INVENTORY RACKS (2)
100 TON HOLLOW RAM W/ POWER UNIT
MICROMETERS TO 20"
RADIUS CUTTING ATTACHMENT
BLUE PRINT DUPLICATION MACHINE
MITCHELL DESIGN DRAWINGS
TELEPHONE SYSTEM
TYPEWRITER
FAX MACHINE
AIR CONDITIONERS (3)
CANON COPY MACHINE
COMPUTER NETWORKING COMPONENTS
COMPUTERS, PRINTERS, AND SOFTWARE
CASTING PATTERNS
DESIGNS
CONF. RM. TABLE AND CHAIRS
(5) DESKS
DESK CHAIRS (4)
FILE CABINETS (3)- FRONT OFFICE
FILE CABINETS (3)- LIZ'S OFFICE
CREDENZA (2)
WOODEN FLAT FILE - DAVE'S OFFICE
METAL FLAT FILE - DAVE'S OFFICE
FOLDING TABLES (2)
ALL MISC. FIXTURES AND TOOLS

EMPLOYMENT AGREEMENT

ELMCO PA, INC. a Pennsylvania corporation ("Company"), and DAVID FULESDAY ("Employee") make and enter into this EMPLOYMENT AGREEMENT ("Agreement") effective as of June 7, 1999.

WHEREAS, Company is willing to employ Employee as its Engineering Manager pursuant to this Agreement, and Employee desires employment by Company as its Engineering Manager pursuant to this Agreement.

NOW, THEREFORE, in consideration of the foregoing recital, the following promises, and employment of Employee by Company, Company and Employee agree and covenant as follows:

1. For the term of this Agreement:

(a) Company will employ Employee as its Engineering Manager, and Employee accepts such employment with Company. Employee shall serve Company during the term of this Agreement with such duties and responsibilities as are necessary to manage all projects, engineering services, product development and resources as assigned by the Company. The precise duties and responsibilities of Employee may be extended, modified or curtailed from time to time by the Company and the job description portion of Employee's title or office may be changed or altered by the Company, but the duties and services required of Employee in his employment shall be generally of the character contemplated in this paragraph.

(b) The term of this Agreement shall be for one (1) year beginning on the Effective Date, and shall automatically be extended for an additional year on each annual anniversary of the Effective Date ("Renewal Date") so that at each Renewal Date the term of this Agreement is for one (1) year, unless the Company gives notice prior to a Renewal Date of the Company's intention to terminate this Agreement ("Termination Notice"). To be effective a Termination Notice from Company must be given not later than thirty (30) days prior to Renewal Date.

(c) Employee's employment with the Company shall terminate:

(i). Upon Employee's death

(ii). On the day preceding the Renewal Date of the year in which a Termination Notice is given by the Company pursuant to Section 1(b); or

(iii). Upon termination by Company at any time of Employee's employment for cause. "Cause" as used in the preceding sentence shall mean willful misconduct in following the legitimate directions of the Company officers; conviction of a felony; habitual alcohol or substance abuse; excessive absenteeism not related to illness, sick leave, or vacations, but only after notice from the Company followed by a repetition of such excessive absenteeism; dishonesty; or continuous conflicts of interest after notice in writing.

2. As long as Employee is employed by the Company, Employee shall have no other outside business activities which conflict with the business activities of Company without the prior written consent of Company's Board of Directors. This prohibition shall not, however, prevent Employee from investing his assets in such form or manner as would not conflict with Company's business, or engaging in other business, which do not detract from the fulfillment of Employee's duties under this Agreement.

3. Compensation

(a) Company shall pay Employee at the rate of \$30,000.00 per year ("Base Compensation"), payable at least monthly by the fifteenth day of each month (or the first business day thereafter, if the fifteenth day of a month falls on a weekend or on a legal holiday). The Company shall evaluate Employee's salary annually on the Renewal Date and may, in its sole discretion, adjust Employee's Base Compensation. The term "Base Compensation": as used in this Agreement shall include any annual adjustments thereto. This provision shall in no way obligate the Company to increase Employee's Base Compensation. Employee shall be entitled to the full benefits offered to all Company employees, plus those described in Schedule 3 (a) attached hereto.

(b) All amounts paid to Employee pursuant to this Agreement shall be reduced: (i) as necessary and appropriate, for federal, state, and local/municipal withholding taxes and withholding pursuant to FICA; and (ii) as requested by Employee, for contributory employee benefits.

(c) Company shall reimburse Employee for all reasonable and necessary expenses incurred in carrying out his duties under this Agreement. Prior to any reimbursement hereunder, Employee shall present to the Company an itemize account of, and receipts for, such expenses.

(d) If, because of illness, physical or mental disability, or other incapacity, Employee fails, for a period or periods aggregating three (3) months during any consecutive twelve (12) month period, to render the services provided for by this Agreement, or if Employee contracts an illness or injury which permanently prevents him from performing the services provided for by this Agreement, then the Company may terminate Employee's employment by notifying Employee, in writing, of such termination. Such termination shall be effective thirty (30) days after such written notification is given.

4. In consideration of, and as material inducement to, the Company entering into this Agreement and the other covenants and agreements contemplated hereby, Employee agrees that for a period commencing on the effective date of this Agreement and ending five (5) years following the termination of the employment by the Company of such Employee, such Employee will not:

(a) Directly or indirectly, acting alone or as a member of a partnership or as a director, officer, employee, stockholder, agent or consultant of any business enterprise within North America: (i) engage in any "Competitive Business" (as such term is defined in Section 4(d)); or (ii) become associated with, or assist or aid in any manner (whether on a compensated or noncompensated basis) any person or business enterprise other than the Company engaged in a Competitive Business; or

(b) Directly or indirectly, on behalf of such Employee and/or such Employee's Affiliates (as defined below) or on behalf of or in conjunction with any persons, partnerships, firms, corporations or other business enterprises, solicit, entice, hire, employ, endeavor to employ or associate for business purposes in any Competitive Business with any person employed by the Company during the term of this Agreement. For the purpose of this Section 4, an "Affiliate" of a person or entity means any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity with respect to whom or which the relationship is being measured. For the purposes of this definition, "control" (including, with correlative meanings, the term "controlled by") as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, or by agreement or otherwise;

(c) Directly or indirectly, at any time or in any manner, divulge, disclose or communicate to any person, corporation, partnership, association or other entity, any information obtained by such Employee in furtherance of or as a result of the employment by the Company of such Employee which affects or is related to the business practices of the Company including, without limitation, any data concerning the design, construction or function of any product manufactured or marketed by the Company, any of the Company's customers or lists of potential customers, sales prices of any of the Company's products or services, the Company's manner of operation, plans, processes systems, data or other information concerning the Company's business. The parties hereto acknowledge and agree that all of the foregoing information is important, sensitive, material and confidential and gravely affects the effective and successful conduct of the Company's business and goodwill. Notwithstanding any provision of this Section 4 to the contrary, the confidentiality provisions of this Section 4(c) shall not expire five (5) years following the termination of the employment by the Company of such Employee.

(d) For the purposes of this Agreement, the term "Competitive Business" shall mean any person, firm or entity engaged in business of press manufacturing or rebuilding, die set rebuilding, P/M tooling, die repair, or the sale of powdered metal machinery, field service, consulting service, equipment or parts pertaining thereto.

5. Employee agrees that:

(a) The covenants and agreements set forth in Section 4 are reasonable and necessary to protect the interest of the Company;

(b) Such covenants and agreements do not reasonably impair such Employee's right to earn a livelihood; and

(c) The Company will suffer considerable loss and damage and irreparable harm and injury if any of the covenants and agreements set forth in Section 4 are breached. As a result, Employee agrees that any violation of the covenants and agreements set forth in Section 4 shall result in such Employee liability for the following liquidated damages, which damages represent the contemplated damage to the Company in the event of a breach of the restrictive covenants contained in Section 4, constitute a reasonable sum and do not represent a penalty: the sum of (I) an amount equal to one hundred percent (100%) of the gross revenues (in the form of sales, salary, dividends, commissions or otherwise) derived by the breaching party (whether such Employee or his Affiliate) as a result of the violation of the provisions of Section 4, which amount shall be remitted to the Company; and (ii) any and all amounts that remain unpaid pursuant to Section 7 hereof.

6. Recognizing that irreparable injury will result to the Company and its business and property in the event of a continuing breach of the restrictive covenants set forth in Section 4, and because this Agreement is based in large measure upon said restrictive covenants, the parties hereto agree that in the event of a violation of said restrictive covenants, the Company shall be entitled, in addition to the liquidated damages provided for in Section 5, and any other remedies and damages available, to obtain restraining orders and injunctions, both temporary and permanent, in order to prevent future violations thereof by such Employee and his Affiliates. Such Employee and his Affiliates waive the claim or defense that the Company has an adequate remedy at law, and such Employee and his Affiliates shall not claim, in any such action or proceeding that an adequate remedy at law exists.

7. In consideration of Employee's covenant not to compete, the Company shall pay the Employee an amount equal to \$60,000.00 dollars. Such amount shall be payable *Off* *DEC* ~~monthly in sixty (60) equal installments, with the first installment payable 30 days after~~ *JUNE, 2004* ~~termination of this contract.~~ Subsequent installments shall be payable monthly thereafter. Notwithstanding the foregoing, the restrictive covenant set forth in Section 4(c) of this Agreement shall survive the termination of the Agreement.

8. Nothing contained in this Agreement shall be deemed to limit or otherwise modify any fiduciary duties or obligations, common law, or otherwise, owed to the Company by Employee.

9. (a) (i) The provisions of this Agreement shall be fully applicable whether Employee is employed by Company or by an Affiliate (as defined in Section 4(b)) of Company. Company shall not have the power to assign this Agreement or Company's performance of its duties and obligations pursuant to this Agreement without the prior written consent of Employee.

(ii) The services to be performed by Employee pursuant to this Agreement are unique, and accordingly, Employee shall not have the power to assign this Agreement or Employee's performance of his duties and obligations pursuant to this Agreement.

(b) In the event that any section(s), paragraph(s), sentence(s), clause(s), or phrase(s) of this Agreement shall be found invalid, void, and/or unenforceable, for any reason, neither this Agreement generally nor the remainder of this Agreement shall thereby be rendered invalid, void, and/or unenforceable. Instead, each of such provisions, and (if necessary) other provisions of this Agreement shall be reformed by a court of competent jurisdiction so as to effect, insofar as is practicable, the intention of Company and Employee as set forth in this Agreement. However, if such court is unable or unwilling to effect such reformation, the remainder of this Agreement shall be construed and given effect as if such invalid, void, and/or unenforceable provisions had not been a part of this Agreement.

(c) This agreement constitutes the entire agreement between Company and Employee regarding the subject matter of this Agreement and supersedes all prior oral or written proposals, negotiations, representations, communications or agreements between Company and Employee. Any and all prior employment agreements that Employee may have had from time to time with Company or any of its Affiliates are superseded as of the Effective Date by this Agreement. This Agreement may not be changed or modified except by a written instrument executed by Company and Employee.

(d) This Agreement shall inure to the benefit of and be binding upon Employee, Employee's heirs, and Employee's personal representatives, and upon Company and its successors and assigns.

(e) The validity, construction, enforcement, and interpretation of this Agreement shall be governed by the laws of the State of Pennsylvania without giving effect to conflicts of laws principles.

(f) Any notices required or contemplated pursuant to this Agreement shall be in writing and delivered in person, evidenced by a signed receipt, or mailed by certified mail, returned receipt requested, postage prepaid, addressed to the last known address of the party to whom such notice is given. Notices shall be deemed given on the date of delivery, if the notice is personally delivered, or the date of mailing, if such notice is mailed in accordance with this Subsection.

IN WITNESS WHEREOF, Company and Employee have entered into this Agreement as of the Effective Date.

EMPLOYEE:



COMPANY:

ELMCO PA, INC.

By David E. Lilly

Name: David E. Lilly

Title: Pres.

SCHEDULE 3(A)

Additional Employee Benefits

1. VACATION:

Two (2) weeks per calendar year; three (3) weeks per year effective after ten (10) years of service. Vacation can be carried over from one year to the next; however, the combined vacation can never exceed 30 days in any year.

2. BONUS PROGRAM:

Employee will be eligible for an annual bonus, in an amount determined pursuant to criteria established annually by the Company's board of directors. However, the Company shall in no way be obligated to pay Employee an annual bonus.

3. 401 K PLAN

Employee shall become eligible to enroll in the Company sponsored 401K plan effective on January 1, 2000.

INVOICE

David & Elizabeth Fulesday
622 High Street
Curwensville, PA 16833

Sold To:

Invoice Date: 21 Nov 2000

ELMCO PA, Inc.
700 Bigler Ave.
Clearfield, PA 16830

(1) 300 ton Bliss model 89 press frame and components.....\$40,196.00
DUE UPON RECEIPT

DATE	DESCRIPTION	START	STOP	HRS
05/12/99	TRIP TO WPI	1:30 pm	6:30 pm	5
05/13/99	WORK ON LAYOUT	10:00 pm	11:00 pm	1
05/14/99	TRIP TO WPI	9:00 am	1:00 pm	4
05/14/99	WORK ON LAYOUT	7:00 pm	12:00 am	5
05/15/99	WORK ON LAYOUT	9:00 pm	1:00 am	4
05/16/99	WORK ON LAYOUT	8:00 pm	11:00 pm	3
05/17/99	WORK ON LAYOUT	7:00 pm	12:00 am	5
05/17/99	WORK ON LAYOUT	10:00 am	12:00 pm	2
05/17/99	WORK ON LAYOUT	2:00 pm	4:00 pm	2
05/18/99	WORK ON LAYOUT	11:00 am	12:30 pm	1.5
05/18/99	WORK ON LAYOUT	2:30 pm	5:00 pm	2.5
05/18/99	WORK ON LAYOUT	8:30 pm	1:00 am	4.5
05/19/99	WORK ON LAYOUT	10:30 am	1:30 pm	3
05/19/99	WORK ON LAYOUT	8:00 pm	12:30 am	4.5
05/20/99	WORK ON LAYOUT	2:00 pm	4:00 pm	2
05/20/99	WORK ON LAYOUT	9:00 pm	12:00 am	3
05/21/99	WORK ON LAYOUT	10:30 am	11:30 am	1
05/21/99	WORK ON LAYOUT	2:30 pm	4:00 pm	1.5
05/21/99	WORK ON LAYOUT	8:00 pm	1:00 am	5
05/22/99	WORK ON LAYOUT	10:00 pm	1:30 am	3.5
05/23/99	WORK ON LAYOUT	2:00 pm	5:30 pm	3.5
05/23/99	WORK ON LAYOUT	7:00 pm	12:30 am	5
05/24/99		7:00 pm	12:00 am	5
05/25/99		7:30 pm	11:00 pm	3.5
05/26/99		8:00 pm	1:00 am	5
05/27/99		8:00 pm	12:00 am	4
05/28/99		1:00 pm	2:30 pm	1.5
05/28/99		8:00 pm	1:00 am	5
05/29/99		3:30 pm	6:30 pm	3
05/29/99		9:00 pm	3:00 am	6
05/30/99		2:00 pm	4:00 pm	2
05/30/99		9:00 pm	2:00 am	5
05/31/99		3:00 pm	5:30 pm	2.5
05/31/99		8:00 pm	1:00 am	5
06/01/99		7:30 pm	11:30 pm	4
06/02/99		8:00 pm	12:30 am	4.5
06/03/99		11:00 am	1:00 pm	2
06/03/99		8:00 pm	12:00 am	4
06/04/99		7:00 pm	10:00 pm	3
06/04/99		11:00 pm	1:00 am	2
06/05/99		10:00 pm	2:00 am	4
06/06/99		6:00 pm	12:00 am	6
06/07/99		10:00 am	12:00 pm	2
06/07/99		8:00 pm	12:30 am	4.5
06/08/99		12:30 pm	2:00 pm	1.5
06/08/99		6:30 pm	12:00 am	5.5
06/09/99		10:00 am	11:30 am	1.5
06/09/99		8:00 pm	12:00 am	4

148.5 HRS

FILED 200 ~~10:17 AM~~ *Att'y*

JUL 19 2001 Plaintiff pd.

8:00

cc
William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11268

FULESDAY, DAVID G. & ELIZABETH W.

01-1158-CD

VS.

ELMCO PA. INC.

COMPLAINT

SHERIFF RETURNS

NOW JULY 20, 2001 AT 2:04 PM DST SERVED THE WITHIN COMPLAINT ON ELMCO PA, INC., DEFENDANT AT EMPLOYMENT, 700 BIGLER AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO HARLAN SYLVESTER, MACHINIST/SUPERVISOR, A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: NEVLING

Return Costs

Cost	Description
20.34	SHFF. HAWKINS PAID BY: PLFF.
10.00	SURCHARGE PAID BY: PLFF.

FILED
07/28/01
JUL 3 1 2001
William A. Shaw
Prothonotary

Sworn to Before Me This

31st Day Of July 2001
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

So Answers,

Chester A. Hawkins
by Marley Hays
Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID G. FULESDAY and
ELIZABETH W. FULESDAY,

No. 2001- 158-CD

COPY

Plaintiffs

vs.

ELMCO PA, INC.,

Defendant

Type of Case:
CIVIL

Type of Pleading:
COMPLAINT

Filed on Behalf of:
PLAINTIFFS

Attorney for this party:
Peter F. Smith, Esquire
Supreme Court No. 34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

JURY TRIAL DEMANDED

I hereby certify this to be a true
and exacted copy of the original
document filed in this case.

JUL 19 2001

Attest:

William E. Blair
Fiduciary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID G. FULESDAY and :
ELIZABETH W. FULESDAY, : No. 2001- -CD
Plaintiffs :
vs. :
ELMCO PA, INC., :
Defendant :
:

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF
YOU DO NOT HAVE OR CANNOT AFFORD A LAWYER, GO TO OR
TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE
YOU CAN GET LEGAL HELP.**

Clearfield County Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Clearfield County Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID G. FULESDAY and :
ELIZABETH W. FULESDAY, : No. 2001- -CD
: Plaintiffs
: vs.
: ELMCO PA, INC., :
: Defendant

COMPLAINT

COMES NOW, the Plaintiffs by their attorney, Peter F. Smith, who aver as follows:

1. The Plaintiffs' full names are DAVID G. FULESDAY and ELIZABETH W. FULESDAY. They are husband and wife and reside at 622 High Street, Curwensville, Pennsylvania, 16833. Hereinafter referred to as "FULES DAYS."
2. The name of the Defendant is ELMCO PA, INC., a Pennsylvania business corporation with principal office at 700 Bigler Avenue, Clearfield, Pennsylvania, 16830. Hereinafter referred to as "ELMCO."

COUNT ONE
BREACH OF LEASE

3. The preceding paragraphs are incorporated herein by reference as those set forth in full.
4. The parties entered a Lease on June 28, 1999, under which ELMCO rented from FULES DAYS a commercial building at 700 Bigler Avenue, Clearfield, Pennsylvania. A true and correct copy of said Lease is attached hereto and incorporated herein by reference.

5. The Lease commenced on June 28, 1999, for an initial term of five years ending June 28, 2004.

6. Paragraph 3.01(a) requires ELMCO to pay rent in the amount of \$5,000.00 per month.

7. Rent commenced on July 1, 1999.

8. On or about February 1, 2001, ELMCO failed to pay the full rent of \$5,000.00 since that date has tendered only \$2,500.00 per month except for May 2001 when ELMCO paid the full rent of \$5,000.00.

9. The failure to pay rent in full constitutes a default under Paragraph 11.01(b) of the Lease.

10. Paragraph 11.04 of the Lease entitles the FULESDAYS to a late charge of 5% of the overdue amount accruing 20 days after the date on which payment of the rent was due.

11. Paragraph 14.04 of the Lease also entitles the FULESDAYS to interest at the rate of 10% per annum on all amounts due.

12. Paragraph 14.16 of the Lease also entitles the prevailing party to attorney fees.

13. Demand has been made on ELMCO to pay the delinquent rent, interest and late charge, but ELMCO has failed to do so.

WHEREFORE, FULESDAYS pray this Honorable Court to enter judgment in their favor and against ELMCO for delinquent rent of \$10,000.00 for the months of February, March, April and June of 2001 plus \$5,000.00 for every month thereafter together with a late charge of 5%, interest of 10% per annum and attorney's fees.

COUNT TWO
BREACH OF ASSET PURCHASE AGREEMENT AND EMPLOYMENT CONTRACT

14. Paragraphs 1-13 above are incorporated herein by reference as though set forth in full.

15. The parties also entered an Asset Purchase Agreement dated June 1, 1999, according to which ELMCO purchased selected assets of Fulesday Machine Company, which are listed on Exhibit "A" of the Asset Purchase Agreement, which was a closely held Pennsylvania business corporation owned by the FULESDAYS. A true and correct copy of said Asset Purchase Agreement is attached hereto and incorporated herein by reference.

16. Section 2.01(a) obligated ELMCO to pay FULESDAYS \$370,000.00.

17. To date ELMCO has paid the FULESDAYS \$310,000.00.

18. It was the parties' understanding that this \$60,000.00 would be paid to the FULESDAYS via an Employment Agreement entered between Plaintiff David G. Fulesday and ELMCO which was made effective June 7, 1999. A true and correct copy of said Employment Agreement is attached hereto and incorporated herein by reference.

19. On June 6, 2001, David E. Lilly, President of ELMCO advised David G. Fulesday that his employment with ELMCO was terminated immediately.

20. Section 10.08 of the Asset Purchase Agreement entitles the prevailing party in the event of litigation to reasonably attorney's fees.

21. Either ELMCO is obligated to pay FULESDAYS an additional \$60,000.00 under the Asset Purchase Agreement, or pay an additional \$60,000.00 via the Employment Agreement with Mr. Fulesday.

WHEREFORE, FULESDAYS pray this Honorable Court to enter judgment in their favor and against ELMCO in the amount of \$60,000.00, together with interest at the statutory rate and reasonable attorney's fees.

COUNT THREE
SALE OF 300-ton BLISS PRESS

22. Paragraphs 1-21 are incorporated herein as though set forth in full.
23. FULESDAYS owned a 300-ton Bliss Press in June of 1999.
24. This Press was not included in the sale of Fulesday Machine Company's assets to ELMCO and does not appear on the list of assets sold to ELMCO, which is attached as Exhibit A to the Asset Purchase Agreement.
25. The parties entered a side agreement that if ELMCO could sell this 300-ton Bliss Press, it would pay FULESDAYS \$40,196.00 for it.
26. On or about November 1, 2000, ELMCO sold the 300-ton Bliss Press to GKN Sinter Metals.
27. ELMCO has failed to pay FULESDAYS the \$40,196.00, which it owes them for this Press. Attached hereto and incorporated herein by reference is a copy of Fulesday's invoice to ELMCO for this press.
28. Demand has been made upon ELMCO to pay this amount, but it has failed to do so.

WHEREFORE, FULESDAYS pray this Honorable Court to enter judgment in their favor and against ELMCO in the amount of \$40,196.00 together with interest at the statutory rate from November 1, 2000, and costs.

COUNT FOUR
FAILURE TO PAY FOR SERVICES

29. Paragraphs one through twenty-eight are incorporated herein as those set forth in full.
30. Prior to the execution of the Asset Purchase Agreement and Employment Agreement between the parties discussed in Count Two of this complaint, Mr. Fulesday worked for ELMCO as an independent contractor from May 12, 1999 through June 6, 1999.
31. Mr. Fulesday provided engineering services pursuant to ELMCO.
32. On May 12, 1999 and May 14, 1999 Mr. Fulesday traveled to Windfall Products in St. Mary's, Pennsylvania to perform some of these duties on behalf of ELMCO.
33. The distance from ELMCO'S Clearfield facility to Windfall in St. Mary's round trip is approximately seventy-two (72) miles for a total of one hundred forty-four (144) miles for both trips.
34. ELMCO agreed to compensate Mr. Fulesday for his services and reimburse him for his expenses.
35. ELMCO customarily bills its employee's time at the rate of \$95.00 per hour.
36. Mr. Fulesday believes the rate \$95.00 per hour is reasonable compensation for his engineering services.
37. The federal government allows taxpayers to deduct 31¢ per mile.
38. Mr. Fulesday believes that 31¢ is reasonable reimbursement for his mileage in this instance.
39. Mr. Fulesday kept a log of the time he dedicated to ELMCO as a independent contractor. A true and correct copy of said log is attached hereto and incorporated herein by

reference.

40. Mr. Fulesday expended 148.5 hours on behalf of ELMCO which when compensated at the rate of \$95.00 per hour results in total compensation due to Mr. Fulesday of \$14,107.50 Cents.

41. One hundred forty-four (144) miles reimbursed at the rate of 31¢ per mile totals \$44.64

WHEREFORE, Mr. Fulesday prays this Honorable Court to enter judgment in his favor and against ELMCO in the amount of \$14,152.14 together with interest at the statutory rate and costs.

Respectfully submitted,

Date: 7-18-01


Peter F. Smith, Esquire
Attorney for Plaintiffs

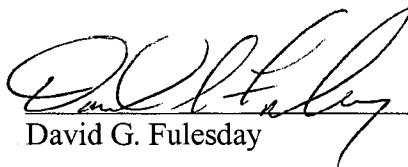
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STATE OF PENNSYLVANIA

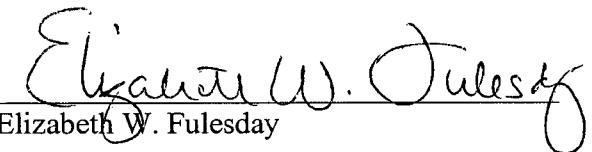
: SS

COUNTY OF CLEARFIELD

DAVID G. FULESDAY and ELIZABETH W. FULESDAY, husband and wife, being duly sworn according to law, deposes and says that they are duly authorized to make this Affidavit, and further, that the facts set forth in the foregoing Complaint are true and correct to the best of their knowledge, information and belief.

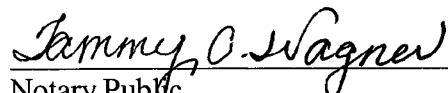


David G. Fulesday



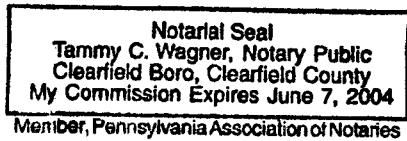
Elizabeth W. Fulesday

SWORN TO AND SUBSCRIBED
before me this 18th day of July, 2001.



Tammy C. Wagner

Notary Public



LEASE

THIS LEASE, made and entered into as of this 28th day of June, 1999 by and between David G. and Elizabeth W. Fulesday, an Pennsylvania corporation (hereinafter referred to as "Landlord") and ELMCO PA, INC., a Pennsylvania corporation (hereinafter referred to as "Tenant").

ARTICLE I Premises

Landlord hereby leases to Tenant and Tenant leases from Landlord for the term, at the rental, and upon all of the conditions set forth herein, that certain real property situated in the County of Clearfield, State of Pennsylvania, commonly known as 700 Bigler Avenue, together with all improvements, land and parking access, excluding the metal storage shed. The metal storage shed can be included together with the Premises upon six (6) months notice to Landlord.

ARTICLE II TERM

2.01 Original Term. The original term of this Lease shall be for five (5) years commencing on June 28, 1999 and ending on June 28, 2004 (the Original Term unless sooner terminated pursuant to any provision hereof.)

2.02 Delay in Commencement. Notwithstanding said commencement date, if for any reason Landlord cannot deliver possession of the Premises to Tenant on said date, Landlord shall not be subject to any liability therefore, nor shall such failure affect the validity of this Lease or the obligations of Tenant hereunder or extend the term hereof, but in such case Tenant shall not be obligated to pay rent until possession of the Premises is tendered to Tenant: provided, however, that if Landlord shall not have delivered possession of the Premises within sixty (60) days from said commencement date, Tenant may, at Tenant's option, by notice in writing to Landlord within ten (10) days thereafter, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder. If Tenant occupies the Premises prior to said commencement date, such occupancy shall be subject to all provisions hereof, such occupancy shall not advance the termination date, and Tenant shall pay rent for such period at the initial monthly rates set forth below.

2.03 Option to Extend. Tenant shall have the option to extend the term of this Lease for one (1) additional term of five (5) years commencing on the expiration of the Original Term, provided (a) Tenant is not then in default under the Lease at the time Tenant gives written notice of its exercise of its option to extend the term and at the commencement of the Renewal Term, (b) Tenant is in possession of the Premises, and (c) Tenant gives written notice of its exercise of its option to extend the term at least three (3) months prior to the expiration of the Original Term. Such extension shall be upon the same terms, conditions and provisions, except as specifically provided hereafter. The

option to extend the Lease shall not be exercisable by Tenant's successors, assigns or subtenants.

2.04 Option to Purchase. The Tenant shall have the option to purchase the leased property upon termination of the Original Term, or at any time during the Renewal Term. The Purchase Price shall be at a mutually agreed upon "Fair Market Value" of the leased property. In the event the parties can not agree upon a Purchase Price, each party shall provide independent appraisals for the "Fair Market Value" of the leased property, and the Purchase Price shall be the average of the two appraisals.

ARTICLE III RENT

3.01 Payment of Rent.

(a) During the Original Term, Tenant shall pay to Landlord as rent for the Premises an amount equal to \$5,000.00 per month. Tenant shall pay landlord upon the execution hereof \$5,000.00 as rent for the first month of the term of this Lease. Rent for any period during the term hereof which is for less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate in writing. The rent shall increase by \$600.00 monthly when tenant exercises the option to include the metal storage building.

(b) For each year during any Renewal Term of this Lease, the annual rent payable hereunder shall be adjusted as of the applicable "Rent Adjustment Date" (as hereinafter defined) to be equal to the annual rental payable during the year immediately preceding the Rent Adjustment Date multiplied by as fraction, the denominator of which is the CPI Number (as hereinafter defined) for the first month of the Original Term or Renewal Term immediately preceding the applicable Rent adjustment Date, as the case may be, and the numerator of which is the CPI Number for the third month immediately preceding the applicable Rent Adjustment Date. Notwithstanding the foregoing, the annual rent payable for any year during the term of this Lease shall not be less than the annual rent payable for the immediately preceding year.

For purposes of this Lease, the term "CPI Number" shall mean the United States Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics of the Department of Labor, All Items Index, U.S. City Average, 1982-84 = 100. In the event that the CPI Number shall be converted to a different standard reference base or otherwise revised, the determination of rent adjustment shall be made with the use of such conversion factor, formula or table converting the CPI Number as may be published by the Bureau of Labor Statistics or if not published by the Bureau of Labor Statistics, then as determined by Landlord. If the CPI Number ceases to be published or if no conversion factor, formula or table is reasonably available, then there shall be substituted such other index as Landlord shall reasonably determine.

The term "Rent Adjustment Date" shall mean the first day of each Renewal Term during the term of this Lease.

ARTICLE IV

USE

4.01 Use. The Premises shall be used and occupied only for the manufacture, repair and restoration of tools, dies and machinery rebuilding and for any other lawful purpose.

4.02 Compliance with Law. Tenant shall, at Tenant's expense, comply promptly with all applicable statutes, ordinances, rules regulations, orders, restrictions of record and requirements in effect during the term or any part of the term hereof regulating the use by Tenant of the Premises. Tenant shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance.

4.03 Condition of Premises. Tenant hereby accepts the Premises in their condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the suitability of the Premises for the conduct of Tenant's business.

ARTICLE V MAINTENANCE, REPAIRS AND ALTERATIONS.

5.01 Tenant's Obligations. Tenant shall keep in good order, condition and repair the Premises and every part thereof, structural and nonstructural (whether the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises) including, without limiting the generality of the foregoing, all plumbing, heating, air conditioning, ventilating, electrical, lighting facilities and equipment within the Premises, fixtures, and walls (interior), located within the Premises, and all landscaping, driveways, parking lots, fences and signs located on the Premises and sidewalks and parkways adjacent to the Premises, and whether requiring repair or replacement.

5.02 Surrender. On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the Premises to Landlord in the same condition as when received, broom clean, ordinary wear and tear excepted. Tenant shall repair any damage to the Premises occasioned by the removal of Tenant's trade fixtures, furnishings and equipment pursuant to Paragraph 5.05 (d), which repair shall include the patching and filling of holes and repair of structural damage.

5.03 Landlord's Rights. If Tenant fails to perform Tenant's obligations under this Article, Landlord may at its option (but shall not be required to) enter upon the Premises, after ten (10) days prior written notice to Tenant, and put the same in good order, condition and repair, and the cost thereof together with interest thereon at the rate of ten percent (10%) per annum shall become due and payable as additional rental to Landlord together with Tenant's next rental installment.

5.04 Landlord's Obligations. It is intended by the parties hereto that Landlord's only obligation is to repair and maintain the structural components of the Premises.

5.05 Alterations and Additions.

(a) Tenant shall not, without Landlord's prior written approval, make any alterations, improvements or additions in, on or about the Premises. Landlord may require that Tenant remove any or all alterations, improvements or additions made by Tenant at the expiration of the term hereof, and restore the Premises to its prior condition. Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, a bond in an amount equal to one and one-half times the estimated cost of any alteration improvement or addition, to insure Landlord against any liability for mechanics and materialmen's liens and to insure completion of the work.. Should Tenant make any alteration, improvement or addition without the prior written approval of Landlord, Landlord may require that Tenant immediately remove any or all of the same.

(b) Any alterations, improvements or additions in or about the Premises that Tenant shall desire to make which require form, with proposed detailed plans. If Landlord approves, such approval shall be deemed conditioned on Tenant acquiring a permit from appropriate governmental agencies furnishing of a copy thereof to Landlord prior to commencement of the work, and full compliance by Tenant with all conditions of said permit in a prompt and expeditious manner.

(c) Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use in, on or about the Premises, which claims are or may be secured by any mechanics or materialmen's lien against the Premises or any interest therein. Tenant shall give Landlord not less than ten (10) days' notice prior to the commencement of any work in, on or about the Premises, and Landlord shall have the right to post notices of non-responsibility. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense defend itself and Landlord against the same and shall pay and satisfy any adverse judgement that may be rendered thereon before the enforcement thereof against the Landlord or the Premises, on the condition that if Landlord shall require, Tenant shall furnish to Landlord a surety bond satisfactory to Landlord indemnifying Landlord against liability for the same and holding the Premises free from the effect of judgment, lien or claim. In addition, Tenant shall pay Landlord's attorneys' fees and costs.

(d) All alterations, improvements and additions, which may be made in, on or about the Premises, at the expense of the Tenant shall remain the property of Tenant and remain on and be excluded from the Fair Market Value of the Premises at the expiration of the Term. Tenant's machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Tenant and may be removed by Tenant subject to the provisions of paragraph 5.02.

ARTICLE VI INSURANCE AND INDEMNITY

6.01 Insuring Party. Tenant shall have the obligation to obtain and pay the cost of all insurance required hereunder.

6.02 Liability Insurance. Tenant shall, at Tenant's expense obtain and keep in force during the term of this Lease a policy of Combined Single Limit, Bodily Injury and Property Damage Insurance insuring Landlord and Tenant against any liability arising out

of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be a combined single limit policy in an amount reasonably required by Landlord. The policy shall contain cross liability endorsements and shall insure performance by Tenant of the indemnity provisions of this Article. The limits of said insurance shall not, however, limit the liability of Tenant hereunder. If Tenant shall fail to procure and maintain said insurance, Landlord may, but shall not be required to, procure and maintain the same, but at the expense of Tenant. If, in the reasonable opinion of Landlord, the amount of liability insurance required hereunder is not adequate, Tenant shall increase said insurance coverage as requested by Landlord, provided, however, the failure of Landlord to require any additional insurance coverage shall not be deemed to relieve Tenant from any obligations under this Lease.

6.03 Property Insurance.

(a) Tenant shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises, in the amount of the full replacement perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk) and sprinkler leakage. Said insurance shall provide for payment of loss thereunder to Landlord or to the holders of mortgages or deeds of trust on the Premises. Tenant shall, in addition, obtain and keep in force during the term of this Lease a policy of rental income insurance covering a period of six months, with loss payable to Landlord, which insurance shall also cover all real estate taxes and insurance costs for said period. If Tenant shall fail to procure and maintain said insurance, Landlord may, but shall not be required to, procure and maintain the same, but at the expense of Tenant. If such insurance coverage has a deductible clause, Tenant shall be liable for the deductible amount.

(b) Not more frequently than each year, if, in the reasonable opinion of Landlord, the amount of property insurance required hereunder is not adequate, Tenant shall increase said insurance coverage as required by Landlord. However, such increase may be more frequent than each year if required by the insurance carrier in order to maintain insurance for the full replacement value of the Premises.

6.04 Insurance Policies. Insurance required hereunder shall be provided by insurers of recognized responsibility authorized to do business in the State of Pennsylvania having an equivalent to a Best's financial rating of V or higher and a policyholder's rating of at least an A, and reasonably satisfactory to Landlord. The Tenant shall deliver to the Landlord. The Tenant shall deliver to the Landlord copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Landlord. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to each insured and each mortgagee to whom losses may be payable. The proceeds of property insurance shall be payable to Landlord to be applied toward Tenant's obligations of repair, restoration or reconstruction as provided in Article VII hereof. Tenant shall, not less than thirty (30) days prior to the expiration of such policies, furnish Landlord with renewals or "binders" thereof, or Landlord may order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant on demand. Tenant shall not do or permit to be done anything which shall invalidate the insurance. If Tenant does or permits to be done anything which shall increase the cost of insurance, then Tenant shall pay for any additional premiums

attributable to any act or omission or operation of Tenant causing such increase in the cost of insurance.

6.05 Waiver of Subrogation. Tenant and Landlord each hereby waive any and all rights of recovery against the other, or against the other, or against the officers, employees, agents and representatives of the other, for loss of or damage to such waiving party or its property or the damage is insured against under any insurance policy in force at the time of such loss or damages. Tenant shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

6.06 Indemnity. Except as otherwise provided herein, Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims arising from Tenant's use or occupancy of the Premises or from the conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant in or about the Premises or elsewhere and shall further indemnify and hold harmless Landlord from and against any and all claims arising from Tenant's part to be performed, or arising from any negligence of the Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant, on notice from Landlord, shall defend the same at Tenant's expense by counsel satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, on or about the Premises arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord.

6.07 Exemption of Landlord from Liability. Landlord shall not be liable for injury to the person, property or business of Tenant, Tenant's employees, agents, contractors, invitees, customers or other persons in or about the Premises howsoever caused, including, by way of illustration and not by way of limitation, injury caused by or resulting from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, whether on account of conditions arising on the Premises, or on other portions of any property of which the Premises are a part, or from other sources or places, and regardless of whether the cause of such injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any injury arising from any act or omission of any other occupant, if any, of the property of which the Premises are part.

ARTICLE VII DAMAGE OR DESTRUCTION

7.01 Obligation to Rebuild. In the event any improvements on or forming part of the Premises are damaged or destroyed, partially or totally, from any cause whatsoever whether or not such damage or destruction is covered by any insurance required to be maintained under this Lease, Tenant shall repair, restore, and rebuild the improvements to at least as good condition as existed immediately prior to such damage or destruction and this Lease shall continue in full force and effect. Such repair, restoration and rebuilding (all of which are herein called "repair") shall be commenced within a diligently pursued

to completion. Unless such casualty shall be a consequence of Landlord's act or omission, there shall be no abatement of rent or of any other obligation of Tenant hereunder by reason of such damage or destruction. Tenant hereby waives any and all rights provided by law to terminate this Lease, upon the partial or total destruction of the Premises, now existing or hereafter enacted.

7.02 Use of Insurance Proceeds. In the event of damage or destruction the proceeds of insurance shall be paid to Landlord, shall be applied toward Tenant's obligations of repair of improvements damaged or destroyed by casualty giving rise to the insurance claim, and shall be paid out by Landlord from time to time as said work shall progress, in amounts designated by certification by independent architects licenses to do business in the state where the Premises are located, showing the application of said amounts as payments for said work, provided, however, that if the net proceeds from insurance are not adequate for said work, Tenant shall pay, out of funds other than such net insurance proceeds, the amount by which the cost of said work will exceed the net proceeds from insurance and shall furnish proof to Landlord of the payment of such excess for work performed before Landlord shall release any part of the insurance proceeds.

7.03 Plans and Specifications. Prior to commencing repair, Tenant shall provide Landlord with written plans and specifications, which shall be subject to Landlord's prior approval. Landlord's approval shall not be unreasonably withheld. If available, the original plans and specifications shall be sued, provided that the parties may make modifications and substitutions in materials and construction upon mutual consent.

7.04 Mechanic's Liens. Tenant shall not create or permit to be created or remain, and will discharge, any lien, encumbrance or charge which might be or become a lien, encumbrance or charge upon the Premises or upon any improvements thereon, or upon any income therefrom. If any mechanic's, laborer's or materialmen's lien shall at any time be filed against the Premises or any improvements thereon, Tenant, within ten (10) days after notice of the filing thereof, shall cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

ARTICLE VIII REAL PROPERTY TAXES

8.01 Payment of Taxes. Landlord shall pay all real property taxes applicable to the Premises during the term of this Lease. All such payments shall be made at least ten (10) days prior to the applicable delinquency date. Landlord shall promptly furnish Tenant with satisfactory evidence that such taxes have been paid. If any such taxes paid by Landlord shall cover any period of time prior to or after the expiration of the term hereof, Landlord's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year during the term of this Lease, and Tenant shall reimburse Landlord to the extent required. If Landlord shall fail to pay any such taxes, Tenant shall have the right to pay the same, in which case Landlord shall repay such amount to Tenant by way of deduction from next rent installment together with interest at the rate of ten percent (10%) per annum.

8.02 Definition of Real Property Taxes. As used herein, "real property taxes" shall include any form of assessment, license fee, commercial rental tax, ad valorem tax, gross receipts tax, levy, penalty, or tax (other than net income, inheritance or estate taxes), imposed by any public or private authority having the direct or indirect power to tax or impose assessments against any legal or equitable interest of Landlord in the Premises or in the real property of which the Premises are a part, or against Landlord's right to rent or other income therefrom, or against Landlord's business of leasing the Premises, or any tax or assessment imposed in substitution, partially or totally, or any tax or assessment previously included within the definition of real property taxes, or any additional tax or assessment the nature of which was previously included within the definition of real property taxes.

8.03 Personal Property Taxes.

(a) Tenant shall pay prior to delinquency all taxes assessed against and levied on trade fixtures, furnishings, equipment and all other personal property of Tenant in, on or about the Premises. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

(b) If any of Tenant's personal property shall be assessed with Landlord's real property, Tenant shall pay the same as part of Tenant's obligation to pay all personal property taxes.

ARTICLE IX
UTILITIES

Tenant shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any taxes thereon.

ARTICLE X
ASSIGNMENT AND SUBLetting

10.01 Landlord's Consent Required. Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises, without Landlord's prior written consent, which Landlord shall not unreasonably withhold. Any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void, and shall constitute a breach of this Lease. Notwithstanding the foregoing, in no event shall Tenant's successors, assigns or subtenants be entitled to exercise the option to extend described in Paragraph 2.03 hereof.

10.02 No Release of Tenant. Regardless of Landlord's consent, no subletting or assignment shall release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Tenant or any successor of Tenant, in the performance of any of the terms hereof, Landlord may proceed directly against Tenant

without the necessity of exhausting remedies against any assignee. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto and such action shall not relieve Tenant of liability under this Lease.

10.03 Attorneys' Fees. In the event Tenant shall assign or sublet the Premises or request the consent of Landlord to any assignment or subletting or if Tenant shall request the consent of Landlord for any act that Tenant proposes to do, then Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection therewith.

ARTICLE XI DEFAULTS; REMEDIES

11.01 Default by Tenant. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

- (a) The vacating or abandonment of the Premises by Tenant.
- (b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three days after written notice thereof from Landlord to Tenant.
- (c) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in Paragraph (b) above, where such failure shall continue for a period of thirty (30) days after written notice hereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than 30 days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said 30-day period and thereafter diligently pursues such cure to completion.
- (d) (i) The making by Tenant of any general assignment, or general arrangement for the benefit of creditors; (ii) filing by or against Tenant of a petition to have Tenant adjusted a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days.
- (e) The discovery by Landlord that any financial statement given to Landlord by Tenant, any assignee of Tenant, any subtenant of Tenant, any successor in interest of Tenant or any guarantor of Tenant's obligations hereunder, and any of them, was materially false.

11.02 Remedies. In the event of any such material default or breach by Tenant, Landlord may at any time thereafter, with or without notice or demand and without

limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default or breach:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and any real estate commission actually paid; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; that portion of the leasing commission paid by Landlord applicable to the unexpired term of this Lease.

(b) Maintain Tenant's right to possession in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the State of Indiana.

11.03 Default by Landlord. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

11.04 Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any mortgage or deed of trust covering the Premises. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within twenty (20) days after such amount shall be due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

ARTICLE XII CONDEMNATION

If more than twenty-five percent (25%) of the interior floor area of the buildings on the Premises, or more than fifty percent (50%) of the land area of the Premises, which is not occupied by any improvements, is taken under the power of eminent domain or sold under the threat of the exercise of said power (herein called "condemnation"), Landlord shall promptly notify Tenant, and either party may within thirty (30) days thereafter terminate this Lease by notice of the other party. In the event that a condemnation of less than twenty-five percent (25%) of the floor area of the buildings on the Premises and less than fifty percent (50%) of the land area is made, or neither party terminates this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area taken bears to the total floor area of the building situated on the Premises. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any award for loss of or damage to Tenant's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall, to the extent of severance damages received by Landlord in connection with such condemnation, repair any damage to the Premises caused by such condemnation except to the extent that Tenant has been reimbursed therefor by the condemning authority. Tenant shall pay any amount in excess of such severance damages required to complete such repair.

ARTICLE XIII REAL ESTATE BROKER

Tenant represents that Tenant has dealt with no broker in connection with this Lease, and that insofar as Tenant knows no broker or finder negotiated this Lease or is entitled to any commission or fee in connection herewith. Tenant agrees to indemnify, defend and hold Landlord free and harmless from and against all claims for broker's commissions or finder's fees by any person claiming to have been retained by Tenant in connection with this transaction or to have caused this transaction.

ARTICLE XIV GENERAL PROVISIONS

14.01 EstoppeL Certificate.

(a) Tenant shall at any time upon not less than ten (10) days' prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect(and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any

are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

(b) Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one month's rent has been paid in advance or such failure may be considered by Landlord as a default by Tenant under this Lease.

(c) If Landlord desires to finance or refinance the Premises, or any part thereof, Tenant hereby agrees to deliver to any lender designated by Landlord such financial statements of Tenant as may be reasonably required by such lender. Such statements shall include the past three years' financial statements of Tenant. All such financial statements shall be received in confidence and shall be used only for the purposes herein set forth.

14.02 Landlord's Liability. The term "Landlord" as used herein shall mean only the owner or owners at the time in question of the fee title or a lessee's interest in a ground lease of the Premises, and in the event of any transfer of such title or interest, Landlord herein names (and in case of any subsequent transfers the then grantor) shall be relieved from and after the date of such transfer of all liability as respects Landlord's obligations thereafter to be performed, provided that any funds in the hands of Landlord or the then grantor at the time of such transfer, in which Tenant has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Landlord shall, subject as aforesaid, be binding on Landlord's successors and assigns, only during their respective periods of ownership.

14.03 Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

14.04 Interest on Past-Due Obligations. Except as expressly herein provided, any amount due Landlord not paid when due shall bear interest at ten percent (10%) per annum from the date due. Payment of such interest shall not excuse or cure any default by Tenant under this Lease, provided, however, that interest shall not be payable on late charges incurred by Tenant nor on any amounts upon which late charges are paid by Tenant.

14.05 Time of Essence. Time is of the essence of this Lease.

14.06 Captions. Article and paragraph captions are not a part hereof

14.07 Incorporation of Prior Agreements; Amendments. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Tenant hereby acknowledges that neither any real estate broker nor any cooperating broker on this transaction nor the Landlord or any employees or agents of any of said persons has made any oral or written warranties or representations to Tenant relative to the condition or use by Tenant of said Premises.

14.08 Notices. Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified mail, and if given

personally or my mail, shall be deemed sufficiently given if addressed to Tenant or to Landlord at the address noted below:

If to Landlord: David G. and Elizabeth W. Fulesday
 622 High Street
 Curwensville, PA 16833

If to Tenant: ELMCO PA, INC.
 700 Bigler Avenue
 Clearfield, PA 16830

Either party may by notice to the other specify a different address for notice purposes except that upon Tenant's taking possession of the premises, the Premises shall constitute Tenant's address for notice purposes. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by notice to Tenant.

14.09 Waivers. No waiver by Landlord of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

14.10 Recording. Tenant shall not record this Lease without Landlord's prior written consent, and such recordation shall, at the option of Landlord, constitute a non-curable default of Tenant hereunder.

14.11 Holding Over. If Tenant remains in possession of the Premises or any part thereof after the expiration of the term hereof without the express written consent of Landlord, such occupancy shall be a tenancy from month to month at a rental double the amount of the last monthly rental plus all other charges payable hereunder, and upon all the terms hereof applicable to a month-to-month tenancy.

14.12 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible be cumulative with all other remedies at law or in equity.

14.13 Covenants and Conditions. Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

14.14 Binding Effect; Choice of Law. Subject to any provisions whereof restricting assignment or subletting by Tenant, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Pennsylvania.

14.15 Subordination.

(a) This lease, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation for security now or hereafter

placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease is dated prior to subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

(b) Tenant agrees to execute any documents required to effectuate such subordination or to make this Lease prior to the lien or any mortgage, deed of trust or ground lease, as the case may be, and failing to do so within ten (10) days after written demand, does hereby make constitute and irrevocably appoint Landlord as Tenant's attorney in fact and in Tenant's name, place and stead, to do so.

14.16 Attorney's Fees. If either party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorneys' fees to be paid by the losing party as fixed by the court.

14.17 Landlord's Access. Landlord and Landlord's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, or lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises or to the building of which they are a part as Landlord may deem necessary or desirable.

14.18 Signs and Auctions. Tenant shall not place any sign upon the Premises or conduct any auction thereon without Landlord's prior written consent except that Tenant shall have the right, without the prior permission of Landlord to place ordinary and usual for rent or sublet signs thereon.

14.19 Merger. The voluntary or other surrender of this Lease by Tenant, or mutual cancellation thereof, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

14.20 Corporate Authority. If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. If Tenant is a corporation, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Lease.

14.21 Legal Fees.

(a) In the event of legal action between Landlord and Tenant on account of any alleged default of either hereunder, the prevailing party in such action shall be entitled to be reimbursed by the other party in the amount of all reasonable attorneys' fees and other costs incurred by the prevailing party in connection with such action.

(b) In the event Landlord shall, without fault on its part, be made a party to any action commenced against Tenant or on account of any acts or omissions of Tenant, Tenant shall pay all costs and reasonable

14.22 Force Majeure. Except as provided otherwise in this Lease, Landlord shall be excused from performing any obligation under this Lease, and any delay in the performance of any of Landlord's obligations under this Lease shall be excused, if and so long as the performance of the obligation is prevented, delayed or otherwise hindered by acts of God, fire, earthquake, floods, explosion, acts of the elements, war, riots, mob violence, inability to procure or a general shortage of skilled labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, laws or orders of governmental or military authorities or any other cause, whether similar or dissimilar to the foregoing, not within the control of Landlord.

The parties hereto have executed this Lease the date first shown above.



DAVID G. FULESDAY ("Landlord")



Elizabeth W. Fulesday
ELIZABETH W. FULESDAY ("Landlord")

By 
David E. Lilly President
ELMCO PA, INC. ("Tenant")

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("AGREEMENT") is made and entered into effective this 1st day of June, 1999, by and between Fulesday Machine Company, 700 Bigler Avenue, Clearfield, PA 16830 a Pennsylvania corporation (hereinafter referred to as "Seller") and ELMCO PA, INC. 249 Main Street, Falls Creek, PA 15840, a Pennsylvania corporation (hereinafter referred to as "Buyer").

WITNESSETH

WHEREAS, Seller desires to sell and transfer to Buyer, and Buyer desires to purchase from Seller, substantially all the assets and rights utilized in the operation of Fulesday Machine Company upon the provisions set forth in this agreement.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

ARTICLE I

PURCHASE AND SALE

SECTION 1.01. Purchased Assets. Pursuant to the provisions hereinafter set forth, Seller hereby agrees to sell, assign, transfer and deliver to Buyer, and Buyer hereby agrees to purchase from Seller, substantially all the assets of the Seller described below (the "Purchased Assets"):

The Purchased Assets sold and purchased hereunder include the following:

- (a) All machinery, equipment, office furnishings, computers, product designs and fixed assets used in the manufacturing operations of Fulesday Machine Company Inc., including but not limited to the items per attached "Exhibit A".
- (b) All miscellaneous property, whether tangible or intangible, of Fulesday Machine Company, as outlined in the Security Agreement, including Exhibit "A", including jigs, tools, dies, molds, manuals, patents, processes, trade names, trademarks, copyrights, general intangibles, patterns, computer software programs, plans and specifications, technical material and knowhow of every kind or character, used in connection with the manufacturing operations of Fulesday Machine Company, Inc.

Section 1.02. Excluded Assets. Buyer shall not purchase, and Seller shall not sell to Buyer, any of Seller's assets not specifically identified in Section 1.01, including work in process inventory and accounts receivable.

Section 1.03. Liabilities. Except as otherwise provided in this Agreement, Buyer is not assuming, and upon consummation of the transaction contemplated by this Agreement, shall not assume, any debt, liability or other obligation of Seller (collectively "Liabilities") and shall not be liable or responsible for any liabilities of any kind of nature whatsoever, irrespective of whether such Liabilities are known, unknown, contingent, absolute or otherwise.

ARTICLE II

PURCHASE PRICE AND ALLOCATION

Section 2.01. Purchase Price.

- (a) The purchase price, \$370,000.00 (the "Purchase Price") to be paid by Buyer to Seller for all of the Purchased Assets is subject to prorations and adjustments as provided herein.
- (b) The parties hereby agree that the Purchased Assets are all Class III Assets, as defined by Section 1060 and Section 338 of the Internal Revenue Code of 1986, as amended, and the accompanying Regulations thereto.

Section 2.02. Payment of Purchase Price.

The Purchase Price shall be paid by the Buyer in cash, in immediately available funds, at Closing. CSB Bank will handle all necessary disbursements to provide ELMCO PA with free and clear title for all assets.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.01. Representations, Warranties and Covenants of Seller.

Except as set forth on a Disclosure Statement (attached hereto as Exhibit B and signed by Seller), Seller hereby represents, warrants and covenants to Buyer as follows:

- (a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Pennsylvania, and, has all necessary corporate power to execute this Agreement and to consummate the transactions contemplated herein. Seller is duly qualified or otherwise authorized to transact business and is in good standing in each jurisdiction in which Seller transacts business.
- (b) The execution and delivery of this Agreement by Seller and the performance by Seller of all obligations to be performed by it hereunder have been duly authorized by all necessary and appropriate corporate action. This Agreement constitutes a valid and legally binding obligation of the Seller in accordance with the provisions hereof.
- (c) Neither the execution and delivery of this Agreement by Seller, nor the consummation of the transactions contemplated herein will:
 - (i) Violate any provision of any Seller's Articles of Incorporation or Bylaws.
 - (ii) Violate any provision of, or cause a termination of or accelerate the performance required by, any contract or agreement, whether oral or written, to which Seller is a party.
 - (iii) Result in the creation of a lien upon any Purchased Assets, or cause a material defect or breach under any of the provisions of any agreement to which the Seller is a party, or by which Seller is bound.
- (d) There is no suit, action, arbitration or legal, administrative or other proceeding, controversy or investigation pending, or threatened, against the Seller relating to the Business or the Purchased Assets or which would restrain or prohibit the consummation of the transactions contemplated herein.

- (e) Seller is sole and exclusive owner of the Purchased Assets and, subject to release by secured creditors, Seller has good, marketable and indefeasible title to the Purchased Assets, free and clear of all Adverse Claims. The Seller is not infringing on any right of any other person with respect to the ownership or use of the Purchased Assets, and the ownership and use of such Purchased Assets by Buyer will not infringe on any right of any other person.
- (f) To the best of Seller's knowledge, Seller is not in violation, nor has Seller received notice of any alleged violation, or any federal, state or local law or regulation relating to the Purchased Assets.
- (g) To the best of Seller's knowledge, all taxes and assessments against the Purchased Assets or Seller which are now due or have accrued have been or will be paid in full by Seller, or, incident to this sale, all taxes or assessments against the Purchased Assets have been extinguished so that the Purchased Assets are being transferred to Buyer free and clear of any liens, encumbrances claims pertaining to taxes.
- (h) The existing use and condition of the Leased Real Estate does not violate any zoning, building, health, safety, environmental, fire or similar statute, ordinance, regulation or code, nor has Seller received any notice, written or otherwise, from any government agency alleging violation of building codes, building or use restrictions, zoning ordinances, rules and regulations, or any such matters.
- (i) There are no pending or threatened matters of litigation, administrative action or examination, claim or demand whatsoever relating to the Leased Real Estate.
- (j) There is no pending or contemplated eminent domain, condemnation or other governmental taking of the Leased Real Estate or any part thereof.
- (k) The Leased Real Estate is adjacent to and has full and free access on all perimeter areas to and from public roads and ways, such that no private easements or agreements are necessary to afford access to or from Leased Real Estate. No fact or condition exists which would result in the termination or impairment of access to the Leased Real Estate from adjoining public or private streets or ways or which could result in discontinuation of presently available or otherwise necessary sewer, water, electric, gas, telephone or other utilities or services.
- (l) There are no public improvements in the nature of off-site improvements, or otherwise, which have been ordered to be made and/or which have not heretofore been assessed and there are no special or general assessments pending against or affecting the Leased Real Estate.

Section 3.02. Representations, Warranties and Covenants of Buyer.

Buyer hereby represents, warrants and convenience as follows:

- (a) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the state of Pennsylvania and has all necessary authority to execute this Agreement as consummate the transactions contemplated herein.
- (b) Buyer has full power and authority to enter into and perform the transactions contemplated by this Agreement. This Agreement has been, and the documents to be delivered at Closing will be, duly authorized, executed and delivered by Buyer and constitute the lawful, valid and legally binding obligation of Buyer. Subject only to Bankruptcy, insolvency and similar laws affecting creditors' rights generally and to principles of equity regarding the availability of equitable remedies.
- (c) Buyer is not a party to, subject to, or bound by any agreement, debt instrument, trust or other judgment, order writ injunction or decree of any court of government body, which prevents, nor is any consent or authorization of any government body required for, performance by Buyer of its obligations hereunder.
- (d) Buyer, its respective officers, directors and shareholders, are not "insiders" to Seller.

- (e) No representation or warranty made by Buyer contained in this Agreement, or any statement, exhibit, certificate, or other document furnished to or to be furnished to Seller pursuant hereto in connection with the transactions contemplated herein, contains or will contain any untrue statement of material fact or omits or will omit to state of a material fact necessary to make the statements contained herein or therein not misleading.
- (f) Buyer has had the opportunity to inspect and did inspect the assets to be purchased under the terms of this agreement, and has made up its mind as to said assets usefulness, as to said assets need of repair, and take said Purchased Assets as is" without reliance upon any opinions or statements of Seller or any agent of Seller not contained herein. Buyer and Seller acknowledge that Seller agreed to the purchase price, terms and conditions of this Agreement by reason of such understanding.

ARTICLE IV

CLOSING

Section 4.01. Time

The closing of the transactions contemplated herein ("Closing") shall occur on or as soon as practicable following the fulfillment or waiver in writing by Buyer of all of the Closing Conditions provided in Section 6.01 of this Agreement but in no event shall the Closing occur after June 28, 1999.

Section 4.02. Place

Closing will take place at such location as is mutually agreed upon by the parties.

Section 4.03. Deliveries by Seller At Closing

At the Closing, Buyer shall deliver the Purchase Price, in accordance with the provisions of Section 2.02 hereof. In addition, Buyer shall execute and deliver such other documents, instruments or certificates as may be necessary to effectuate the transactions contemplated by this Agreement or as may be reasonably requested by Seller's legal counsel.

Section 4.04. Deliveries by Seller at Closing

At or prior to the Closing, Seller shall deliver to Buyer the following:

- (a) An assignment and Bill of Sale in substantially the form of Exhibit A attached hereto and incorporated herein by this reference, duly executed by Seller.
- (b) A certified copy of the Board of Directors' and shareholders' resolutions necessary to consummate the transactions contemplated by this Agreement.
- (c) Executed Lease Agreement between ELMCO PA, INC. and David and Elizabeth Fulesday.
- (d) Executed Employment Agreement between ELMCO PA, INC. and David Fulesday.
- (e) Such other documents of conveyance of instruments as may be necessary to effectuate the transactions contemplated by this Agreement.

ARTICLE V

AFFIRMATIVE COVENANTS OF THE SELLER

Seller hereby agrees to keep, perform and fully discharge the following affirmative covenants:

Section 5.01. Best Efforts to Protect and Maintain Assets; Possession.

As of the date hereof through the date of Closing (the "Interim Period"), Seller shall use its best efforts to protect, preserve and maintain the Purchased Assets in good repair, order and condition, ordinary wear and tear expected.

Section 5.02. No Disposition of Purchased Assets.

No sales, transfers or other dispositions of the Purchased Assets will be consummated without prior written consent of Buyer.

ARTICLE VI

CONDITIONS OF PRECEDENT TO CLOSING

Section 6.01. Conditions precedent to Obligations of Buyer.

- (a) Closing Deliveries. On or prior to Closing, Seller shall deliver to Buyer each of the items described in Section 4.04 hereof.
- (b) Accuracy of Representations and Warranties. All of the representations and warranties of Seller described in this Agreement shall be true, correct and complete as of Closing.
- (c) Affirmative Covenants. Seller shall comply with each affirmative covenant described in Section V hereof.

Section 6.02. Conditions Precedent to Obligations of Seller.

- (a) Delivery Items. Buyer shall deliver to Seller each of the items described in Section 4.03 hereof on the date of Closing.
- (b) Accuracy of Representations and Warranties. All of the representations and warranties of Buyer described in this Agreement shall be true, correct and complete as of the Closing.

ARTICLE VII

TERMINATION

Section 7.01. Termination and Abandonment. This Agreement may be terminated by Buyer at any time prior to the Closing if the conditions set forth in Section 6.01 have not been fulfilled or waived and such noncompliance or nonperformance may not be cured or eliminated (or by its nature cannot be cured or eliminated) by Seller on or prior to the date of closing and within five (5) day's notice thereof to Seller from Buyer specifying such noncompliance's or nonperformance.

Section 7.02. Effect of Termination. In the event of the termination or abandonment of this Agreement pursuant to the provisions of Section 7.01, this Agreement shall thereafter become null and void and no further effect.

ARTICLE VIII

NOTICE

Section 8.01.

(a) Any notice, request, approval, demand, consent, and instruction or other communication to be given by any party hereunder ("Notice"), except those required to be delivered at Closing, shall be in writing, and shall be personally delivered, sent by overnight courier or sent by the U.S. certified mail, return receipt requested, shall be the date of receipt by the party receiving such Notice as evidence by a signed receipt and the date of Notice in the event of Notice sent certified mail, return receipt requested, shall be the date of depositing same in the email as evidence by postmark thereon.

(b) Notices. Whenever any party shall be required to give notice or demand to another party according to the provisions of this Agreement, such notice or demand shall be as follows:

- (i) In the case of Buyer, to: David E. Lilly, President, ELMCO PA, 249 Main Street, Falls Creek, PA 15840.
- (ii) In the case of the Seller, to: David G. Fulesday, President Fulesday Machine Company, 700 Bigler Avenue, Clearfield, PA 16830
- (iii) Any party may change the address to which such notices are to be addressed by giving the other party notice in the manner herein set forth.

ARTICLE IX

BROKER'S COMMISSIONS

Neither Buyer, nor Seller have dealt with any finder or broker in connection with this transaction and no such fee, commissions, expenses or other consideration are payable with respect thereto. The parties hereto each agree to defend, indemnify, protect and hold harmless the other and the Purchased Assets with respect to any action, claim or liability for such fee, commissions or expenses claimed as a result of the acts or conduct of the indemnifying party to this transaction.

ARTICLE X

MISCELLANEOUS

Section 10.01. Neither party may assign any of its rights or obligations hereunder without the express written consent of the other party.

Section 10.02. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and permitted assigns.

Section 10.03. This Agreement, including the Exhibits and Schedules hereto, constitutes the entire Agreement between the parties hereto, and there are no other covenant, agreements, promises, terms and provisions, conditions, undertakings or understandings that are oral or written, between them concerning the transactions contemplated herein other than those set forth. No subsequent alteration, amendment, change, deletion or addition of this Agreement shall be binding upon the parties hereto unless in writing and signed by the parties hereto.

Section 10.04. The word "person" as used herein shall include all individuals, partnerships, corporations, or any entities whatsoever.

Section 10.05. Any reference herein to an Exhibit or Schedule refers to the applicable Exhibit or Schedules that are attached to this Agreement and such Exhibits and Schedules shall constitute a part of this Agreement and are expressly made part hereof.

Section 10.06. If any provision hereof is for any reason unenforceable and inapplicable, the other provisions hereof shall remain in full force and effect in the same manner as if such unenforceable or inapplicable provision has never been contained.

Section 10.07. This Agreement shall be construed under and in accordance with the laws of the State of Pennsylvania, without giving effect to conflicts of laws principals.

Section 10.08. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to all costs incurred, including reasonable attorney's fees.

Section 10.09. The representations, warranties and covenants contained in this Agreement, or in any Exhibit or Schedule attached hereto, or any instruments of transfer, certificates, or other documents delivered pursuant hereto, shall survive the Closing.

Section 10.10. The article, section and paragraph headings contained in this Agreement are for the reference purposes only and shall no affect in any way the meaning or interpretation of this Agreement.

Section 10.11. This agreement may be executed in counterparts, all of which together shall be considered one and the same and shall be effective when one or more counterparts have been signed by each of the parties and delivered to all of the parties.

Section 10.12. The parties hereto each agree to execute and deliver such documents, certificates, agreements, and other writing and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement.

Section 10.13. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver hereof. Nor shall any waiver on the part of any party of such right, power or privilege, nor any single or partial exercise of any such right power or privilege, preclude any further exercise thereof or the exercise thereof or the exercise of any other such right, power or privilege.

Section 10.14. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first above written.

BUYER:

ELMCO PA INC.

BY David E. Lilly

David E. Lilly, President

SELLER:

Fulesday Machine Company, Inc.

BY David G. Fulesday

David G. Fulesday, President

BY Elizabeth W. Fulesday

Elizabeth W. Fulesday

Report 1

Substantially all the assets of Fulesday Machine Company

Description

MONARCH LATHE 27.5 X 84
HOLBROOK LATHE 18 X 48
DEAN, SMITH & GRACE (MONARCH) 18 X 48
RIVETTE TOOL ROOM LATHE 10 X 24
WARNER & SWASEY #2A TURRET LATHE
MILWAUKEE #3 HORT. MILL
AREX #2 HORT. MILL W/ VERT. HEAD
ACRA VERT. MILL (BRIDGEPORT STYLE) W/ FEED & DRO
BRIDGEPORT SERIES 2 CNC MILL
BRIDGEPORT SERIES 2 MILL
CINCINNATI HORT BED MILL W/ POWER OVERARM
ROCKFORD HYDRAULIC SHAPER 24"
MANLEY 40 TON SHOP PRESS W/ POWER UNIT
KING 42" VERT. BORING MILL
THOMPSON SURFACE GRINDER 12 X 40
LANDIS CYLINDRICAL GRINDER 16 X 48
ARCHDALE RADIAL DRILL 36"
AMERICAN RADIAL DRILL 48"
CRAFTSMAN DRILL PRESS
RACINE POWER HACK SAW
ROLL-IN VERT. BAND SAW
HENDLEY FORMING ROLLS 48 X 11 GA.
DREIS & KRUMP APRON BRAKE 96 X 16 GA.
PEXTO POWER SHEAR 120" X 16 GA.
CHICAGO PAN BRAKE 36" X 16 GA.
BAR AND ANGLE SHEAR (HAND OPERATED)
LUCAS 5" HBM
GIDDINGS & LEWIS 5" HBM W/ ROTARY
GIDDINGS & LEWIS 4" HBM
MILLER 650 AMP WELDER W/ FEEDERS
MILLER TIG WELDER 250 AMP
WESTINGHOUSE WELDER 500 AMP
LINCOLN WELDER 250 AMP
WILTON BELT GRINDER W/ DUST COLLECTOR
CARBIDE TOOL GRINDER 6"
CRAFTSMAN GRINDER 6"
TAYLOR FORK LIFT 14000# W/ GIB
YALE FORK LIFT 6000#
PETTIBONE SUPER 60 W/ GIB
CHEVY 2500 SERIES 1988 PICKUP 4WD 3/4 TON
PLASMA CUTTING MACHINE
BALANCING ROLLS - (2) SETS
CUTTING TORCHES - TRACK TYPE- (2)
TORCHES, HOSE, WELD CABLE, ETC.
CHIP DUMPSTERS (2)
ROTARY TABLE 18"
HOSSFELD BENDER

Report 1

Description

SPENCER INDUSTRIAL VACUUM
PLATFORM SCALES 2000 LBS.
AIR COMPRESSORS (2)
DIVIDING HEAD, MILLING
TOOLING - DRILLS, CUTTERS, ETC.
KEYWAY BROCHES AND GUIDE BUSHINGS
METAL STORAGE CABINETS (6)
PAINT GUNS (2)
SHOP CARTS - HEAVY DUTY (4)
MISC. POWER TOOLS, CHAINS, WRENCHES, ETC
GAGES, GIGS AND FIXTURES
PRECISION LEVEL
JOB CARTS (10)
STEEL INVENTORY RACKS (2)
100 TON HOLLOW RAM W/ POWER UNIT
MICROMETERS TO 20"
RADIUS CUTTING ATTACHMENT
BLUE PRINT DUPLICATION MACHINE
MITCHELL DESIGN DRAWINGS
TELEPHONE SYSTEM
TYPEWRITER
FAX MACHINE
AIR CONDITIONERS (3)
CANON COPY MACHINE
COMPUTER NETWORKING COMPONENTS
COMPUTERS, PRINTERS, AND SOFTWARE
CASTING PATTERNS
DESIGNS
CONF. RM. TABLE AND CHAIRS
(5) DESKS
DESK CHAIRS (4)
FILE CABINETS (3)- FRONT OFFICE
FILE CABINETS (3)- LIZ'S OFFICE
CREDENZA (2)
WOODEN FLAT FILE - DAVE'S OFFICE
METAL FLAT FILE - DAVE'S OFFICE
FOLDING TABLES (2)
ALL MISC. FIXTURES AND TOOLS

EMPLOYMENT AGREEMENT

ELMCO PA, INC. a Pennsylvania corporation ("Company"), and DAVID FULESDAY ("Employee") make and enter into this EMPLOYMENT AGREEMENT ("Agreement") effective as of June 7, 1999.

WHEREAS, Company is willing to employ Employee as its Engineering Manager pursuant to this Agreement, and Employee desires employment by Company as its Engineering Manager pursuant to this Agreement.

NOW, THEREFORE, in consideration of the foregoing recital, the following promises, and employment of Employee by Company, Company and Employee agree and covenant as follows:

1. For the term of this Agreement:

(a) Company will employ Employee as its Engineering Manager, and Employee accepts such employment with Company. Employee shall serve Company during the term of this Agreement with such duties and responsibilities as are necessary to manage all projects, engineering services, product development and resources as assigned by the Company. The precise duties and responsibilities of Employee may be extended, modified or curtailed from time to time by the Company and the job description portion of Employee's title or office may be changed or altered by the Company, but the duties and services required of Employee in his employment shall be generally of the character contemplated in this paragraph.

(b) The term of this Agreement shall be for one (1) year beginning on the Effective Date, and shall automatically be extended for an additional year on each annual anniversary of the Effective Date ("Renewal Date") so that at each Renewal Date the term of this Agreement is for one (1) year, unless the Company gives notice prior to a Renewal Date of the Company's intention to terminate this Agreement ("Termination Notice"). To be effective a Termination Notice from Company must be given not later than thirty (30) days prior to Renewal Date.

(c) Employee's employment with the Company shall terminate:

(i). Upon Employee's death

(ii). On the day preceding the Renewal Date of the year in which a Termination Notice is given by the Company pursuant to Section 1(b); or

(iii). Upon termination by Company at any time of Employee's employment for cause. "Cause" as used in the preceding sentence shall mean willful misconduct in following the legitimate directions of the Company officers; conviction of a felony; habitual alcohol or substance abuse; excessive absenteeism not related to illness, sick leave, or vacations, but only after notice from the Company followed by a repetition of such excessive absenteeism; dishonesty; or continuous conflicts of interest after notice in writing.

2. As long as Employee is employed by the Company, Employee shall have no other outside business activities which conflict with the business activities of Company without the prior written consent of Company's Board of Directors. This prohibition shall not, however, prevent Employee from investing his assets in such form or manner as would not conflict with Company's business, or engaging in other business, which do not detract from the fulfillment of Employee's duties under this Agreement.

3. Compensation

(a) Company shall pay Employee at the rate of \$30,000.00 per year ("Base Compensation"), payable at least monthly by the fifteenth day of each month (or the first business day thereafter, if the fifteenth day of a month falls on a weekend or on a legal holiday). The Company shall evaluate Employee's salary annually on the Renewal Date and may, in its sole discretion, adjust Employee's Base Compensation. The term "Base Compensation": as used in this Agreement shall include any annual adjustments thereto. This provision shall in no way obligate the Company to increase Employee's Base Compensation. Employee shall be entitled to the full benefits offered to all Company employees, plus those described in Schedule 3 (a) attached hereto.

(b) All amounts paid to Employee pursuant to this Agreement shall be reduced: (i) as necessary and appropriate, for federal, state, and local/municipal withholding taxes and withholding pursuant to FICA; and (ii) as requested by Employee, for contributory employee benefits.

(c) Company shall reimburse Employee for all reasonable and necessary expenses incurred in carrying out his duties under this Agreement. Prior to any reimbursement hereunder, Employee shall present to the Company an itemize account of, and receipts for, such expenses.

(d) If, because of illness, physical or mental disability, or other incapacity, Employee fails, for a period or periods aggregating three (3) months during any consecutive twelve (12) month period, to render the services provided for by this Agreement, or if Employee contracts an illness or injury which permanently prevents him from performing the services provided for by this Agreement, then the Company may terminate Employee's employment by notifying Employee, in writing, of such termination. Such termination shall be effective thirty (30) days after such written notification is given.

4. In consideration of, and as material inducement to, the Company entering into this Agreement and the other covenants and agreements contemplated hereby, Employee agrees that for a period commencing on the effective date of this Agreement and ending five (5) years following the termination of the employment by the Company of such Employee, such Employee will not:

(a) Directly or indirectly, acting alone or as a member of a partnership or as a director, officer, employee, stockholder, agent or consultant of any business enterprise within North America: (i) engage in any "Competitive Business" (as such term is defined in Section 4(d)); or (ii) become associated with, or assist or aid in any manner (whether on a compensated or noncompensated basis) any person or business enterprise other than the Company engaged in a Competitive Business; or

(b) Directly or indirectly, on behalf of such Employee and/or such Employee's Affiliates (as defined below) or on behalf of or in conjunction with any persons, partnerships, firms, corporations or other business enterprises, solicit, entice, hire, employ, endeavor to employ or associate for business purposes in any Competitive Business with any person employed by the Company during the term of this Agreement. For the purpose of this Section 4, an "Affiliate" of a person or entity means any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity with respect to whom or which the relationship is being measured. For the purposes of this definition, "control" (including, with correlative meanings, the term "controlled by") as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, or by agreement or otherwise;

(c) Directly or indirectly, at any time or in any manner, divulge, disclose or communicate to any person, corporation, partnership, association or other entity, any information obtained by such Employee in furtherance of or as a result of the employment by the Company of such Employee which affects or is related to the business practices of the Company including, without limitation, any data concerning the design, construction or function of any product manufactured or marketed by the Company, any of the Company's customers or lists of potential customers, sales prices of any of the Company's products or services, the Company's manner of operation, plans, processes systems, data or other information concerning the Company's business. The parties hereto acknowledge and agree that all of the foregoing information is important, sensitive, material and confidential and gravely affects the effective and successful conduct of the Company's business and goodwill. Notwithstanding any provision of this Section 4 to the contrary, the confidentiality provisions of this Section 4(c) shall not expire five (5) years following the termination of the employment by the Company of such Employee.

(d) For the purposes of this Agreement, the term "Competitive Business" shall mean any person, firm or entity engaged in business of press manufacturing or rebuilding, die set rebuilding, P/M tooling, die repair, or the sale of powdered metal machinery, field service, consulting service, equipment or parts pertaining thereto.

5. Employee agrees that:

(a) The covenants and agreements set forth in Section 4 are reasonable and necessary to protect the interest of the Company;

(b) Such covenants and agreements do not reasonably impair such Employee's right to earn a livelihood; and

(c) The Company will suffer considerable loss and damage and irreparable harm and injury if any of the covenants and agreements set forth in Section 4 are breached. As a result, Employee agrees that any violation of the covenants and agreements set forth in Section 4 shall result in such Employee liability for the following liquidated damages, which damages represent the contemplated damage to the Company in the event of a breach of the restrictive covenants contained in Section 4, constitute a reasonable sum and do not represent a penalty: the sum of (I) an amount equal to one hundred percent (100%) of the gross revenues (in the form of sales, salary, dividends, commissions or otherwise) derived by the breaching party (whether such Employee or his Affiliate) as a result of the violation of the provisions of Section 4, which amount shall be remitted to the Company; and (ii) any and all amounts that remain unpaid pursuant to Section 7 hereof.

6. Recognizing that irreparable injury will result to the Company and its business and property in the event of a continuing breach of the restrictive covenants set forth in Section 4, and because this Agreement is based in large measure upon said restrictive covenants, the parties hereto agree that in the event of a violation of said restrictive covenants, the Company shall be entitled, in addition to the liquidated damages provided for in Section 5, and any other remedies and damages available, to obtain restraining orders and injunctions, both temporary and permanent, in order to prevent future violations thereof by such Employee and his Affiliates. Such Employee and his Affiliates waive the claim or defense that the Company has an adequate remedy at law, and such Employee and his Affiliates shall not claim, in any such action or proceeding that an adequate remedy at law exists.

7. In consideration of Employee's covenant not to compete, the Company shall pay the Employee an amount equal to \$60,000.00 dollars. Such amount shall be payable *Off Del* monthly in sixty (60) equal installments, with the first installment payable ~~30 days after~~ *June, 2004*. ~~termination of this contract.~~ Subsequent installments shall be payable monthly thereafter. Notwithstanding the foregoing, the restrictive covenant set forth in Section 4(c) of this Agreement shall survive the termination of the Agreement.

8. Nothing contained in this Agreement shall be deemed to limit or otherwise modify any fiduciary duties or obligations, common law, or otherwise, owed to the Company by Employee.

9. (a) (i) The provisions of this Agreement shall be fully applicable whether Employee is employed by Company or by an Affiliate (as defined in Section 4(b)) of Company. Company shall not have the power to assign this Agreement or Company's performance of its duties and obligations pursuant to this Agreement without the prior written consent of Employee.

(ii) The services to be performed by Employee pursuant to this Agreement are unique, and accordingly, Employee shall not have the power to assign this Agreement or Employee's performance of his duties and obligations pursuant to this Agreement.

(b) In the event that any section(s), paragraph(s), sentence(s), clause(s), or phrase(s) of this Agreement shall be found invalid, void, and/or unenforceable, for any reason, neither this Agreement generally nor the remainder of this Agreement shall thereby be rendered invalid, void, and/or unenforceable. Instead, each of such provisions, and (if necessary) other provisions of this Agreement shall be reformed by a court of competent jurisdiction so as to effect, insofar as is practicable, the intention of Company and Employee as set forth in this Agreement. However, if such court is unable or unwilling to effect such reformation, the remainder of this Agreement shall be construed and given effect as if such invalid, void, and/or unenforceable provisions had not been a part of this Agreement.

(c) This agreement constitutes the entire agreement between Company and Employee regarding the subject matter of this Agreement and supersedes all prior oral or written proposals, negotiations, representations, communications or agreements between Company and Employee. Any and all prior employment agreements that Employee may have had from time to time with Company or any of its Affiliates are superseded as of the Effective Date by this Agreement. This Agreement may not be changed or modified except by a written instrument executed by Company and Employee.

(d) This Agreement shall inure to the benefit of and be binding upon Employee, Employee's heirs, and Employee's personal representatives, and upon Company and its successors and assigns.

(e) The validity, construction, enforcement, and interpretation of this Agreement shall be governed by the laws of the State of Pennsylvania without giving effect to conflicts of laws principles.

(f) Any notices required or contemplated pursuant to this Agreement shall be in writing and delivered in person, evidenced by a signed receipt, or mailed by certified mail, returned receipt requested, postage prepaid, addressed to the last known address of the party to whom such notice is given. Notices shall be deemed given on the date of delivery, if the notice is personally delivered, or the date of mailing, if such notice is mailed in accordance with this Subsection.

IN WITNESS WHEREOF, Company and Employee have entered into this Agreement as of the Effective Date.

EMPLOYEE:



COMPANY:

ELMCO PA, INC.

By David E. Lilly

Name: David E. Lilly

Title: Pres.

SCHEDULE 3(A)

Additional Employee Benefits

1. VACATION:

Two (2) weeks per calendar year; three (3) weeks per year effective after ten (10) years of service. Vacation can be carried over from one year to the next; however, the combined vacation can never exceed 30 days in any year.

2. BONUS PROGRAM:

Employee will be eligible for an annual bonus, in an amount determined pursuant to criteria established annually by the Company's board of directors. However, the Company shall in no way be obligated to pay Employee an annual bonus.

3. 401 K PLAN

Employee shall become eligible to enroll in the Company sponsored 401K plan effective on January 1, 2000.

INVOICE

David & Elizabeth Fulesday
622 High Street
Curwensville, PA 16833

Sold To:

Invoice Date: 21 Nov 2000

ELMCO PA, Inc.
700 Bigler Ave.
Clearfield, PA 16830

(1) 300 ton Bliss model 89 press frame and components.....\$40,196.00
DUE UPON RECEIPT

DATE	DESCRIPTION	START	STOP	HRS
05/12/99	TRIP TO WPI	1:30 pm	6:30 pm	5
05/13/99	WORK ON LAYOUT	10:00 pm	11:00 pm	1
05/14/99	TRIP TO WPI	9:00 am	1:00 pm	4
05/14/99	WORK ON LAYOUT	7:00 pm	12:00 am	5
05/15/99	WORK ON LAYOUT	9:00 pm	1:00 am	4
05/16/99	WORK ON LAYOUT	8:00 pm	11:00 pm	3
05/17/99	WORK ON LAYOUT	7:00 pm	12:00 am	5
05/17/99	WORK ON LAYOUT	10:00 am	12:00 pm	2
05/17/99	WORK ON LAYOUT	2:00 pm	4:00 pm	2
05/18/99	WORK ON LAYOUT	11:00 am	12:30 pm	1.5
05/18/99	WORK ON LAYOUT	2:30 pm	5:00 pm	2.5
05/18/99	WORK ON LAYOUT	8:30 pm	1:00 am	4.5
05/19/99	WORK ON LAYOUT	10:30 am	1:30 pm	3
05/19/99	WORK ON LAYOUT	8:00 pm	12:30 am	4.5
05/20/99	WORK ON LAYOUT	2:00 pm	4:00 pm	2
05/20/99	WORK ON LAYOUT	9:00 pm	12:00 am	3
05/21/99	WORK ON LAYOUT	10:30 am	11:30 am	1
05/21/99	WORK ON LAYOUT	2:30 pm	4:00 pm	1.5
05/21/99	WORK ON LAYOUT	8:00 pm	1:00 am	5
05/22/99	WORK ON LAYOUT	10:00 pm	1:30 am	3.5
05/23/99	WORK ON LAYOUT	2:00 pm	5:30 pm	3.5
05/23/99	WORK ON LAYOUT	7:00 pm	12:30 am	5
05/24/99		7:00 pm	12:00 am	5
05/25/99		7:30 pm	11:00 pm	3.5
05/26/99		8:00 pm	1:00 am	5
05/27/99		8:00 pm	12:00 am	4
05/28/99		1:00 pm	2:30 pm	1.5
05/28/99		8:00 pm	1:00 am	5
05/29/99		3:30 pm	6:30 pm	3
05/29/99		9:00 pm	3:00 am	6
05/30/99		2:00 pm	4:00 pm	2
05/30/99		9:00 pm	2:00 am	5
05/31/99		3:00 pm	5:30 pm	2.5
05/31/99		8:00 pm	1:00 am	5
06/01/99		7:30 pm	11:30 pm	4
06/02/99		8:00 pm	12:30 am	4.5
06/03/99		11:00 am	1:00 pm	2
06/03/99		8:00 pm	12:00 am	4
06/04/99		7:00 pm	10:00 pm	3
06/04/99		11:00 pm	1:00 am	2
06/05/99		10:00 pm	2:00 am	4
06/06/99		6:00 pm	12:00 am	6
06/07/99		10:00 am	12:00 pm	2
06/07/99		8:00 pm	12:30 am	4.5
06/08/99		12:30 pm	2:00 pm	1.5
06/08/99		6:30 pm	12:00 am	5.5
06/09/99		10:00 am	11:30 am	1.5
06/09/99		8:00 pm	12:00 am	4

148.5 HRS

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

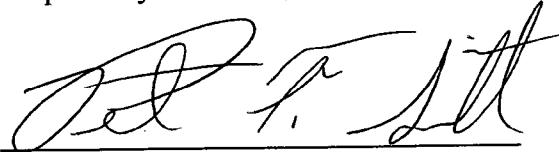
DAVID G. FULESDAY and :
ELIZABETH W. FULESDAY, : No. 2001-1158-CD
: :
Plaintiffs :
: :
vs. :
: :
ELMCO PA, INC., :
: :
Defendant :
:

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiffs in the above captioned matter, hereby certify
that I sent by U.S. First Class Mail a certified copy of the **NOTICE REQUIRED BY Pa.R.C.P.**
237.1 filed in this matter on the Defendant, at the following address:

ELMCO PA, INC.
700 Bigler Avenue
Clearfield, Pennsylvania 16830

Respectfully submitted,



Peter F. Smith, Attorney for Plaintiff

Date: August 14, 2001

FILED

AUG 15 2001
m 12:00 pm
William A. Shaw
Prothonotary

No. C/C 9


IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID G. FULESDAY and
ELIZABETH W. FULESDAY,
Plaintiffs

CIVIL DIVISION

No. 01 - 1158 - CD

Vs.

ELMCO PA, INC.,

Defendant

PRAECIPE FOR APPEARANCE

Filed on Behalf of:

Defendant, ELMCO PA, INC.

Counsel of Record for This
Party:

JOHN R. RYAN, ESQUIRE
Pa. I.D. #38739

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

814/765-1566

FILED

AUG 16 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID G. FULESDAY and :
ELIZABETH W. FULESDAY, : No. 01 - 1158 - CD
Plaintiffs:
VS. :
: :
ELMCO PA, INC., :
Defendant :
:

PRAECIPE TO ENTER APPEARANCE

TO: WILLIAM SHAW, PROTHONOTARY

Please enter my appearance of behalf of the Defendant, ELMCO
PA, INC., in the above-captioned action.



JOHN R. RYAN, ESQUIRE
Attorney for Defendant

8/16/01

DATE

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
CIVIL DIVISION
No. 01 - 1158 - CD

DAVID G. FULESDAY and
ELIZABETH W. FULESDAY,

Plaintiffs

vs.

ELMCO PA., INC.,

Defendant

PRAECIPE FOR APPEARANCE

1/16/2011
JES

COLAVECCHI & RYAN

ATTORNEYS AT LAW

221 E. MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID G. FULESDAY and
ELIZABETH W. FULESDAY,
Plaintiffs

CIVIL DIVISION

No. 01 - 1158 - CD

Vs.

ELMCO PA, INC.,
Defendant

ANSWER AND NEW MATTER

Filed on Behalf of:

Defendant, ELMCO PA, INC.

Counsel of Record for This
Party:

JOHN R. RYAN, ESQUIRE
Pa. I.D. #38739

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

814/765-1566

FILED

AUG 28 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID G. FULESDAY and :
ELIZABETH W. FULESDAY, : No. 01 - 1158 - CD
Plaintiffs: :
: Vs. :
: :
ELMCO PA, INC., : Defendant :
:

ANSWER

NOW COMES, Elmco PA, Inc., Defendant above named, and by its attorney, John R. Ryan, Esquire, makes its Answer to the Complaint of Plaintiffs as follows:

1. Admitted.
2. Admitted.

COUNT ONE
BREACH OF LEASE

3. No response required.
4. Admitted.
5. Admitted.
6. Admitted insofar as the language of the said Lease calls for rental payment of Five Thousand Dollars (\$5,000.00) per month.

By way of further response, it is believed and therefore averred that the parties through the said agreement had modified the terms of that agreement orally and under the terms of the said oral

modification, agreed that the amount of the rent would be Two Thousand Five Hundred Dollars (\$2,500.00) per month. The amount of Five Thousand Dollars (\$5,000.00) rent was inserted into the Lease at the request of Plaintiff David Fulesday. The language of the agreement showed the amount of Five Thousand Dollars (\$5,000.00) per month as rent solely for the convenience of the Plaintiff David Fulesday.

7. Admitted.

8. Admitted in part and denied in part. It is admitted that during the months of February, March and April, the Defendant paid rent in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) per month since during those months, Plaintiff David Fulesday was laid off of his employment with Defendant. Plaintiff resumed employment in May and accordingly the full amount was paid in that month. The amounts paid in February, March and April were paid in accordance with the terms of the oral agreement modifying the written terms of the Lease Agreement and Plaintiff David Fulesday accepted those amounts without complaint.

9. It is denied that the Defendant has breached its obligations under the said Lease Agreement for the reasons stated for hereinabove, and strict proof of such alleged breach is demanded at the time of trial.

10. Admitted insofar as the Lease contains language as alleged. Denied in that Defendant denies that Plaintiffs are entitled to any late fees.

11. Admitted insofar as the Lease contains language as alleged. Denied in that Defendant denies that Plaintiffs are entitled to any interest.

12. Admitted.

13. It is denied that until the time of the filing of this Complaint, Plaintiff has made any demand on Defendant for any alleged delinquent rent, interest and late charge. Strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendant requests that judgment be entered in its favor and against Plaintiffs.

COUNT TWO
BREACH OF ASSET PURCHASE AGREEMENT
AND EMPLOYMENT CONTRACT

14. Paragraphs 1 through and including paragraph 13 of Defendant's Answer are incorporated herein by reference as if set forth at length.

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted. However, Defendant denies any implication that Plaintiffs are entitled to an award of counsel fees pursuant to said agreement.

21. Denied insofar as it was the agreement of the parties that the additional Sixty Thousand Dollars (\$60,000.00) would be paid to Plaintiff David Fulesday pursuant to the terms of the Employment Agreement and not the said Asset Purchase Agreement.

WHEREFORE, Defendant requests that judgment be entered in its favor and against Plaintiffs.

COUNT III
SALE OF 300-TON BLISS PRESS

22. Paragraphs 1 through and including 21 of Defendant's Answer are incorporated herein by reference as if set forth at length.

23. Admitted.

24. Admitted.

25. It is admitted that Defendant agreed to attempt to sell the Bliss Press, however, Defendant denies that it is obligated to pay Plaintiff the sum of Forty Thousand One Hundred Ninety-six Dollars (\$40,196.00) as alleged and strict proof therefore is demanded at the time of trial.

26. It is admitted.

27. Admitted insofar as Defendant has not paid Plaintiff the sum as alleged. Defendant's obligation to do so is denied and strict proof thereof is demanded at the time of trial.

28. It is admitted that the said invoice was delivered to Defendant in June 2001. It is denied that Defendant is obligated to pay Plaintiff the said sum.

WHEREFORE, Defendant requests that judgment be entered in its favor and against Plaintiff.

COUNT FOUR
FAILURE TO PAY FOR SERVICES

29. Paragraphs 1 through and including paragraph 28 of Defendant's Answer are incorporated herein by reference as if set forth at length.

30. Denied and strict proof thereof is demanded at the time of trial.

31. Denied and strict proof thereof is demanded at the time of trial.

32. Defendant is without knowledge as to the allegations of Paragraph 32 and therefore the same are denied and strict proof thereof is demanded at the time of trial.

33. Admitted.

34. Denied and strict proof thereof is demanded at the time of trial.

35. Admitted.

36. Denied in that Defendant had not agreed to compensate Plaintiffs at the alleged rate or at any rate of compensation for any services rendered prior to the execution of the said agreements.

37. Admitted.

38. Denied in that Defendant did not agree to compensation Plaintiff for any mileage at any rate.

39. Defendant is without knowledge as to whether or not Plaintiff kept a log. Regardless, Defendant denies that it is obligated to pay Plaintiff as alleged.

40. Denied for the reasons set forth hereinabove.

41. Denied for the reasons set forth hereinabove.

WHEREFORE, Defendant request that judgment be entered in its favor and against the Plaintiffs.

NEW MATTER

NOW COMES, Elmco PA, Inc., Defendant above named and by its attorney, John R. Ryan, Esquire, files its New Matter and avers as follows:

42. Paragraphs 1 through and including paragraph 41 of Defendant's Answer are incorporated herein as if set forth at length.

43. Plaintiffs and Defendant did entered into an Employment Agreement as alleged by Plaintiffs which calls for Defendant to pay the sum of Sixty Thousand Dollars (\$60,000.00) to Plaintiff David Fulesday.

44. Said Agreement at Paragraph 7 therein provides that the sum of Sixty Thousand Dollars (\$60,000.00) be paid to David Fulesday in Sixty (60) equal installments with the first said payment to be made in June of 2004.

45. Accordingly, Defendant is under no obligation to commence said installment payments to Plaintiff until June of 2004.

46. With respect to the sale of the Bliss Press, Defendant did agree to attempt to sale the Press for Plaintiff, however, in so doing, Defendant assumed certain warranty obligations of the Plaintiff payment of which reduced the amount received for the sale of the said machine.

47. In fact the total warranty claims paid by Defendant exceeded the amount received from the sale of the said Bliss Press, and by reason of this offset, there are no amounts due and owing to Plaintiff on the sale of the said Bliss Press. Attached hereto and marked Exhibit "A" is a list of the expenses incurred by Defendant on the Plaintiff's warranties. Said Exhibit "A" is incorporated herein by reference as if set forth at length.

48. With respect to Plaintiff's claim for services set forth in Count Four, it is believed and therefore averred that during the

time period in question, Plaintiff David Fulesday was still operating the company known as Fulesday Machine and in fact the Agreements whereby Defendant acquired the assets of said company had not yet been completed and executed.

49. Once the aforesaid Agreements were executed, Plaintiff became an employee of the Defendant and in fact Defendant purchased the engineering assets of Fulesday Machine which would have included any services performed by Plaintiff up to the execution of the Agreements.

50. The Employment Contract between the Plaintiff David Fulesday and the Defendant was not renewed due to the Plaintiff's failure to perform his duties in an acceptable fashion.

51. Until such time as Plaintiff David Fulesday was advised that the Employment Contract would not be renewed, he made no complaint whatsoever about any payments made by the Defendant nor did Plaintiff David Fulesday allege that he was due any payment for compensation or services performed prior to the execution of the said Agreement.

WHEREFORE, Defendant requests that judgment be entered in its favor and against Plaintiffs.



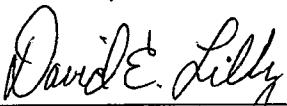
JOHN R. RYAN, ESQUIRE
Attorney for Defendant

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

VERIFICATION

I verify that the statements made in this Answer and New Matter are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. 4904, relating to unsworn falsification to authorities.

ELMCO PA, INC.

BY 
DAVID E. LILLY, PRESIDENT

ELMCO EXPENSES FOR FULESDAY WARRANTIES

SN	PARTS	LABOR	EXPENSES	TOTAL
3C115	\$13,392.00	\$17,100.00	\$108.00	\$30,500.00
100-81	\$117.45	\$950.00	\$70.00	\$1,137.45
60-99		\$665.00	\$72.00	\$737.00
20-95	\$248.95	\$380.00	\$35.00	\$663.95
20-96	\$2,067.12	\$760.00	\$280.00	\$3,107.12
20-100	\$5,239.87	\$1,805.00	\$494.00	\$7,538.87
20-101	\$2,200.00	\$1,425.00	\$350.00	\$3,975.00
TOTAL				\$47,759.39

Exhibit

"A"

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
CIVIL DIVISION
No. 01 - 1158 - CD

DAVID G. FULESDAY and
ELIZABETH W. FULESDAY,
Plaintiffs

vs.
ELMCO PA, INC.,
Defendant

ANSWER AND NEW MATTER

FILED

Aug 28 2001
John B. Ryan
Colavecchi & Ryan
Attorneys at Law
221 E. Market Street
(across from courthouse)
P. O. Box 131
CLEARFIELD, PA. 16830

COLAVECCHI & RYAN

ATTORNEYS AT LAW

221 E. MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID G. FULESDAY and
ELIZABETH W. FULESDAY, : No. 2001- 1158 -CD
Plaintiffs :
vs. : Type of Case:
ELMCO PA, INC., : **CIVIL**
Defendant : Type of Pleading:
: **ANSWER TO DEFENDANT'S NEW**
: **MATTER**
: Filed on Behalf of:
: **PLAINTIFFS**
: Attorney for this party:
: **Peter F. Smith, Esquire**
: PA Supreme Court No. 34291
: 30 South Second Street
: P.O. Box 130
: Clearfield, PA 16830
: (814) 765-5595
: Attorney for Defendant:
: **John R. Ryan, Esquire**
: PA Supreme Court ID #38739
: Colavecchi, Ryan & Colavecchi
: P.O. Box 131, 221 East Market Street
: Clearfield, PA 16830
: (814) 765-1566

FILED
SEP 27 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID G. FULESDAY and :
ELIZABETH W. FULESDAY, : No. 2001-1158-CD
: :
Plaintiffs :
: :
vs. :
: :
ELMCO PA, INC., :
: :
Defendant :
:

ANSWER TO DEFENDANT'S NEW MATTER

COMES NOW David G. Fulesday and Elizabeth W. Fulesday (hereinafter "Fulesdays") by their attorney, Peter F. Smith, who states the following in response to Defendant's New Matter:

42. Paragraph 1 through 41 of the Complaint are incorporated herein as though set forth in full.

43. Admitted.

44. Denied. This statement is only true if the Defendant fails to pay the additional \$60,000.00 that is owed to Plaintiffs pursuant to the Asset Purchase Agreement as set forth in Paragraphs 15 through 21 of the Complaint.

45. Denied. This statement is only true if the Defendant fails to pay the additional \$60,000.00 that is owed to Plaintiffs pursuant to the Asset Purchase Agreement as set forth in Paragraphs 15 through 21 of the Complaint.

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against the Defendants as requested in the Complaint.

Respectfully submitted,

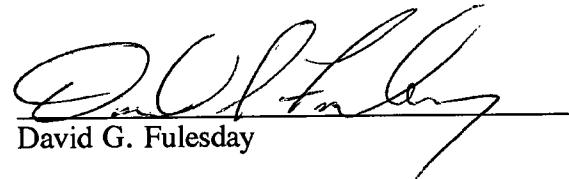
Date: 9-24-01


Peter F. Smith
Attorney for Plaintiffs

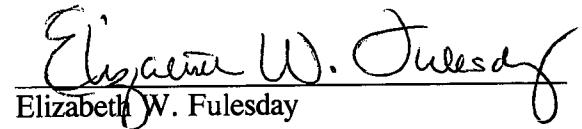
AFFIDAVIT

STATE OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

DAVID G. FULESDAY and ELIZABETH W. FULESDAY, husband and wife, being duly sworn according to law, deposes and says that they are duly authorized to make this Affidavit, and further, that the facts set forth in the foregoing Answer to New Matter are true and correct to the best of their knowledge, information and belief.

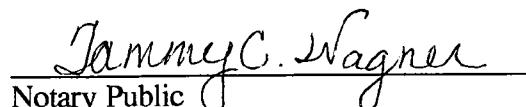


David G. Fulesday



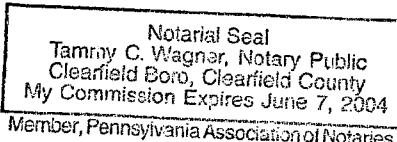
Elizabeth W. Fulesday

SWORN TO AND SUBSCRIBED
before me this 26th day of
September, 2001.



Tammy C. Wagner

Notary Public



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID G. FULESDAY and
ELIZABETH W. FULESDAY

Plaintiff

vs.

No. 2000-1158-CD

ELMCO PA, INC.

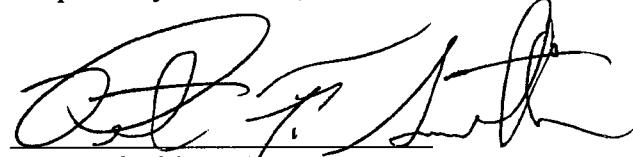
Defendants

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for Plaintiffs certify that I sent a true and correct copy of **Plaintiff's Answer to New Matter** by First Class Mail, Postage Prepaid on or about September 26, 2001, on Defendant's counsel as follows:

John R Ryan, Esquire
COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith,
Attorney for Plaintiffs

Date: September 26, 2001

FILED
OCT 10 2001
3CC
SEP 27 2001
APY
S 9

William A. Shaw
Prothonotary

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PA. 16830

PETER F. SMITH
ATTORNEY
CLEARFIELD, PA. 16830
814-765-5595

CERTIFIED TRUE AND CORRECT COPY

ATTORNEY FOR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID G. FULESDAY and
ELIZABETH W. FULESDAY, :
: No. 2001- 1158 -CD

Plaintiffs
:

vs.
ELMCO PA, INC.,

Defendant
:

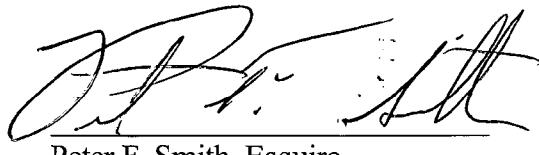
P R A E C I P E

To: William A. Shaw, Prothonotary of Clearfield County

Dear Sir:

Please list the above-caption case for non-jury trial. I estimate that one day will be required.

Respectfully submitted



Peter F. Smith, Esquire

Dated: December 3, 2001

cc: John R. Ryan, Esquire
Attorney for Defendants

FILED

DEC 03 2001

William A. Shaw
Prothonotary

FILED

NO
0125481
DEC 03 2001

cc
E
KOS
Copy to CJA

William A. Shaw
Prothonotary

PETER F. SMITH
ATTORNEY
CLEARFIELD, PA. 16830
814 - 765-5595

CERTIFIED TRUE AND CORRECT COPY

ATTORNEY FOR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID G. FULESDAY and :
ELIZABETH W. FULESDAY, : No. 2001- 1158 -CD
: Plaintiffs :
: vs. :
: ELMCO PA, INC., :
: Defendant :
:

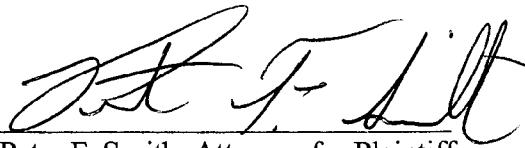
PRAECIPE TO DISCONTINUE

TO: William A. Shaw, Prothonotary

Dear Mr. Shaw:

As counsel for the Plaintiffs in the above captioned matter I appear and request that you mark it "**SETTLED and DISCONTINUED.**"

Respectfully submitted,



Peter F. Smith, Attorney for Plaintiff

Date: January 24, 2002

cc: John Ryan, Esquire

FILED

JAN 25 2002

William A. Shaw
Prothonotary

FILED

014:00
JAN 25 2002

William A. Shaw
Prothonotary

Cert. Disc.
to Atty Smith, CLA
BS

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

David G. Fulesday
Elizabeth W. Fulesday

Vs.
Elmco PA, Inc.

No. 2001-01158-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on January 25, 2002 marked:

Settled and Discontinued

Record costs in the sum of \$110.34 have been paid in full by Peter F. Smith, Esq..

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 25th day of January A.D. 2002.

William A. Shaw, Prothonotary