

04-1577-CD  
Backus USA, INC. Et al. vs. PRECISION FABRICATION AND CONTROL

2004-1577-CD  
Backus USA et al vs Precision Fabrication

Date: 08/03/2005

Time: 08:40 AM

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**Clearfield County Court of Common Pleas**

User: LBENDER

**ROA Report**

**Case: 2004-01577-CD**

**Current Judge: Paul E. Cherry**

Backus USA, Inc., Freshtec Food Processing Equipment International, vs. Precision Fabrication and Controls, Inc., Advanced Industrial Controls, Inc.

**Equity**

Date		Judge
10/12/2004	<input checked="" type="checkbox"/> Filing: Civil Complaint Paid by: Hopkins, David J. (attorney for Backus USA, Inc.) Receipt number: 1888263 Dated: 10/12/2004 Amount: \$85.00 (Check)	No Judge
	<input checked="" type="checkbox"/> Motion For Preliminary Injunction, filed on behalf of: Backus USA, INC. and FreshTec Food	Paul E. Cherry
10/13/2004	<input checked="" type="checkbox"/> Order of Court, AND NOW, this 13th day of October 2004, upon consideration of Plaintiff's Motion for Preliminary Injunction and Plaintiff's Complaint in Equity, it is hereby ordered that Defendants and any individuals or entity within their control or supervision or acting in concert or on their behalf are enjoined until hearing on the matter or until further order of court from directly or indirectly 1. Violating any term or provision of the Confidentiality agreement 2. Using the Confidential Information to manufacture develop produce or other fabricate for sale or distribution any food processing equipment; 3. Manufacturing, developing, producing or fabricating for sale or distribution any food processing equipment that performs the same function as any machinery previously produced for or on behalf of Plaintiffs; and any and all relief as the Court deems appropriate. A hearing on Plaintiffs Motion for Preliminary Injunction is scheduled for Oct 20, 2004 at 1:30 p.m. in Courtroom No. 2 at the Clearfield Co. Courthouse. BY THE COURT, Paul E. Cherry, Judge. 2 CC atty Heltzel	Paul E. Cherry
10/26/2004	<input checked="" type="checkbox"/> Order, AND NOW, this 25th day of October, 2004, it is the ORDER of the Court that argument on Plaintiffs' Motion for Preliminary Injunction filed in the above matter has been scheduled for Tuesday, November 9, 2004 at 1:30 p.m. in Courtroom no. 2, Clfd. Co. Courthouse. BY THE COURT:/s/ Paul E. Cherry, Judge. 1 CC Attys: Hopkins, Brew	Paul E. Cherry
10/27/2004	<input checked="" type="checkbox"/> Entry of Appearance and Acceptance of Service, accept service of Complaint and enter appearance, filed by s/Eugene J. Brew, Jr., Esq. No CC	Paul E. Cherry
	<input checked="" type="checkbox"/> Preliminary Objections, filed by s/Eugene J. Brew, Jr., Esq. No CC	Paul E. Cherry
10/28/2004	<input checked="" type="checkbox"/> Order AND NOW, this 28th day of October, 2004 it is the Order of the Court that argument on Def. Preliminary Objections filed in the above matter has been scheduled for Nov. 9, 2004. s/PEC 2 CC and Memo re; service to Atty. Brew	Paul E. Cherry
11/04/2004	<input checked="" type="checkbox"/> Affidavit of Service filed, copy of the Order of Court dated Oct. 28, 2004, by U.S. Mail on Nov. 1, 2004 upon David J. Hopkins, Esq., and Advanced Industrial Controls, Inc. Filed by s/ Eugene J. Brew, Esq. No CC	Paul E. Cherry
11/05/2004	<input checked="" type="checkbox"/> Motion to Consolidate Actions Pursuant to Pa.R.C.P. 213 (a), filed by s/David J. Hopkins, Esq. No CC	Paul E. Cherry
	<input checked="" type="checkbox"/> Certificate of Service, Motion to Consolidate Actions Pursuant to Pa.R.C.P. Upon Eugene J. Brew, Esq. Filed by s/David J. Hopkins, Esq.	Paul E. Cherry
11/09/2004	<input checked="" type="checkbox"/> Response to Preliminary Objections to Plaintiff's Complaint, filed by s/David J. Hopkins, Esq. Two CC Attorney Hopkins	Paul E. Cherry
11/17/2004	<input checked="" type="checkbox"/> Response to Preliminary Objections to Plaintiffs' Complaint, filed by Atty. Hopkins no cert. copies.	Paul E. Cherry
11/18/2004	<input checked="" type="checkbox"/> ORDER, filed Cert. copies to Atty. Hopkins, Brew and Advanced Industrial. Paul E. Cherry NOW, this 9th day of November, 2004, Parties shall submit briefs relative the motion for preliminary injunction.	Paul E. Cherry

Date: 05/27/2005

**Clearfield County Court of Common Pleas**

User: BHUDSON

Time: 10:39 AM

**ROA Report**

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Case: 2004-01577-CD

Current Judge: Paul E. Cherry

Backus USA, Inc., Freshtec Food Processing Equipment International, vs. Precision Fabrication and Controls, Inc., Advanced Industrial Controls, Inc.

Equity

Judge

Date

Date		Judge
04/11/2005	Order, AND NOW, this 8th day of April, 2005, upon receipt of Precision Fabrication & Control Inc.'s Motion for Sanctions III, IT IS ORDERED: 1. Argument shall be heard on this Motion before the Court on May 11, 2005 at 10:30 a.m. 2. Counsel for Precision Fabrication & Controls, Inc. May participate in this Argument by telephone conference call. BY THE COURT: /s/ Paul E. Cherry, Judge. 2CC Atty Brew  Order, AND NOW, this 8th day of April, 2005, upon receipt of Plaintiff, Precision Fabrication & Controls, Inc.'s Motion to Require Bond, IT IS ORDERD: 1. Argument shall be heard on this motion before the Court on May 11, 2005 at 10:30 a.m. 2. Counsel for Precision Fabrication & Controls, Inc. may participate in this Argument by telephone conference call. BY THE COURT: /s/ Paul E. Cherry, Judge. 2CC Atty. Brew	Paul E. Cherry
05/09/2005	✓ Praeclipe For Entry of Appearance, filed on behalf of Precision Fabrication Paul E. Cherry and Controls, Inc. enter Mutzabaugh & Saunders, LLP Filed by s/ Atty. Mutzabaugh. No CC, original filed to 04-1146-CD	Paul E. Cherry
05/19/2005	✓ Order, AND NOW, this 18th day of May, 2005, following argument on Def.'s Motion to Require Bond, it is the ORDER of this Court that said Motion is hereby GRANTED. Plaintiff shall post bond in the amount of \$75,000.00 within no more than 10 days from today's date. BY THE COURT: /s/ Paul E. Cherry, Judge. 1CC Attys: Mutzabaugh, Brew, Hopkins, Advanced Ind.	Paul E. Cherry
	✗ Order, AND NOW, this 18th day of May, 2005, it is the ORDER of this Court that Defendant's Preliminary Objections be and are hereby DISMISSED. BY THE COURT, /s/ Paul E. Cherry, Judge. 1CC Attys: Hopkins, Brew, Mutzabaugh, Advanced Ind.	Paul E. Cherry
	✗ Order, AND NOW, this 19th day of May, 2005, it is the ORDER of this Court that hearing shall be held on the 11th and 12th days of July, 2005 beginning at 9:00 a.m. in Courtroom No. 2 of the Clfd. Co. Courthouse. BY THE COURT, /s/ Paul E. Cherry, Judge. 1CC Attys: Hopkins, Brew, Mutzabaugh, Advanced Ind.	Paul E. Cherry
05/24/2005	**All further filings to be filed to 04-1146-CD per court order of May 23, 2005**	Paul E. Cherry

Date: 08/03/2005

Clearfield County Court of Common Pleas

User: LBENDER

Time: 08:40 AM

ROA Report

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Case: 2004-01577-CD

Current Judge: Paul E. Cherry

Backus USA, Inc., Freshtec Food Processing Equipment International, vs. Precision Fabrication and Controls, Inc., Advanced Industrial Controls, Inc.

Equity

Date		Judge
11/18/2004	X ORDER, filed Cert. to Atty. Hopkins, Brew and Advanced Industrial. NOW, this 9th day of November, 2004, RE: Testimony relative to the motion for preliminary injunction, ORDERED that defendants their agents and etc. are enjoined and restrained from. (see original ORDER)	Paul E. Cherry
	X Order Of Court, filed. cert. to Atty. Hopkins, Brew and Advanced Industrial. Paul E. Cherry NOW, this 9th day of November, 2004, Parties have reached agreement relative to the petition for consolidation, ORDERED that the matter filed to McKean County Court Docket # 915 CD 2004 shall be consolidated with all Clearfield County matters filed to Dockets No. 04-1577-CD and 04-1146-CD . Further ORDERED that all stays entered by this Court are hereby lifted. Plaintiff shall be responsible for any costs with the transfer.	
12/15/2004	X Copy of whole record of Plaintiff and Defendant, as the same remains of record before the said Court at No. 915 CD 2004, filed by s/ Bonnie Moore Howard, Prothonotary, Commonwealth of Pennsylvania, County of McKean. Original filed to 04-1146-CD	Paul E. Cherry
01/21/2005	X Motion for Sanction II: Defendant, Precision Fabrication and Controls, Inc. Paul E. Cherry Motion for Sanctions Requesting Order Directing Responsive Answers to Interrogatories, filed by Atty. Brew. 1 CC To Atty. 1/25/05 Letter to Eugene Brew, Esq., Re: Court will not address without a proposed scheduling order	
01/31/2005	X Request for Admissions, filed by s/Eugene J. Brew, Esq. No CC X Amended Request for Status Conference, filed by s/Eugene J. Brew, Esq. One CC Attorney Brew X Motion For Sanctions II: Defendant, Precision Fabrication and Controls, Inc. Motion for Sanctions Requesting Order Directing Responsive Answers to Interrogatories. Filed by s/Eugene J. Brew, Jr., Esq.	Paul E. Cherry
02/01/2005	X Order of Court, AND NOW, this 1st day of February, 2005, upon receipt of Plaintiff, Precision Fabrication and Controls, Inc.'s Motion for Sanctions II, Orderd: 1. Argument shall be heard on this Motion before the Court on March 17, 2005, at 10:00 a.m. 2. Counsel for Precision Fabrication and Controls, Inc. may participate in this Argument by telephone conference call. BY THE COURT: /s/Paul E. Cherry, Judge One CC Attorney Brew X Order of Court, AND NOW, this 1st day of February, 2005, after Status Conference, it is Ordered: (See Original for details). A further status conference will be held on March 17, 2005. Counsel for Precision may participate by telephone conference call at 10:00 a.m. BY THE COURT: /s/Paul E. Cherry, Judge One CC Attorney Brew	Paul E. Cherry
02/03/2005	X Answer To Motion for Sanctions No. 2, filed by s/ David J. Hopkins, Esquire. 1CC Atty Hopkins, Original to 04-1146-cd	Paul E. Cherry
02/07/2005	X Amended Request for Admissions, filed by s/Eugene J. Brew, Esq. NO CC	Paul E. Cherry
03/09/2005	X Certificate of Service, filed by Atty. Hopkins no cert. copies. Served copy of Response to Amended Request for Admissions upon Atty. Brew.	Paul E. Cherry
04/04/2005	X Motion to Order Bond Posted, filed by s/Eugene J. Brew, Esq. No CC	Paul E. Cherry
04/06/2005	X Motion for Sanctions III: Defendant, Precision Fabrication & Controls, Inc.'s Motion for Sanctions III Requesting an Order Directing Defendant to Answer Interrogatories, filed by s/Eugene Brew, Esq. No CC	Paul E. Cherry

Date: 08/03/2005  
Time: 08:40 AM  
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**Clearfield County Court of Common Pleas**

User: LBENDER

**ROA Report**

**Case: 2004-01577-CD**

**Current Judge: Paul E. Cherry**

Backus USA, Inc., Freshtec Food Processing Equipment International, vs. Precision Fabrication and Controls, Inc., Advanced Industrial Controls, Inc.

**Equity**

Date		Judge
04/11/2005	X Order, AND NOW, this 8th day of April, 2005, upon receipt of Precision Fabrication & Control Inc.'s Motion for Sanctions III, IT IS ORDERED: 1. Argument shall be heard on this Motion before the Court on May 11, 2005 at 10:30 a.m. 2. Counsel for Precision Fabrication & Controls, Inc. May participate in this Argument by telephone conference call. BY THE COURT: /s/ Paul E. Cherry, Judge. 2CC Atty Brew	Paul E. Cherry
	X Order, AND NOW, this 8th day of April, 2005, upon receipt of Plaintiff, Precision Fabrication & Controls, Inc.'s Motion to Require Bond, IT IS ORDERED: 1. Argument shall be heard on this motion before the Court on May 11, 2005 at 10:30 a.m. 2. Counsel for Precision Fabrication & Controls, Inc. may participate in this Argument by telephone conference call. BY THE COURT: /s/ Paul E. Cherry, Judge. 2CC Atty. Brew	Paul E. Cherry
05/09/2005	X Praeclipe For Entry of Appearance, filed on behalf of Precision Fabrication Paul E. Cherry and Controls, Inc. enter Mutzabaugh & Saunders, LLP Filed by s/ Atty. Mutzabaugh. No CC, original filed to 04-1146-CD	Paul E. Cherry
05/19/2005	X Order, AND NOW, this 18th day of May, 2005, following argument on Def.'s Motion to Require Bond, it is the ORDER of this Court that said Motion is hereby GRANTED. Plaintiff shall post bond in the amount of \$75,000.00 within no more than 10 days from today's date. BY THE COURT: /s/ Paul E. Cherry, Judge. 1CC Attys: Mutzabaugh, Brew, Hopkins, Advanced Ind.	Paul E. Cherry
	X Order, AND NOW, this 18th day of May, 2005, it is the ORDER of this Court that Defendant's Preliminary Objections be and are hereby DISMISSED. BY THE COURT, /s/ Paul E. Cherry, Judge. 1CC Attys: Hopkins, Brew, Mutzabaugh, Advanced Ind.	Paul E. Cherry
	X Order, AND NOW, this 19th day of May, 2005, it is the ORDER of this Court that hearing shall be held on the 11th and 12th days of July, 2005 beginning at 9:00 a.m. in Courtroom No. 2 of the Clfd. Co. Courthouse. BY THE COURT, /s/ Paul E. Cherry, Judge. 1CC Attys: Hopkins, Brew, Mutzabaugh, Advanced Ind.	Paul E. Cherry
05/24/2005	**All further filings to be filed to 04-1146-CD per court order of May 23, 2005**	Paul E. Cherry
07/07/2005	X Withdrawal of Appearance, on behalf of Precision Fabrication & Controls, Inc, in all 3 of the above pending actions. filed by s/ Eugene J. Brew, Esquire. no CC Copy to C/A Original To 04-1146-CD	Paul E. Cherry

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

BACKUS USA, INC, a Pennsylvania  
Corporation, and FRESHTEC FOOD  
PROCESSING EQUIPMENT  
INTERNATIONAL, LLC,  
A Pennsylvania limited liability company,  
Plaintiff,

v.

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
Defendants.

No. 04-1577-CD

Type of Pleading: Complaint in Equity

Filed on behalf of: Backus USA, Inc. and  
FreshTec Food Processing Equipment  
International, LLC

Counsel of Record for this party:

HOPKINS HELTZEL, LLP

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
Supreme Court No. 42519

900 Beaver Drive  
DuBois, Pennsylvania 15801  
(814) 375-0300

FILED  
OCT 12 2004  
William A. Shaw  
Prothonotary

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

BACKUS USA, INC, a Pennsylvania	:	
Corporation, and FRESHTEC FOOD	:	
PROCESSING EQUIPMENT	:	
INTERNATIONAL, LLC,	:	
A Pennsylvania limited liability company,	:	
Plaintiff,	:	
	:	
v.	:	No.
	:	
PRECISION FABRICATION AND	:	
CONTROLS, INC. and ADVANCED	:	
INDUSTRIAL CONTROLS, INC.	:	
Defendants.	:	

**NOTICE**

TO: Defendants

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 Amended Complaint is 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 property or other rights important to you.

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

Office of the Court Administrator  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830  
(814) 765-2641 (ext. 5982)

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

BACKUS USA, INC., a Pennsylvania	:	
Corporation and FRESHTEC FOOD	:	
PROCESSING EQUIPMENT	:	
INTERNATIONAL, LLC, a Pennsylvania	:	
limited liability company,	:	
Plaintiff,	:	
	:	
v.	:	No.
	:	
PRECISION FABRICATION AND	:	
CONTROLS, INC. and ADVANCED	:	
INDUSTRIAL CONTROLS, INC.	:	
Defendants.	:	

**COMPLAINT IN EQUITY**

AND NOW, comes Plaintiffs, Backus USA, Inc. ("Backus") and FreshTec Food Processing Equipment International, LLC ("FreshTec"), by and through their undersigned counsel, and files the within Complaint in Equity as follows:

1. Plaintiff FreshTec is a Pennsylvania limited liability corporation with offices located at P.O. Box 585, DuBois, Pennsylvania 15801. FreshTec is engaged in the business of designing and selling machines and equipment to the food processing industry.
2. Plaintiff, Backus is a Delaware corporation, with offices located at P.O. Box 585, DuBois, Pennsylvania, 15801. Backus is engaged in the design, selling and engineering of food processing products, as well as material handling and automation for other industries.
3. Defendant Advanced Industrial Controls, Inc., ("AIC") is a Pennsylvania corporation, whose principal place of business is located at 536 East Main Street, Bradford, Pennsylvania 16701. AIC is or was engaged in fabrication and construction of equipment.

4. Precision Fabrication and Controls, Inc. ("Precision") is a Pennsylvania corporation, whose principal place of business is located at 195 Chestnut Street, P.O. Box 331, Bradford, Pennsylvania 16701. Precision is in the business of manufacturing machines.

5. Beginning in June, 2002, Backus and FreshTec entered into a business relationship with AIC for the fabrication and delivery of several items of machinery designed for and on behalf of Backus' customers.

6. In connection with this business relationship, it was necessary for Backus to disclose certain confidential information to Defendants for purposes of allowing Defendants to fabricate and design the machinery to Backus' customers' specifications.

7. Such confidential information included business records and plans, financial statements, customer lists and records, trade secrets, technical information, products, inventions, product design information, pricing structure, discounts, costs, computer programs and listings, source codes and/or object codes and other proprietary information (the "Confidential Information").

8. Due to the necessity of disclosing the Confidential Information to Defendants and the crucial importance of ensuring the confidentiality of such information to the future and present operations of Backus and AIC entered into a Confidentiality Agreement dated June 1, 2002. A copy of the Confidentiality Agreement is attached hereto as Exhibit A.

9. Paragraph II of the Confidentiality Agreement provides that the Confidential Information was a "valuable, special and unique asset of Backus which provides Backus with a significant competitive advantage," and further provides that AIC would not disclose the Confidential Information to any person or entity without the prior written consent of Backus.

10. Paragraph VI of the Confidentiality Agreement also indicates that AIC acquires no intellectual property rights, and "even if suggestions, comments, and/or ideas made by AIC are incorporated into the Confidential Information or related materials during the term of this Agreement."

11. The parties agreed in Paragraph II of the Confidentiality Agreement that in the event that AIC has disclosed or threatens to disclose the Confidential Information, Backus is entitled to injunctive relief to restrain AIC from disclosure of the Confidential Information, in addition to other remedies including a claim for losses and damages.

12. Upon information and belief, Precision acquired the assets and secured debt of AIC on or about April 15, 2004, pursuant to a purported "bulk transfer."

13. The "bulk sales notice" sent to creditors of Precision indicated that the property to be transferred to Precision included intangible assets, contracts and most work in progress. The "bulk sales notice" is attached hereto as Exhibit B.

14. In accordance with said notice, or by equitable principles, Precision is bound by the terms of the Confidentiality Agreement.

15. Following Precision's takeover of AIC's operations, delivery of the food processing machinery to FreshTec was significantly delayed causing customer dissatisfaction with FreshTec.

16. In several instances, machinery delivered by Precision was defective and required extensive repairs. Said repairs cost FreshTec significant expenses due to visits and repair work necessary to resolve said defects.

17. On July 28, 2004, following unsuccessful efforts to resolve outstanding payment issues, FreshTec filed a Complaint in Equity at Docket Number 041146CD alleging various

claims including tortious interference with contractual relations, defamation, and seeking a decree with respect to the proper payee.

18. On the same date, FreshTec filed a Motion for Preliminary Injunction at the same caption, seeking to enjoin Precision from contacting its customers.

19. On July 29, 2004, this Court entered an injunction prohibiting AIC or Precision from contacting any of FreshTec's customers and from taking any action to encumber any machinery held by or in the possession of FreshTec's customers. Further, this Honorable Court ordered FreshTec to place the sum of \$91,012.00 into escrow pending resolution of the matters set forth in FreshTec's Complaint which FreshTec has done.

20. Plaintiffs believe and therefore aver that since sometime in July, 2004, Precision and/or AIC have been and are in the process of constructing machinery previously fabricated for Plaintiffs, including but not limited to bin dumpers, wash lines, wedgers, cutters, belt slicers, spin washers and control panels.

21. Plaintiffs believe and therefore aver that such machinery is being produced for sale to third parties in direct competition with Plaintiffs.

22. Plaintiffs believe and therefore aver that Defendants have used the Confidential Information in violation of the Confidentiality Agreement in order to fabricate these designs for other customers.

23. Precision is not in the business of designing food processing equipment, and any and all food processing machines manufactured by AIC or Precision were manufactured based upon designs, drawings, technical information and specifications provided by Backus or FreshTec.

24. Such designs, drawings, technical information and specifications are Confidential Information subject to the restrictions contained in the Confidentiality Agreement.

25. Disclosure of the Confidential Information is detrimental to Plaintiffs' business interests, and both Backus and FreshTec will suffer irreparable harm in the event that Defendants are permitted to use the Confidential Information to produce, sell, license or provide same or similar products as are presently being provided by Backus and/or FreshTec.

## COUNT I

### Breach of Contract

26. Paragraphs 1-24 above are hereby incorporated as though set forth fully herein.

27. Precision has manufactured or fabricated highly specialized machinery previously fabricated for Plaintiffs, including but not limited to bin dumpers, wash lines, wedgers, cutters, belt slicers, spin washers and control panels, and sold such machinery to third parties.

28. Based upon the process involved in Plaintiffs' business and the customization of the machinery to the needs of its customers, any machinery previously produced for Plaintiffs' would incorporate certain Confidential Information, including customer specifications, technology and product design information.

29. Precision's manufacture or fabrication of such machinery for any third party would necessarily include the use of Confidential Information in breach of the Confidentiality Agreement.

30. Pursuant to the transfer of assets in the bulk sales notice, Precision succeeded to all of the contracts to which AIC was a party, including the Confidentiality Agreement, or in the alternative, the transfer by AIC to Precision was fraudulent.

31. The business in which Backus is engaged is a highly competitive industry. As such, Precision's use and/or disclosure of such Confidential Information in breach of the Confidentiality Agreement will result in irreparable harm to Backus, which cannot be compensated by monetary damages and which harm is likely to continue and cannot be adequately remedied at law.

WHEREFORE, Plaintiff, Backus USA, Inc., respectfully requests that an injunction issue preliminarily until final hearing and permanently thereafter, enjoining Defendant Precision from further disclosing or using the Confidential Information in violation of the Confidentiality Agreement, and further requiring Precision to comply with the terms of the Confidentiality Agreement.

## COUNT II

### Breach of Contract

32. Paragraphs 1-30 above are hereby incorporated as though set forth fully herein.

33. Precision holds a limited license to use the Confidential Information, and pursuant to the Confidentiality Agreement, any ideas, suggestions or comments incorporated into the food processing equipment designs are the intellectual property of Backus.

34. As such, to the extent that Precision is fabricating machinery which has been adapted, changed or modified by Precision but still performs the same function as machinery previously produced for or on behalf of Plaintiffs, necessarily incorporates Confidential Information or intellectual property rights that are the exclusive property of Backus, and as such constitute a breach of the Confidentiality Agreement.

35. Pursuant to the transfer of assets in the bulk sales notice, Precision succeeded to all of the contracts to which AIC was a party, including the Confidentiality Agreement, or in the alternative, the transfer from AIC to Precision was fraudulent.

36. The business in which Backus is engaged is a highly competitive industry. As such, Precision's use and/or disclosure of such Confidential Information in breach of the Confidentiality Agreement will result in irreparable harm to Backus, which cannot be compensated by monetary damages and which harm is likely to continue and cannot be adequately remedied at law.

WHEREFORE, Plaintiff, Backus USA, Inc., respectfully requests that an injunction issue preliminarily until final hearing and permanently thereafter, enjoining Defendant Precision from further disclosing or using the Confidential Information or intellectual property owned by Backus to develop food processing machinery in breach of the Confidentiality Agreement, and further requiring Precision to comply with the terms of the Confidentiality Agreement.

**COUNT III**

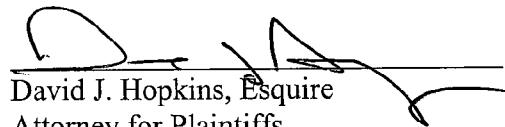
**ATTORNEY FEES**

37. Paragraphs 1-36 above are hereby incorporated as though set forth fully herein.
38. Defendants' actions have been willful and wanton and such actions entitle Plaintiffs to attorney fees.

WHEREFORE Plaintiffs, Backus USA, Inc. and FreshTec Food Processing Equipment International, LLC, respectfully requests that Plaintiffs be awarded attorney fees and such other and further relief as the Court deems fair, just and equitable.

Respectfully submitted,

HOPKINS HELTZEL LLP

  
David J. Hopkins, Esquire  
Attorney for Plaintiffs

## **CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement (this "Agreement") is made effective as of June 01, 2002, between Backus USA, Inc., of PO Box 585, DuBois, Pennsylvania 15801, and AIC, of 336 East Main Street, Bradford, Pennsylvania 16701.

In this Agreement, the party who owns the Confidential Information will be referred to as "Backus", and the party to whom the Confidential information will be disclosed will be referred to as "AIC".

Backus is engaged in Design, building, selling and engineering of food processing products, as well as material handling and automation for other industries. AIC is engaged in fabrication and construction of equipment. Information will be disclosed to AIC in order for them to design and fabricate certain equipment for Backus USA. AIC has represented that AIC will protect the confidential material and information which may be disclosed between Backus and AIC. Therefore, the parties agree as follows:

**I. CONFIDENTIAL INFORMATION.** The term "Confidential Information" means any information or material which is proprietary to Backus, whether or not owned or developed by Backus, which is not generally known other than by Backus, and which AIC may obtain through any direct or indirect contact with Backus.

**a. Confidential Information includes without limitation:**

- business records and plans;
- financial statements
- customer lists and records
- trade secrets
- technical information
- products
- inventions
- product design information
- pricing structure
- discounts
- costs
- computer programs and listings
- source code and/or object code
- and other proprietary information.

**II. PROTECTION OF CONFIDENTIAL INFORMATION.** AIC understands and acknowledges that the Confidential Information has been developed or obtained by Backus by the investment of significant time, effort and expense, and that the Confidential Information is a valuable, special and unique asset of Backus which provides Backus with a significant competitive advantage, and needs to be protected from improper disclosure. In consideration for the disclosure of the Confidential Information, AIC agrees to hold in confidence and to not disclose the Confidential Information to any person or entity without the prior written consent of

Post-It® Fax Note	7671	Date <b>6/3/02</b>	# of pages <b>&gt; 3</b>
To <b>LARRY SALONE</b>	From <b>JR</b>		
Co./Dept. <b>/</b>	Co. <b>A. I. C.</b>		
Phone #	Phone #		
Fax #	Fax #		

Backus.

*No Copying.* AIC will not copy or modify any Confidential Information without the prior written consent of Backus.

*Application to Employees.* Further, AIC shall not disclose any Confidential Information to any employees of AIC, except those employees who are required to have the Confidential Information in order to perform their job duties in connection with the limited purposes of this Agreement. Each permitted employee to whom Confidential Information is disclosed shall sign a non-disclosure agreement substantially the same as this Agreement at the request of Backus.

*Unauthorized Disclosure of Information.* If it appears that AIC has disclosed (or has threatened to disclose) Confidential Information in violation of this Agreement, Backus shall be entitled to an injunction to restrain AIC from disclosing, in whole or in part, the Confidential Information. Backus shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

**III. RETURN OF CONFIDENTIAL INFORMATION.** Upon the written request of Backus, AIC shall return to Backus all written materials containing the Confidential Information. AIC shall also deliver to Backus written statements signed by AIC certifying that all materials have been returned within five (5) days of receipt of the request.

**IV. RELATIONSHIP OF PARTIES.** Neither party has an obligation under this Agreement to purchase any service or item from the other party, or commercially offer any products using or incorporating the Confidential Information. This Agreement does not create any agency, partnership, or joint venture.

**V. NO WARRANTY.** AIC acknowledges and agrees that the Confidential Information is provided on an AS IS basis. Backus MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONFIDENTIAL INFORMATION AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL BACKUS BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OR USE OF ANY PORTION OF THE CONFIDENTIAL INFORMATION. Backus does not represent or warrant that any product or business plan disclosed to AIC will be marketed or carried out as disclosed, or at all. Any actions taken by AIC in response to the disclosure of the Confidential Information shall be solely at the risk of AIC.

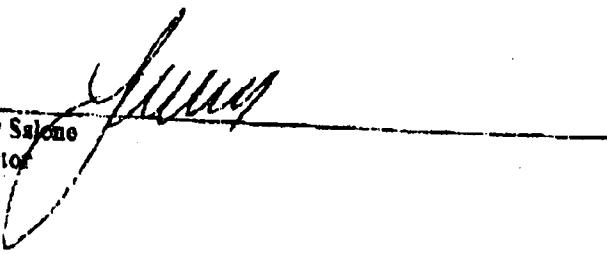
**VI. LIMITED LICENSE TO USE.** AIC shall not acquire any intellectual property rights under this Agreement except the limited right to use set out above. AIC acknowledges that, as between Backus and AIC, the Confidential Information and all related copyrights and other intellectual property rights, are (and at all times will be) the property of Backus, even if suggestions, comments, and/or ideas made by AIC are incorporated into the Confidential Information or related materials during the period of this Agreement.

**VII. GENERAL PROVISIONS.** This Agreement sets forth the entire understanding of the

parties regarding confidentiality. Any amendments must be in writing and signed by both parties. This Agreement shall be construed under the laws of the State of Pennsylvania. This Agreement shall not be assignable by either party, and neither party may delegate its duties under this Agreement, without the prior written consent of the other party. The confidentiality provisions of this Agreement shall remain in full force and effect after the effective date of this Agreement.

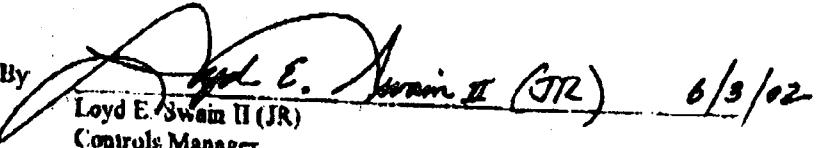
Information Owner:  
Buckus USA, Inc.

By:

  
Larry Salone  
Director

Recipient:  
AIC

By:

  
Loyd E. Swain II (JR)  
Controls Manager

6/3/02

McCLURE & MILLER LLP

ATTORNEYS AT LAW  
SUITE 701, 717 STATE STREET  
ERIE, PENNSYLVANIA 16501

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Telecopier: (814) 454-1554  
E-mail address:  
gbrew@mclure-miller.com

April 7, 2004

TO THE CREDITORS OF: ADVANCED INDUSTRIAL CONTROLS, INC.,  
536 East Main Street  
Bradford, PA 16701

Please take notice of the following. Based on information received from the intended Purchaser of the assets of Advanced Industrial Controls, Inc., the following information is submitted:

1. A bulk transfer of the assets of ADVANCED INDUSTRIAL CONTROLS, INC., is about to be made.

2. The name and address of the Transferee, or purchaser of the assets is: PRECISION FABRICATION & CONTROLS, INC., 195 Chestnut Street, P. O. Box 331, Bradford, PA, 16701.

3. ~~All of the debts of ADVANCED INDUSTRIAL CONTROLS, INC., are not to be paid as they fall due as a result of this transaction.~~

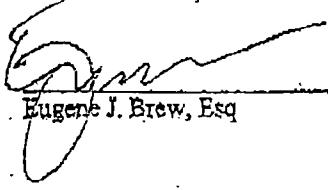
4. The location and general description of the property to be transferred is: All inventory, fixed assets, accounts receivable, name, customer list, intangible assets, non-compete agreements, contracts, and most work-in-progress of ADVANCED INDUSTRIAL CONTROLS, INC., located at its place of business, 536 East Main Street, and 245 Chestnut Street, Bradford, PA, 16701.

5. ~~The total debts of ADVANCED INDUSTRIAL CONTROLS, INC., exceed the value of its assets.~~

6. The transfer is for new consideration, and the amount of such consideration is \$100,000.00, and assumption of most of the secured debt of ADVANCED INDUSTRIAL CONTROLS, INC.

7. The purchaser/Transferee intends to continue in business at the same locations.

8. The time and place of the transfer of the assets and payment is expected to be on or about APRIL 15, 2004, at a location to be determined in either Bradford or Erie, PA.

  
Eugene J. Brew, Esq.

11,107.74

TOTAL P.01

**VERIFICATION**

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

A handwritten signature in black ink, appearing to read "Jennifer", is written over a horizontal line.



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

BACKUS USA, INC, a Pennsylvania  
Corporation, and FRESHTEC FOOD  
PROCESSING EQUIPMENT  
INTERNATIONAL, LLC,  
A Pennsylvania limited liability company,  
Plaintiff,

v.

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
Defendants.

No. 04-1577-CD

Type of Pleading: Motion for Preliminary  
Injunction

Filed on behalf of: Backus USA, Inc. and  
FreshTec Food Processing Equipment  
International, LLC

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
Supreme Court No. 42519

900 Beaver Drive  
DuBois, Pennsylvania 15801  
(814) 375-0300

FILED  
OCT 12 2004  
William A. Shaw  
Prothonotary

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

BACKUS USA, INC., a Pennsylvania	:	
Corporation and FRESHTEC FOOD	:	
PROCESSING EQUIPMENT	:	
INTERNATIONAL, LLC, a Pennsylvania	:	
limited liability company,	:	
Plaintiff,	:	
	:	
v.	:	No.
	:	
PRECISION FABRICATION AND	:	
CONTROLS, INC. and ADVANCED	:	
INDUSTRIAL CONTROLS, INC.	:	
Defendants.	:	

**MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs, Backus USA, Inc., a Pennsylvania corporation, and FreshTec Food Processing Equipment International, LLC, by and through their undersigned counsel, hereby file the following motion for preliminary injunction as follows:

1. Plaintiffs respectfully move this Court for a preliminary injunction pursuant to Rule 1531 of the Pennsylvania Rules of Civil Procedure.
2. Contemporaneously with the filing of this Motion, Plaintiff filed its verified Complaint in Equity requesting that this Court (1) declare valid and binding a Confidentiality Agreement; (2) Order Defendants to act in compliance with, the terms of the Confidentiality Agreement dated as of June 1, 2002; and (3) enjoin Defendants from any further disclosure in violation of the Confidentiality Agreement. A copy of Plaintiffs' Complaint in Equity is attached hereto as Exhibit A.
3. Over the course of several months beginning in June 2002, Backus USA, Inc. ("Backus") ordered various food processing machines from Advanced Industrial Controls, Inc., ("AIC").

4. Due to the highly customized nature of the machinery sold by Plaintiffs, it was necessary to disclose certain Confidential Information (as hereinafter defined) to Defendants for purposes of fabricating the food processing machinery.

5. Because the Confidential Information is of such crucial importance to Backus' business and operations, the parties entered into a Confidentiality Agreement dated as of June 1, 2002, enumerating the rights of the parties with respect to such information.

6. Said Confidentiality Agreement required that any "Confidential Information" which included business records and plans, customer lists and records, trade secrets, technical information, products, inventions, product design information, pricing structure, and other information be held confidential and not be disclosed without the prior written consent of Backus.

7. Paragraph II of the Confidentiality Agreement provides that the Confidential Information is a "valuable, special and unique asset of Backus which provides Backus with a significant competitive advantage," and further provides that AIC will not disclose the Confidential Information to any person or entity without the prior written consent of Backus.

8. Paragraph VI of the Confidentiality Agreement also indicates that AIC acquires no intellectual property rights, and "even if suggestions, comments, and/or ideas made by AIC are incorporated into the Confidential Information or related materials during the term of this Agreement."

9. The parties agreed in Paragraph II of the Confidentiality Agreement that in the event that AIC has disclosed or threatens to disclose the Confidential Information, Backus is entitled to injunctive relief to restrain AIC from disclosure of the Confidential Information, in addition to other remedies including a claim for losses and damages.

10. Upon information and belief, Precision acquired the assets and secured debt of AIC on or about April 15, 2004, pursuant to a purported "bulk transfer", or in the alternative, the transfer of assets by AIC to Precision was fraudulent.

11. The "bulk sales notice" sent to creditors of Precision indicated that the property to be transferred to Precision included intangible assets, contracts and most work in progress.

12. In accordance with said notice, Precision is bound by the terms of the Confidentiality Agreement.

13. Plaintiffs believe and therefore aver that since sometime in July, 2004, Precision and/or AIC have been and are in the process of constructing machinery previously fabricated for Plaintiffs, including but not limited to bin dumpers, wash lines, wedgers, cutters, belt slicers, spin washers and control panels.

14. Plaintiffs believe and therefore aver that the design of such machinery incorporates the Confidential Information in breach of the Confidentiality Agreement.

15. Precision is not in the business of designing food processing equipment, and any and all food processing machines manufactured by AIC or Precision were manufactured based upon designs, drawings, technical information and specifications provided by Backus or FreshTec.

16. Such designs, drawings, technical information and specifications are Confidential Information subject to the restrictions contained in the Confidentiality Agreement.

17. Precision holds a limited license to use the Confidential Information, and pursuant to the Confidentiality Agreement, any ideas, suggestions or comments incorporated into the food processing equipment designs are the intellectual property of Backus.

18. As such, to the extent that Precision is fabricating machinery which has been adapted, changed or modified by Precision but still performs the same function as machinery previously produced for or on behalf of Plaintiffs, necessarily incorporates Confidential Information or intellectual property rights that are the exclusive property of Backus, and as such constitute a breach of the Confidentiality Agreement.

19. Disclosure of the Confidential Information is detrimental to Plaintiffs' business interests, and both Backus and FreshTec will suffer irreparable harm in the event that Defendants are permitted to use the Confidential Information to produce, sell, license or provide same or similar products as are presently being provided by Backus and/or FreshTec.

20. Plaintiff brings this motion for preliminary injunction to prevent Precision from using the Confidential Information in any manner in connection with its fabrication and design of food processing equipment for sale to third parties.

21. For the reasons stated herein and in Plaintiff's Complaint in Equity, unless and until Defendant is enjoined from manufacturing, developing, producing or otherwise fabricating food processing equipment including but not limited to bin dumpers, wash lines, wedgers, cutters, belt slicers, spin washers and control panels for third parties, Plaintiff will be irreparably harmed as the Confidential Information is critical to the on-going success of Plaintiffs' business.

22. Plaintiff is likely to succeed on the merits of its Complaint.

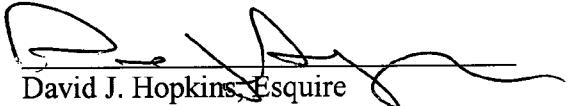
23. Plaintiff has no adequate remedy at law.

24. Plaintiff shall post bond in escrow as directed by this Honorable Court. However, FreshTec has previously deposited \$91,012.00 in an escrow account at Farmers National Bank in the name of David J. Hopkins, Esquire.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter a preliminary injunction upon the entry of an appropriate bond by Plaintiff enjoining and restraining Defendants and their agents, servants, employees, employers, consultants, officers, directors, attorneys, affiliates, successors, and assigns and any other individual or entity within its control or supervision and all other persons or entities acting in concert with Defendants or on their behalf or on its behalf or participating with Defendant until hearing on the matter or until further order of Court from (1) violating any term or provision of the Confidentiality Agreement; (2) using the Confidential Information to manufacture, develop, produce or otherwise fabricate for sale or distribution any food processing equipment; (3) manufacturing, developing, producing or fabricating for sale or distribution any food processing equipment that performs the same function as any machinery previously produced for or on behalf of Plaintiffs; and (4) any and all such other relief as the Court deems appropriate.

Respectfully submitted,

HOPKINS HELTZEL LLP



David J. Hopkins, Esquire  
Attorney for Plaintiffs



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

BACKUS USA, INC, a Pennsylvania  
Corporation, and FRESHTEC FOOD  
PROCESSING EQUIPMENT  
INTERNATIONAL, LLC,  
A Pennsylvania limited liability company,  
Plaintiff,

v. : No.

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
Defendants.

## Type of Pleading: Complaint in Equity

Filed on behalf of: Backus USA, Inc. and  
FreshTec Food Processing Equipment  
International, LLC

**Counsel of Record for this party:**

HOPKINS HELTZEL, LLP

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
Supreme Court No. 42519

900 Beaver Drive  
DuBois, Pennsylvania 15801  
(814) 375-0300

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

BACKUS USA, INC, a Pennsylvania	:	
Corporation, and FRESHTEC FOOD	:	
PROCESSING EQUIPMENT	:	
INTERNATIONAL, LLC,	:	
A Pennsylvania limited liability company,	:	
Plaintiff,	:	
	:	
v.	:	No.
	:	
PRECISION FABRICATION AND	:	
CONTROLS, INC. and ADVANCED	:	
INDUSTRIAL CONTROLS, INC.	:	
Defendants.	:	

**NOTICE**

TO: Defendants

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 Amended Complaint is 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 property or other rights important to you.

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

Office of the Court Administrator  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830  
(814) 765-2641 (ext. 5982)

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

BACKUS USA, INC., a Pennsylvania Corporation and FRESHTEC FOOD PROCESSING EQUIPMENT :  
INTERNATIONAL, LLC, a Pennsylvania limited liability company, :  
Plaintiff, :  
v. :  
PRECISION FABRICATION AND :  
CONTROLS, INC. and ADVANCED :  
INDUSTRIAL CONTROLS, INC. :  
Defendants. :  
No. :  
:

## COMPLAINT IN EQUITY

AND NOW, comes Plaintiffs, Backus USA, Inc. ("Backus") and FreshTec Food Processing Equipment International, LLC ("FreshTec"), by and through their undersigned counsel, and files the within Complaint in Equity as follows:

1. Plaintiff FreshTec is a Pennsylvania limited liability corporation with offices located at P.O. Box 585, DuBois, Pennsylvania 15801. FreshTec is engaged in the business of designing and selling machines and equipment to the food processing industry.

2. Plaintiff, Backus is a Delaware corporation, with offices located at P.O. Box 585, DuBois, Pennsylvania, 15801. Backus is engaged in the design, selling and engineering of food processing products, as well as material handling and automation for other industries.

3. Defendant Advanced Industrial Controls, Inc., ("AIC") is a Pennsylvania corporation, whose principal place of business is located at 536 East Main Street, Bradford, Pennsylvania 16701. AIC is or was engaged in fabrication and construction of equipment.

4. Precision Fabrication and Controls, Inc. ("Precision") is a Pennsylvania corporation, whose principal place of business is located at 195 Chestnut Street, P.O. Box 331, Bradford, Pennsylvania 16701. Precision is in the business of manufacturing machines.

5. Beginning in June, 2002, Backus and FreshTec entered into a business relationship with AIC for the fabrication and delivery of several items of machinery designed for and on behalf of Backus' customers.

6. In connection with this business relationship, it was necessary for Backus to disclose certain confidential information to Defendants for purposes of allowing Defendants to fabricate and design the machinery to Backus' customers' specifications.

7. Such confidential information included business records and plans, financial statements, customer lists and records, trade secrets, technical information, products, inventions, product design information, pricing structure, discounts, costs, computer programs and listings, source codes and/or object codes and other proprietary information (the "Confidential Information").

8. Due to the necessity of disclosing the Confidential Information to Defendants and the crucial importance of ensuring the confidentiality of such information to the future and present operations of Backus and AIC entered into a Confidentiality Agreement dated June 1, 2002. A copy of the Confidentiality Agreement is attached hereto as Exhibit A.

9. Paragraph II of the Confidentiality Agreement provides that the Confidential Information was a "valuable, special and unique asset of Backus which provides Backus with a significant competitive advantage," and further provides that AIC would not disclose the Confidential Information to any person or entity without the prior written consent of Backus.

10. Paragraph VI of the Confidentiality Agreement also indicates that AIC acquires no intellectual property rights, and "even if suggestions, comments, and/or ideas made by AIC are incorporated into the Confidential Information or related materials during the term of this Agreement."

11. The parties agreed in Paragraph II of the Confidentiality Agreement that in the event that AIC has disclosed or threatens to disclose the Confidential Information, Backus is entitled to injunctive relief to restrain AIC from disclosure of the Confidential Information, in addition to other remedies including a claim for losses and damages.

12. Upon information and belief, Precision acquired the assets and secured debt of AIC on or about April 15, 2004, pursuant to a purported "bulk transfer."

13. The "bulk sales notice" sent to creditors of Precision indicated that the property to be transferred to Precision included intangible assets, contracts and most work in progress. The "bulk sales notice" is attached hereto as Exhibit B.

14. In accordance with said notice, or by equitable principles, Precision is bound by the terms of the Confidentiality Agreement.

15. Following Precision's takeover of AIC's operations, delivery of the food processing machinery to FreshTec was significantly delayed causing customer dissatisfaction with FreshTec.

16. In several instances, machinery delivered by Precision was defective and required extensive repairs. Said repairs cost FreshTec significant expenses due to visits and repair work necessary to resolve said defects.

17. On July 28, 2004, following unsuccessful efforts to resolve outstanding payment issues, FreshTec filed a Complaint in Equity at Docket Number 041146CD alleging various

claims including tortious interference with contractual relations, defamation, and seeking a decree with respect to the proper payee.

18. On the same date, FreshTec filed a Motion for Preliminary Injunction at the same caption, seeking to enjoin Precision from contacting its customers.

19. On July 29, 2004, this Court entered an injunction prohibiting AIC or Precision from contacting any of FreshTec's customers and from taking any action to encumber any machinery held by or in the possession of FreshTec's customers. Further, this Honorable Court ordered FreshTec to place the sum of \$91,012.00 into escrow pending resolution of the matters set forth in FreshTec's Complaint which FreshTec has done.

20. Plaintiffs believe and therefore aver that since sometime in July, 2004, Precision and/or AIC have been and are in the process of constructing machinery previously fabricated for Plaintiffs, including but not limited to bin dumpers, wash lines, wedgers, cutters, belt slicers, spin washers and control panels.

21. Plaintiffs believe and therefore aver that such machinery is being produced for sale to third parties in direct competition with Plaintiffs.

22. Plaintiffs believe and therefore aver that Defendants have used the Confidential Information in violation of the Confidentiality Agreement in order to fabricate these designs for other customers.

23. Precision is not in the business of designing food processing equipment, and any and all food processing machines manufactured by AIC or Precision were manufactured based upon designs, drawings, technical information and specifications provided by Backus or FreshTec.

24. Such designs, drawings, technical information and specifications are Confidential Information subject to the restrictions contained in the Confidentiality Agreement.

25. Disclosure of the Confidential Information is detrimental to Plaintiffs' business interests, and both Backus and FreshTec will suffer irreparable harm in the event that Defendants are permitted to use the Confidential Information to produce, sell, license or provide same or similar products as are presently being provided by Backus and/or FreshTec.

## COUNT I

### Breach of Contract

26. Paragraphs 1-24 above are hereby incorporated as though set forth fully herein.

27. Precision has manufactured or fabricated highly specialized machinery previously fabricated for Plaintiffs, including but not limited to bin dumpers, wash lines, wedgers, cutters, belt slicers, spin washers and control panels, and sold such machinery to third parties.

28. Based upon the process involved in Plaintiffs' business and the customization of the machinery to the needs of its customers, any machinery previously produced for Plaintiffs' would incorporate certain Confidential Information, including customer specifications, technology and product design information.

29. Precision's manufacture or fabrication of such machinery for any third party would necessarily include the use of Confidential Information in breach of the Confidentiality Agreement.

30. Pursuant to the transfer of assets in the bulk sales notice, Precision succeeded to all of the contracts to which AIC was a party, including the Confidentiality Agreement, or in the alternative, the transfer by AIC to Precision was fraudulent.

31. The business in which Backus is engaged is a highly competitive industry. As such, Precision's use and/or disclosure of such Confidential Information in breach of the Confidentiality Agreement will result in irreparable harm to Backus, which cannot be compensated by monetary damages and which harm is likely to continue and cannot be adequately remedied at law.

WHEREFORE, Plaintiff, Backus USA, Inc., respectfully requests that an injunction issue preliminarily until final hearing and permanently thereafter, enjoining Defendant Precision from further disclosing or using the Confidential Information in violation of the Confidentiality Agreement, and further requiring Precision to comply with the terms of the Confidentiality Agreement.

## COUNT II

### Breach of Contract

32. Paragraphs 1-30 above are hereby incorporated as though set forth fully herein.

33. Precision holds a limited license to use the Confidential Information, and pursuant to the Confidentiality Agreement, any ideas, suggestions or comments incorporated into the food processing equipment designs are the intellectual property of Backus.

34. As such, to the extent that Precision is fabricating machinery which has been adapted, changed or modified by Precision but still performs the same function as machinery previously produced for or on behalf of Plaintiffs, necessarily incorporates Confidential Information or intellectual property rights that are the exclusive property of Backus, and as such constitute a breach of the Confidentiality Agreement.

35. Pursuant to the transfer of assets in the bulk sales notice, Precision succeeded to all of the contracts to which AIC was a party, including the Confidentiality Agreement, or in the alternative, the transfer from AIC to Precision was fraudulent.

36. The business in which Backus is engaged is a highly competitive industry. As such, Precision's use and/or disclosure of such Confidential Information in breach of the Confidentiality Agreement will result in irreparable harm to Backus, which cannot be compensated by monetary damages and which harm is likely to continue and cannot be adequately remedied at law.

WHEREFORE, Plaintiff, Backus USA, Inc., respectfully requests that an injunction issue preliminarily until final hearing and permanently thereafter, enjoining Defendant Precision from further disclosing or using the Confidential Information or intellectual property owned by Backus to develop food processing machinery in breach of the Confidentiality Agreement, and further requiring Precision to comply with the terms of the Confidentiality Agreement.

**COUNT III**

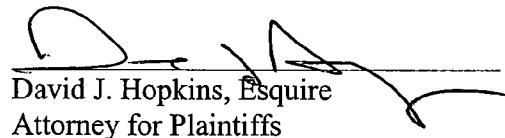
**ATTORNEY FEES**

37. Paragraphs 1-36 above are hereby incorporated as though set forth fully herein.
38. Defendants' actions have been willful and wanton and such actions entitle Plaintiffs to attorney fees.

WHEREFORE Plaintiffs, Backus USA, Inc. and FreshTec Food Processing Equipment International, LLC, respectfully requests that Plaintiffs be awarded attorney fees and such other and further relief as the Court deems fair, just and equitable.

Respectfully submitted,

HOPKINS HELTZEL LLP



David J. Hopkins, Esquire  
Attorney for Plaintiffs

## ***CONFIDENTIALITY AGREEMENT***

This Confidentiality Agreement (this "Agreement") is made effective as of June 01, 2002, between Backus USA, Inc., of PO Box 585, DuBois, Pennsylvania 15801, and AIC, of 536 East Main Street, Bradford, Pennsylvania 16701.

In this Agreement, the party who owns the Confidential Information will be referred to as "Backus", and the party to whom the Confidential Information will be disclosed will be referred to as "AIC".

Backus is engaged in Design, building, selling and engineering of food processing products, as well as material handling and automation for other industries. AIC is engaged in fabrication and construction of equipment. Information will be disclosed to AIC in order for them to design and fabricate certain equipment for Backus USA. AIC has represented that AIC will protect the confidential material and information which may be disclosed between Backus and AIC. Therefore, the parties agree as follows:

**I. CONFIDENTIAL INFORMATION.** The term "Confidential Information" means any information or material which is proprietary to Backus, whether or not owned or developed by Backus, which is not generally known other than by Backus, and which AIC may obtain through any direct or indirect contact with Backus.

**1. Confidential Information includes without limitation:**

- business records and plans;
- financial statements;
- customer lists and records;
- trade secrets;
- technical information;
- products;
- inventions;
- product design information;
- pricing structure;
- discounts;
- costs;
- computer programs and listings;
- source code and/or object code
- and other proprietary information.

**II. PROTECTION OF CONFIDENTIAL INFORMATION.** AIC understands and acknowledges that the Confidential Information has been developed or obtained by Backus by the investment of significant time, effort and expense, and that the Confidential Information is a valuable, special and unique asset of Backus which provides Backus with a significant competitive advantage, and needs to be protected from improper disclosure. In consideration for the disclosure of the Confidential Information, AIC agrees to hold in confidence and to not disclose the Confidential Information to any person or entity without the prior written consent of

Post-N <sup>o</sup>	Fax Note	7671	Date	6/3/02	# of pages	► 3
To	Larry Salone					
Co./Dept.	JR					
Phone #	Co. A. I. C.					
Fax #	Phone #					
	Fax #					

Backus.

*No Copying.* AIC will not copy or modify any Confidential Information without the prior written consent of Backus.

*Application to Employees.* Further, AIC shall not disclose any Confidential Information to any employees of AIC, except those employees who are required to have the Confidential Information in order to perform their job duties in connection with the limited purposes of this Agreement. Each permitted employee to whom Confidential Information is disclosed shall sign a non-disclosure agreement substantially the same as this Agreement at the request of Backus.

*Unauthorized Disclosure of Information.* If it appears that AIC has disclosed (or has threatened to disclose) Confidential Information in violation of this Agreement, Backus shall be entitled to an injunction to restrain AIC from disclosing, in whole or in part, the Confidential Information. Backus shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

**III. RETURN OF CONFIDENTIAL INFORMATION.** Upon the written request of Backus, AIC shall return to Backus all written materials containing the Confidential Information. AIC shall also deliver to Backus written statements signed by AIC certifying that all materials have been returned within five (5) days of receipt of the request.

**IV. RELATIONSHIP OF PARTIES.** Neither party has an obligation under this Agreement to purchase any service or item from the other party, or commercially offer any products using or incorporating the Confidential Information. This Agreement does not create any agency, partnership, or joint venture.

**V. NO WARRANTY.** AIC acknowledges and agrees that the Confidential Information is provided on an AS IS basis. Backus MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONFIDENTIAL INFORMATION AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL BACKUS BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OR USE OF ANY PORTION OF THE CONFIDENTIAL INFORMATION. Backus does not represent or warrant that any product or business plan disclosed to AIC will be marketed or carried out as disclosed, or at all. Any actions taken by AIC in response to the disclosure of the Confidential Information shall be solely at the risk of AIC.

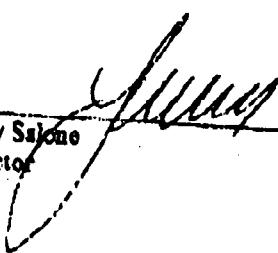
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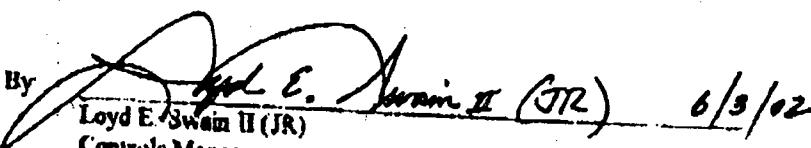
Information Owner:  
Buckus USA, Inc.

By:

  
Larry Sajone  
Director

Recipient:  
AIC

By:

  
Loyd E. Swain II (JR)  
Controls Manager

6/3/02

McCLURE & MILLER LLP  
ATTORNEYS AT LAW  
SUITE 701, 717 STATE STREET  
ERIE, PENNSYLVANIA 16501

Daniel L. R. Miller  
Eugene J. Brew  
Edward P. Wigmann  
Michael J. Vlansky  
Cheladne Hall McClure  
Jeffrey J. Cole  
David J. Rhoten  
Tracy L. Harris

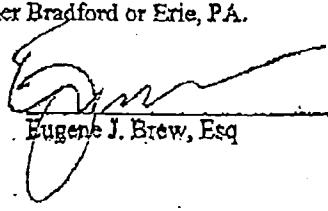
Harvey D. McClure, Esq. (of counsel)  
Herbert J. Johnson, Esq. (of counsel)  
Telephone: (814) 453-3691  
Telecopier: (814) 454-1554  
E-mail address:  
gbrew@mccclure-miller.com

April 7, 2004

TO THE CREDITORS OF: ADVANCED INDUSTRIAL CONTROLS, INC.,  
536 East Main Street  
Bradford, PA 16701

Please take notice of the following. Based on information received from the intended Purchaser of the assets of Advanced Industrial Controls, Inc., the following information is submitted:

1. A bulk transfer of the assets of ADVANCED INDUSTRIAL CONTROLS, INC., is about to be made.
2. The name and address of the Transferee, or purchaser of the assets is: PRECISION FABRICATION & CONTROLS, INC., 195 Chestnut Street, P. O. Box 331, Bradford, PA, 16701. *0403-10/03*
3. All of the debts of ADVANCED INDUSTRIAL CONTROLS, INC., are not to be paid as they fall due as a result of this transaction.
4. The location and general description of the property to be transferred is: All inventory, fixed assets, accounts receivable, name, customer list, intangible assets, non-compete agreements, contracts, and most work-in-progress of ADVANCED INDUSTRIAL CONTROLS, INC., located at its place of business, 536 East Main Street, and 245 Chestnut Street, Bradford, PA, 16701.
5. The total debts of ADVANCED INDUSTRIAL CONTROLS, INC., exceed the value of its assets.
6. The transfer is for new consideration, and the amount of such consideration is \$100,000.00, and assumption of most of the secured debt of ADVANCED INDUSTRIAL CONTROLS, INC.
7. The purchaser/Transferee intends to continue in business at the same locations.
8. The time and place of the transfer of the assets and payment is expected to be on or about APRIL 15, 2004, at a location to be determined in either Bradford or Erie, PA.

  
Eugene J. Brew, Esq.

11,107,274

TOTAL P.81

**VERIFICATION**

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

A handwritten signature in black ink, appearing to read "James", is written over a horizontal line.

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

BACKUS USA, INC, a Pennsylvania  
Corporation, and FRESHTEC FOOD  
PROCESSING  
EQUIPMENT INTERNATIONAL, LLC,  
A Pennsylvania limited liability company,  
Plaintiff,

v.

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
Defendants.

No. 04-1577-CD

FILED *acc*  
01/31/2004 Atty  
OCT 13 2004 *Heetzel*

William A. Shaw  
Prothonotary/Clerk of Courts

ORDER OF COURT

AND NOW, this *13<sup>th</sup>* day of October, 2004, upon consideration of Plaintiff's Motion for Preliminary Injunction and Plaintiff's Complaint in Equity, filed in conjunction therewith, and having determined that Plaintiff will suffer immediate and irreparable injury, it is hereby ordered, adjudged and decreed that Defendants and their agents, servants, employees, employers, consultants, officers, directors and attorneys, affiliates, successors and assigns and any other individual or entity within their control or supervision and all other persons or entities acting in concert or on their behalf are enjoined until hearing on the matter or until further order of Court from, directly or indirectly: (1) violating any term or provision of the Confidentiality Agreement; (2) using the Confidential Information to manufacture, develop, produce or other fabricate for sale or distribution any food processing equipment; (3) manufacturing, developing, producing or fabricating for sale or distribution any food processing equipment that performs the same function as any machinery previously produced for or on behalf of Plaintiffs; and (3) any and all such other relief as the Court deems appropriate.

A hearing on Plaintiff's Motion for Preliminary Injunction is scheduled for  
October 20, 2004 at 1:30P.m. in Courtroom No.2 at the Clearfield County Courthouse,  
Clearfield, Pennsylvania.

BY THE COURT,

  
JUDGE



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

BACKUS USA, INC., a Pennsylvania :  
Corporation, and FRESHTEC FOOD :  
PROCESSING EQUIPMENT :  
INTERNATIONAL, LLC, A :  
Pennsylvania Limited Liability :  
Company :  
vs. : No. 04-1577-CD  
:  
PRECISION FABRICATION AND :  
CONTROLS, INC., and ADVANCED :  
INDUSTRIAL CONTROLS, INC. :  
:

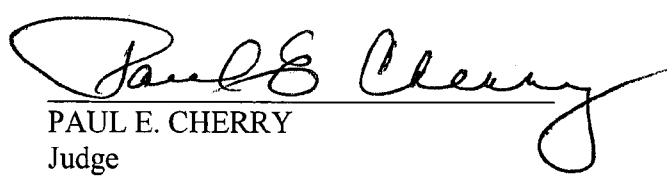
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01848 BPL Hopkins  
OCT 26 2004 Brew  
LCA envelope

William A. Shaw  
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 25<sup>th</sup> day of October, 2004, it is the ORDER of the Court that argument on Plaintiffs' Motion for Preliminary Injunction filed in the above matter has been scheduled for Tuesday, November 9, 2004 at 1:30 P.M., in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
PAUL E. CHERRY  
Judge

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

(CIVIL DIVISION)

BACKUS USA, INC., a Pennsylvania Corporation, and FRESHTEC FOOD PROCESSING EQUIPMENT INTERNATIONAL, LLC, A Pennsylvania limited liability company Plaintiff : Type of Case:  
No. 04-1577-CD  
Complaint in Equity  
Vs. : Type of Pleading:  
PRECISION FABRICATION AND CONTROLS, INC. and ADVANCED INDUSTRIAL CONTROLS, INC. Defendants : Filed on behalf of :  
Precision Fabrication and Controls, Inc. and Advanced Industrial Controls, Inc.  
: Counsel of Record for this party:  
Eugene J. Brew, Esq.  
McClure & Miller LLP  
717 State Street, Suite 701  
Erie, Pa. 16501  
(814) 453-3681  
Supreme Court No. 06500  
: Counsel of record for Adverse Party:  
David J. Hopkins, Esq.  
Hopkins Heltzel LLP  
900 Beaver Drive  
DuBois, Pa. 15801

Dated: October 22, 2004

FILED NO  
m/2/08/01  
OCT 27 2004  
B6  
William A. Shaw  
Prothonotary, Clerk of Courts

BACKUS USA, INC., A  
Pennsylvania Corporation;  
and FRESHTEC FOOD  
PROCESSING EQUIPMENT  
INTERNATIONAL, LLC, A  
Pennsylvania limited  
liability company,  
Plaintiffs

vs.

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
Defendants

\* IN THE COURT OF COMMON PLEAS  
\* OF CLEARFIELD COUNTY,  
\* PENNSYLVANIA

\* NO. 04-1577-CD

APPEARANCE  
ACCEPTANCE OF SERVICE

I, Eugene J. Brew, Jr., Esq., accept service of the Complaint in Equity in the above matter on behalf of Precision Fabrication and Controls, Inc., and request the Prothonotary to enter my appearance for Precision Fabrication and Controls, Inc.

TO THE PROTHONOTARY:

Enter my appearance for Precision Fabrication and Controls, Inc.

  
\_\_\_\_\_  
Eugene J. Brew, Jr., Esq.  
McCLURE & MILLER  
701 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681

Dated: October 22, 2004

**CERTIFICATE OF MAILING**

I, Eugene J. Brew, Jr., Esq., hereby certify that on the below date, I served a true copy of the within pleading on the following by mailing the same to them, postage prepaid:

David J. Hopkins, Esq.  
Hopkins Heltzel, LLP  
900 Beaver Drive  
DuBois, Pennsylvania 15801  
Counsel for Plaintiffs

The Honorable Paul E. Cherry  
Judge of the Court of Common Pleas  
Clearfield County, Pennsylvania  
Clearfield County Court House  
230 East Market Street  
Clearfield, Pennsylvania 16830

  
\_\_\_\_\_  
Eugene J. Brew, Jr., Esq.

Dated: October 22, 2004

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

(CIVIL DIVISION)

BACKUS USA, INC., a Pennsylvania Corporation, and FRESHTEC FOOD PROCESSING EQUIPMENT : No. 04-1577-CD  
INTERNATIONAL, LLC, :  
A Pennsylvania limited liability company :  
Plaintiff : Type of Case:  
Vs. : Complaint in Equity  
: Type of Pleading:  
PRECISION FABRICATION AND CONTROLS, INC. and ADVANCED INDUSTRIAL CONTROLS, INC. : Preliminary Objections  
Defendants : Filed on behalf of :  
: Precision Fabrication and  
: Controls, Inc. and Advanced  
: Industrial Controls, Inc.  
: Counsel of Record for this party:  
: Eugene J. Brew, Esq.  
: McClure & Miller LLP  
: 717 State Street, Suite 701  
: Erie, Pa. 16501  
: (814) 453-3681  
: Supreme Court No. 06500  
: Counsel of record for Adverse Party:  
: David J. Hopkins, Esq.  
: Hopkins Heltzel LLP  
: 900 Beaver Drive  
: DuBois, Pa. 15801

Dated: October 22, 2004

FILED NO  
m10/08/04  
OCT 27 2004  
SAC

William A. Shaw  
Prothonotary Clerk of Courts

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

(CIVIL DIVISION)

**BACKUS USA, INC., a Pennsylvania Corporation, and FRESHTEC FOOD PROCESSING EQUIPMENT INTERNATIONAL, LLC,** :  
**A Pennsylvania limited liability company** :  
Plaintiff :  
:  
vs. :  
:  
**PRECISION FABRICATION AND CONTROLS, INC. and ADVANCED INDUSTRIAL CONTROLS, INC.** :  
Defendants

**PRELIMINARY OBJECTIONS**

Defendant, Precision Fabrication and Controls, Inc. (Precision), by its attorney, Eugene J. Brew, Jr., Esq., files these Preliminary Objections to the Complaint in Equity in the above matter.

1. This action has been brought by plaintiffs to enjoin defendants from disclosing or using alleged confidential information of Backus in accordance with the terms of a Confidentiality Agreement.
2. The written Confidentiality Agreement, attached to the Complaint as Exhibit "A" dated June 1, 2002, was between Backus and Advanced Industrial Controls, Inc., the second defendant in this action.

3. The Confidentiality Agreement, Exhibit "A", attached to the Complaint, states in Paragraph VII:

*This agreement shall not be assignable by either party, and neither party may delegate its duties under this agreement, without the prior written consent of the other party.*

4. There is no written assignment of the agreement attached to the Complaint.
5. The cause of action is based entirely on the Confidentiality Agreement. **Complaint ¶ 14, 16, 17, 18, 22, 24, 25, 28, 29, 30, 31 and 34.**

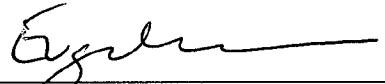
**DEMURRER**

The Complaint is legally insufficient for the reasons as set forth above.

WHEREFORE, Defendant, Precision, respectfully requests the Court to dismiss the Complaint, with prejudice.

Respectfully submitted,

McCLURE AND MILLER, LLP



---

Eugene J. Brew, Jr., Esq.  
Attorney for Defendant

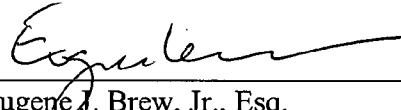
Dated: October 27, 2004

**CERTIFICATE OF MAILING**

I, Eugene J. Brew, Jr., Esq., hereby certify that on the below date, I served a true copy of the within pleading on the following by mailing the same to them, postage prepaid:

David J. Hopkins, Esq.  
Hopkins Heltzel, LLP  
900 Beaver Drive  
DuBois, Pennsylvania 15801  
Counsel for Plaintiffs

The Honorable Paul E. Cherry  
Judge of the Court of Common Pleas  
Clearfield County, Pennsylvania  
Clearfield County Court House  
230 East Market Street  
Clearfield, Pennsylvania 16830

  
\_\_\_\_\_  
Eugene J. Brew, Jr., Esq.

Dated: October 22, 2004

(A)

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

BACKUS USA, INC., a Pennsylvania :  
Corporation, and FRESHTEC FOOD :  
PROCESSING EQUIPMENT :  
INTERNATIONAL, LLC, A :  
Pennsylvania Limited Liability :  
Company :  
vs. : No. 04-1577-CD  
:  
PRECISION FABRICATION AND :  
CONTROLS, INC., and ADVANCED :  
INDUSTRIAL CONTROLS, INC. :  
:

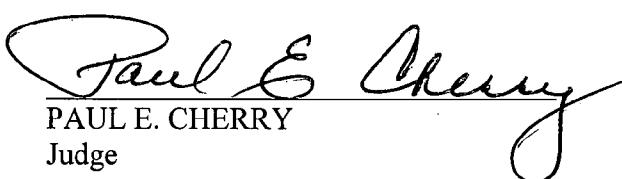
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012:54 AM Re: Service  
§ OCT 28 2004 to Atty Brew

William A. Shaw  
Prothonotary/Clerk of Courts

**ORDER**

AND NOW, this 28<sup>th</sup> day of October, 2004, it is the ORDER of the  
Court that argument on Defendants' Preliminary Objections filed in the above matter  
has been scheduled for Tuesday, November 9, 2004 at 1:30 P.M., in Courtroom No.  
2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
PAUL E. CHERRY  
Judge



OFFICE OF COURT ADMINISTRATOR  
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE  
SUITE 228, 230 EAST MARKET STREET  
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK  
COURT ADMINISTRATOR

PHONE: (814) 765-2641  
FAX: 1-814-765-7649

MARCY KELLEY  
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

**\*\*\* Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - (LAW)

BACKUS USA, INC., a Pennsylvania  
Corporation, and  
FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC  
A Pennsylvania Limited Liability Company  
PLAINTIFF

vs.

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
DEFENDANTS

No. 2004-1577 - CD

Type of Case: Equity -  
Injunctive Relief

Type of Pleading:  
Affidavit of Service

Filed on behalf of:  
Precision Fabrication & Controls,  
Inc.  
Defendant

Counsel of record for this party:

Eugene J. Brew, Esq.  
McClure & Miller LLP  
717 State St., Suite 701  
Erie, PA 16501  
(814) 453-3681  
Supreme Court No. 06500

Counsel of Record for Adverse  
Party:

David J. Hopkins, Esq.  
Hopkins Heltzel, LLP  
900 Beaver Drive  
DuBois, PA 15801

Dated: November 1, 2004

FILED NO CC  
m/j:25/01  
NOV 04 2004 E6k

William A. Shaw  
Prothonotary/Clerk of Courts

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

BACKUS USA, INC., a Pennsylvania Corporation, and	*
	*
FRESHTEC FOOD PROCESSING	*
EQUIPMENT INTERNATIONAL, LLC	*
A Pennsylvania Limited Liability Company	*
Plaintiff	*
	No. 04-1577 - CD
	*
vs.	*
	*
PRECISION FABRICATION AND	*
CONTROLS, INC., and	*
ADVANCED INDUSTRIAL CONTROLS,	*
INC.	*
Defendants	*

**AFFIDAVIT OF SERVICE**

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF ERIE :SS:

I, Eugene J. Brew, Esq., 717 State Street, Suite 701, Erie, PA, being first duly sworn according to law, depose and state that I mailed a true copy of the Order of Court in the above matter dated October 28, 2004, a copy of which is attached hereto, upon the following on the below date by U.S. Mail, postage prepaid:

David J. Hopkins, Esq.  
Hopkins Heltzel, LLP  
900 Beaver Drive  
DuBois, PA 15801

Advanced Industrial Controls, Inc.  
536 East Main St.  
Bradford, PA 16701

Civil Court Administrator  
Clearfield County  
230 E. Market St.  
Clearfield, PA 16830

  
Eugene J. Brew, Esq.  
McCLURE & MILLER LLP  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication and Controls, Inc.

Dated: November 1, 2004

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

BACKUS USA, INC., a Pennsylvania :  
Corporation, and FRESHTEC FOOD :  
PROCESSING EQUIPMENT :  
INTERNATIONAL, LLC, A :  
Pennsylvania Limited Liability :  
Company :  
vs. : No. 04-1577-CD  
: :  
PRECISION FABRICATION AND :  
CONTROLS, INC., and ADVANCED :  
INDUSTRIAL CONTROLS, INC. :  
:

**ORDER**

AND NOW, this 28<sup>th</sup> day of October, 2004, it is the ORDER of the Court that argument on Defendants' Preliminary Objections filed in the above matter has been scheduled for Tuesday, November 9, 2004 at 1:30 P.M., in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

I hereby certify this to be a true and attested copy of the original statement filed in this case

BY THE COURT:  
*s/ Paul E. Cherry*

OCT 28 2004

Attest:

*Paul E. Cherry*  
Prothonotary/  
Clerk of Courts

PAUL E. CHERRY  
Judge

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

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC,  
A Pennsylvania limited liability company,  
Plaintiff,

v.

No. 2004-01146 C.D.

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
Defendants.

---

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

BACKUS USA, INC., a Pennsylvania  
Corporation, and FRESHTEC FOOD  
PROCESSING EQUIPMENT  
INTERNATIONAL, LLC,  
A Pennsylvania limited liability company,  
Plaintiff,

v.

No. 2004-1577 C.D.

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
Defendants.

Type of Pleading: Motion to  
Consolidate Actions Pursuant to  
Pa.R.C.P. §213(a)

Filed on behalf of: FreshTec Food  
Processing Equipment, International, LLC.

Counsel of Record for this Party:

HOPKINS HELTZEL, LLP

David J. Hopkins, Esquire  
Attorney at Law  
Supreme Court No. 42519  
900 Beaver Drive  
DuBois, Pennsylvania 15801  
(814) 375-0300

FILED NO CC  
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SAC  
William A. Shaw  
Prothonotary/Clerk of Courts  
Orig. filed to 04-1146-C.D.

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

FRESHTEC FOOD PROCESSING :  
EQUIPMENT INTERNATIONAL, LLC, :  
A Pennsylvania limited liability company, :  
Plaintiff, :

v. :

No. 2004-01146 C.D.

PRECISION FABRICATION AND :  
CONTROLS, INC. and ADVANCED :  
INDUSTRIAL CONTROLS, INC. :  
Defendants. :

---

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

BACKUS USA, INC., a Pennsylvania :  
Corporation, and FRESHTEC FOOD :  
PROCESSING EQUIPMENT :  
INTERNATIONAL, LLC, :  
A Pennsylvania limited liability company, :  
Plaintiff, :

v. :

No. 2004-1577 C.D.

PRECISION FABRICATION AND :  
CONTROLS, INC. and ADVANCED :  
INDUSTRIAL CONTROLS, INC. :  
Defendants. :

**MOTION TO CONSOLIDATE ACTIONS**  
**PURSUANT TO Pa.R.C.P. 213(a)**

AND NOW, comes Defendants, Backus USA, Inc. ("Backus") and FreshTec Food Processing Equipment International, LLC ("FreshTec"), by and through their undersigned attorneys, Hopkins Heltzel LLC, and files the within Motion and states as follows:

1. Movant, Backus USA, Inc., is a Delaware corporation with its principal place of business located at P.O. Box 585, DuBois, PA 15801.

2. Movant, FreshTec Food Processing Equipment International, LLC, is a Pennsylvania limited liability corporation with its principal place of business located at P.O. Box 585, DuBois, Pennsylvania 15801.

3. Respondent is Precision Fabrication & Controls, Inc., a Pennsylvania corporation with offices located at 195 Chestnut Street, Bradford, PA 16701.

4. Respondent is Advanced Industrial Controls, Inc., a Pennsylvania corporation with an unknown location.

5. Precision is in the business of designing, fabricating and manufacturing machinery and equipment for industry.

6. FreshTec is in the business of selling machinery and equipment to the food processing industry.

7. Precision and FreshTec engaged in a series of transactions involving the purchase of such machinery and equipment, such transactions being the subject matter of this litigation.

8. FreshTec commenced an action in equity in the Court of Common Pleas of Clearfield County Pennsylvania at No. 2004-1146-CD on July 28, 2004, against both Precision and Advance Industrial Controls, Inc., seeking entry of a decree with respect to the proper party to receive payment for the machinery ordered; and asserting claims for defamation and, tortious interference with contractual relationships and seeking specific performance.

9. Simultaneously, FreshTec sought a preliminary injunction against Precision. The injunction was granted by the Court on July 29, 2004, and precluded Precision and AIC from contacting FreshTec's customers regarding sums due and owing under any invoices or on

any other issue and from taking any action to encumber any machinery held by or in the possession of FreshTec's customers.

10. Backus and FreshTec commenced a civil action against Precision and AIC by Complaint filed on October 12, 2004 in the Court of Common Pleas of Clearfield County, Pennsylvania, at No. 2004-1577, asserting claims for breach of contract relating to a noncompete agreement and confidentiality agreement, both of which were executed by the parties as a prerequisite to the manufacture of the food processing equipment for customers of Backus and FreshTec.

11. The fundamental issue in both cases revolves around the transactions connected with the manufacture of food processing machinery by Defendants. Pa.R.C.P. No. 213(a) sanctions the consolidation of actions in this case because both cases arise out of a common question of law and fact and from the same occurrence.

12. Pursuant to Pa.R.C.P. No. 213(a), it is appropriate to consolidate the two actions:

a. The issue concerning whether AIC or Precision is the contracting party with respect to the manufacture of the food processing equipment is a critical issue in both actions, and predominant and significant to the litigation;

b. Coordination will result in an expeditious resolution of the issues raised in these actions. Coordination will be the more efficient utilization of judicial facilities and personnel and will result in the just and efficient conduct of the actions;

c. Failure to coordinate could cause duplicative and inconsistent rulings, orders or judgments; and

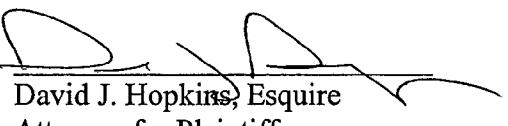
d. Settlement is more likely if the actions are coordinated.

WHEREFORE, Petitioner, FreshTec Food Processing Equipment International, LLC  
prays this Honorable Court to:

1. Consolidate Court of Common Pleas of Clearfield County case of FreshTec Food Processing Equipment International, LLC v. Precision Fabrication and Controls, Inc. and Advanced Industrial Controls, Inc., filed to Docket No. 2004-1146-CD, with the Court of Common Pleas of Clearfield County case of Backus USA, Inc. and Precision Fabrication & Controls, Inc. v. FreshTec Food Processing Equipment International, LLC, filed to Docket No. 2004-1577-CD.
2. Require all discovery and pretrial matters in the consolidated cases be filed in the Court of Common Pleas of Clearfield County under Docket No. 2004-1146-C.D.
3. Conduct the trial of the coordinated cases in the Court of Common Pleas of Clearfield County under Docket No. 2004-1146-CD; and
4. Make any other appropriate Orders as the Court deems necessary.

Respectfully submitted,

HOPKINS HELTZEL LLP



David J. Hopkins, Esquire  
Attorney for Plaintiffs

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

FRESHTEC FOOD PROCESSING :  
EQUIPMENT INTERNATIONAL, LLC, :  
A Pennsylvania limited liability company, :  
Plaintiff, :  
v. : No. 2004-1146 C.D.  
PRECISION FABRICATION AND :  
CONTROLS, INC. and ADVANCED :  
INDUSTRIAL CONTROLS, INC. :  
Defendants. :  
\_\_\_\_\_

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BACKUS USA, INC, a Pennsylvania :  
Corporation, and FRESHTEC FOOD :  
PROCESSING EQUIPMENT :  
INTERNATIONAL, LLC, :  
A Pennsylvania limited liability company, :  
Plaintiff, :  
v. : No. 2004-1577 C.D.  
PRECISION FABRICATION AND :  
CONTROLS, INC. and ADVANCED :  
INDUSTRIAL CONTROLS, INC. :  
Defendants. :  
\_\_\_\_\_

**RULE TO SHOW CAUSE**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_ 2004, upon consideration of the attached Motion to Consolidate, a Rule is hereby issued upon Respondent, Precision Fabrication and Advanced Industrial Controls, Inc., to Show Cause why the Motion to Consolidate Actions Pursuant to Pa.R.C.P §213(a) should not be granted. Rule Returnable the \_\_\_\_\_ day of \_\_\_\_\_, 2004 at \_\_\_\_\_ o'clock, \_\_\_\_\_.M. at the Clearfield County Courthouse, 230 E. Market Street, Clearfield, Pennsylvania 15801.

BY THE COURT,

\_\_\_\_\_ JUDGE

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

FRESHTEC FOOD PROCESSING	:	
EQUIPMENT INTERNATIONAL, LLC,	:	
A Pennsylvania limited liability company,	:	
Plaintiff,	:	
v.	:	No. 2004-1146 C.D.
PRECISION FABRICATION AND	:	
CONTROLS, INC. and ADVANCED	:	
INDUSTRIAL CONTROLS, INC.	:	
Defendants.	:	

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BACKUS USA, INC, a Pennsylvania	:	
Corporation, and FRESHTEC FOOD	:	
PROCESSING EQUIPMENT	:	
INTERNATIONAL, LLC,	:	
A Pennsylvania limited liability company,	:	
Plaintiff,	:	
v.	:	No. 2004-1577 C.D.
PRECISION FABRICATION AND	:	
CONTROLS, INC. and ADVANCED	:	
INDUSTRIAL CONTROLS, INC.	:	
Defendants.	:	

**FILED**

NOV 05 2004

William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of Motion to Consolidate Actions Pursuant to Pa.R.C.P. §213(a), filed on behalf of FreshTec Food Processing Equipment International, LLC, was forwarded by facsimile and first class mail, postage prepaid, on the 5<sup>th</sup> day of November, 2004, to all counsel of record, addressed as follows:

Facsimile: (814) 454-1554

Eugene J. Brew, Esquire  
McClure & Miller LLP  
717 State Street, Suite 701  
Erie, PA 16501

Advanced Industrial Controls, Inc.  
536 East Main Street  
Bradford, PA 16701



David J. Hopkins, Esquire  
Attorney for FreshTec Food Processing  
International LLC

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

FRESHTEC FOOD PROCESSING	:	
EQUIPMENT INTERNATIONAL, LLC,	:	
A Pennsylvania limited liability company,	:	
Plaintiff,	:	
v.	:	No. 2004-1146 C.D.
PRECISION FABRICATION AND	:	
CONTROLS, INC. and ADVANCED	:	
INDUSTRIAL CONTROLS, INC.	:	
Defendants.	:	

---

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BACKUS USA, INC, a Pennsylvania	:	
Corporation, and FRESHTEC FOOD	:	
PROCESSING EQUIPMENT	:	
INTERNATIONAL, LLC,	:	
A Pennsylvania limited liability company,	:	
Plaintiff,	:	
v.	:	No. 2004-1577 C.D.
PRECISION FABRICATION AND	:	
CONTROLS, INC. and ADVANCED	:	
INDUSTRIAL CONTROLS, INC.	:	
Defendants.	:	

**RULE TO SHOW CAUSE**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_ 2004, upon consideration of the attached Motion to Consolidate, a Rule is hereby issued upon Respondent, Precision Fabrication and Advanced Industrial Controls, Inc., to Show Cause why the Motion to Consolidate Actions Pursuant to Pa.R.C.P §213(a) should not be granted. Rule Returnable the \_\_\_\_\_ day of \_\_\_\_\_, 2004 at \_\_\_\_\_ o'clock, \_\_\_\_ M. at the Clearfield County Courthouse, 230 E. Market Street, Clearfield, Pennsylvania 15801.

BY THE COURT,

---

JUDGE

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

BACKUS USA, INC, a Pennsylvania  
Corporation, and FRESHTEC FOOD  
PROCESSING EQUIPMENT  
INTERNATIONAL, LLC,  
a Pennsylvania limited liability company,  
Plaintiff,

v.

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
Defendants.

No. 2004-1577-CD

Type of Pleading: Response to Preliminary  
Objections to Plaintiffs' Complaint

Filed on behalf of: Backus USA, Inc. and  
FreshTec Food Processing Equipment  
International, LLC

Counsel of Record for this party:

HOPKINS HELTZEL, LLP

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
Supreme Court No. 42519

900 Beaver Drive  
DuBois, Pennsylvania 15801  
(814) 375-0300

FILED  
01/10/04  
NOV 09 2004  
2cc  
Atty Hopkins

William A. Shaw  
Prothonotary/Clerk of Courts

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

FRESHTEC FOOD PROCESSING	:
EQUIPMENT INTERNATIONAL, LLC,	:
A Pennsylvania limited liability company,	:
Plaintiff,	:
v.	:
	No. 2004-1146 C.D.
PRECISION FABRICATION AND	:
CONTROLS, INC. and ADVANCED	:
INDUSTRIAL CONTROLS, INC.	:
Defendants.	:

---

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BACKUS USA, INC, a Pennsylvania	:
Corporation, and FRESHTEC FOOD	:
PROCESSING EQUIPMENT	:
INTERNATIONAL, LLC,	:
A Pennsylvania limited liability company,	:
Plaintiff,	:
v.	:
	No. 2004-1577 C.D.
PRECISION FABRICATION AND	:
CONTROLS, INC. and ADVANCED	:
INDUSTRIAL CONTROLS, INC.	:
Defendants.	:

**RULE TO SHOW CAUSE**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_ 2004, upon consideration of the attached Motion to Consolidate, a Rule is hereby issued upon Respondent, Precision Fabrication and Advanced Industrial Controls, Inc., to Show Cause why the Motion to Consolidate Actions Pursuant to Pa.R.C.P §213(a) should not be granted. Rule Returnable the \_\_\_\_\_ day of \_\_\_\_\_, 2004 at \_\_\_\_\_ o'clock, \_\_\_\_ M. at the Clearfield County Courthouse, 230 E. Market Street, Clearfield, Pennsylvania 15801.

BY THE COURT,

---

JUDGE

HOPKINS HELTZEL LLP

900 Beaver Drive, DuBois, Pennsylvania 15801  
VOICE: (814) 375-0300 FAX: (814) 375-5035

---

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

BACKUS USA, INC, a Pennsylvania  
Corporation, and FRESHTEC FOOD  
PROCESSING EQUIPMENT  
INTERNATIONAL, LLC,  
a Pennsylvania limited liability company,  
Plaintiff,

v.

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
Defendants.

No. 2004-1577-CD

Type of Pleading: Response to Preliminary  
Objections to Plaintiffs' Complaint

Filed on behalf of: Backus USA, Inc. and  
FreshTec Food Processing Equipment  
International, LLC

Counsel of Record for this party:

HOPKINS HELTZEL, LLP

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
Supreme Court No. 42519

900 Beaver Drive  
DuBois, Pennsylvania 15801  
(814) 375-0300

FILED  
01/10/04  
NOV 09 2004  
2CC  
Atty Hopkins

William A. Shaw  
Prothonotary/Clerk of Courts

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

BACKUS USA, INC, a Pennsylvania	:	
Corporation, and FRESHTEC FOOD	:	
PROCESSING EQUIPMENT	:	
INTERNATIONAL, LLC,	:	
a Pennsylvania limited liability company,	:	
Plaintiff,	:	
	:	
v.	:	No. 2004-1577-CD
	:	
PRECISION FABRICATION AND	:	
CONTROLS, INC. and ADVANCED	:	
INDUSTRIAL CONTROLS, INC.	:	
Defendants.	:	

**PLAINTIFFS' RESPONSE TO DEFENDANT**  
**PRECISION FABRICATION AND CONTROLS, INC.'S**  
**PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT**

Plaintiffs, Backus USA, Inc. ("Backus") and FreshTec Food Processing Equipment International, Inc. ("FreshTec"), by its undersigned attorneys files this Response to Defendant Precision Fabrication and Controls, Inc.'s Preliminary Objections to Plaintiffs' Complaint in the above matter and sets forth in support thereof:

1. Admitted.
2. Admitted.
3. Paragraph VII of the Confidentiality Agreement speaks for itself. Further,

Plaintiffs' Complaint does not aver that the Confidentiality Agreement was assigned by Advanced Industrial Controls, Inc. ("AIC") to Precision. Indeed, at this preliminary phase of this litigation, Plaintiffs have no information as to what legal relationship exists or existed between AIC and Precision. However, accepting as true the facts set forth in Plaintiffs' Complaint: (1) Plaintiffs provided certain confidential information regarding their designs and plans to

Defendants; (2) Backus and AIC are parties to a Confidentiality Agreement barring the disclosure of such confidential information; and (3) Plaintiffs have reason to believe that the very confidential information protected by the Confidentiality Agreement is presently being used to construct food processing machinery for sale to third parties in direct competition with Plaintiffs. Plaintiffs are unaware as to how Precision came to have access to such confidential information. However, the inference in this case is that such access by Precision clearly evidences the existence of a relationship between Precision and AIC. Equity requires that Precision be held accountable for using such confidential information to gain competitive advantage, especially when AIC by the terms of the Confidentiality Agreement could not have done so. As such, this Preliminary Objection must be dismissed.

4. Admitted.

WHEREFORE, Plaintiffs respectfully requests that this Court deny Precision's Preliminary Objections to Plaintiffs' Complaint.

Respectfully submitted,

  
\_\_\_\_\_  
David J. Hopkins, Esquire  
Attorney for Plaintiffs

Dated: November 9, 2004

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

## **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of Plaintiffs' Response to Preliminary Objections to Complaint, filed on behalf of Backus USA, Inc. and FreshTec Food Processing Equipment International, LLC, was forwarded by first class mail, postage prepaid, on the 9<sup>th</sup> day of November, 2004, to all counsel of record, addressed as follows:

## HAND DELIVERED

Eugene J. Brew, Esquire  
McClure & Miller LLP  
Attorneys at Law  
Suite 701, 717 State Street  
Erie, Pennsylvania 16501

UNITED STATES MAIL, FIRST CLASS  
POSTAGE PREPAID

Advanced Industrial Controls, Inc.  
536 East Main Street  
Bradford, PA 16701

David J. Hopkins, Esquire

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

BACKUS USA, INC, a Pennsylvania Corporation, and FRESHTEC FOOD PROCESSING EQUIPMENT INTERNATIONAL, LLC, A Pennsylvania limited liability company, Plaintiff,

v. : No. 2004-1577-CD

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
Defendants.

## Type of Pleading: Response to Preliminary Objections to Plaintiffs' Complaint

Filed on behalf of: Backus USA, Inc. and  
FreshTec Food Processing Equipment  
International, LLC

Counsel of Record for this party:

HOPKINS HELTZEL, LLP

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
Supreme Court No. 42519

900 Beaver Drive  
DuBois, Pennsylvania 15801  
(814) 375-0300

William A. Shaw  
Prothonotary/Clerk of Courts

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

**PLAINTIFFS' RESPONSE TO DEFENDANT**  
**PRECISION FABRICATION AND CONTROLS, INC.'S**  
**PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT**

Plaintiffs, Backus USA, Inc. ("Backus") and FreshTec Food Processing Equipment International, Inc. ("FreshTec"), by its undersigned attorneys files this Response to Defendant Precision Fabrication and Controls, Inc.'s Preliminary Objections to Plaintiffs' Complaint in the above matter and sets forth in support thereof:

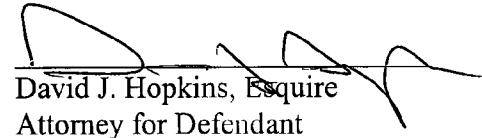
1. Admitted.
2. Admitted.
3. Paragraph VII of the Confidentiality Agreement speaks for itself. Further, Plaintiffs' Complaint does not aver that the Confidentiality Agreement was assigned by Advanced Industrial Controls, Inc. ("AIC") to Precision. Indeed, at this preliminary phase of this litigation, Plaintiffs have no information as to what legal relationship exists or existed between AIC and Precision. However, accepting as true the facts set forth in Plaintiffs' Complaint: (1)

Plaintiffs provided certain confidential information regarding their designs and plans to Defendants; (2) Backus and AIC are parties to a Confidentiality Agreement barring the disclosure of such confidential information; and (3) Plaintiffs have reason to believe that the very confidential information protected by the Confidentiality Agreement is presently being used to construct food processing machinery for sale to third parties in direct competition with Plaintiffs. Plaintiffs are unaware as to how Precision came to have access to such confidential information. However, the Confidentiality Agreement does not prohibit assignment, but merely conditions it upon the consent of the other party. In this case, the consent of each party to the assignment was implicit in their actions and continued dealings. Additionally, the inference in this case is that such access by Precision clearly evidences the existence of a relationship between Precision and AIC. Equity requires that Precision be held accountable for using such confidential information to gain competitive advantage, especially when AIC by the terms of the Confidentiality Agreement could not have done so. As such, this Preliminary Objection must be dismissed.

4. Admitted.

WHEREFORE, Plaintiffs respectfully requests that this Court deny Precision's Preliminary Objections to Plaintiffs' Complaint. In the alternative, should this Honorable Court grant Defendant's Preliminary Objection, Plaintiffs respectfully request the opportunity to amend the Complaint.

Respectfully submitted,

  
David J. Hopkins, Esquire  
Attorney for Defendant

Dated: November 16, 2004

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

## **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of Plaintiffs' Response to Preliminary Objections to Complaint, filed on behalf of Backus USA, Inc. and FreshTec Food Processing Equipment International, LLC, was forwarded by first class mail, postage prepaid, on the 16<sup>th</sup> day of November, 2004, to all counsel of record, addressed as follows:

Eugene J. Brew, Esquire  
McClure & Miller LLP  
Attorneys at Law  
Suite 701, 717 State Street  
Erie, Pennsylvania 16501

Advanced Industrial Controls, Inc.  
536 East Main Street  
Bradford, PA 16701

David J. Hopkins, Esquire  
Attorney for Plaintiffs

HOPKINS HELTZEL LLP

900 Beaver Drive, DuBois, Pennsylvania 15801  
VOICE: (814) 375-0300 FAX: (814) 375-5035

---

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

BACKUS USA, INC., a	*	CIVIL ACTION - LAW
Pennsylvania Corporation,	*	
and FRESHTEC FOOD PROCESSING	*	
EQUIPMENT INTERNATIONAL, LLC.,	*	
a Pennsylvania Limited	*	
Liability Company,	*	
Plaintiffs	*	
	*	
vs.	*	
	*	
PRECISION FABRICATION AND	*	
CONTROLS, INC., and ADVANCED	*	
INDUSTRIAL CONTROLS, INC.,	*	
Defendants	*	NO. 04-1577-CD

ORDER OF COURT

NOW, this 9th day of November, 2004, IT IS THE ORDER OF THIS COURT that the parties submit appropriate briefs relative the motion for preliminary injunction within no more than ten days from this date; and relative the preliminary objections, that counsel for plaintiff shall submit brief within no more than seven days from this date. Counsel for defendants shall submit a reply brief within no more than five days thereafter, if he so chooses.

**FILED**

010-2981  
NOV 18 2004 (5)

BY THE COURT:

William A. Shaw  
Prothonotary Clerk of Courts  
ICC Atys. Hopkins, Brew  
ICC Advanced Industrial  
5360 E. Main St., Bradford, PA  
16701

(A)

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

BACKUS USA, INC., a  
Pennsylvania Corporation,  
and FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC.,  
a Pennsylvania Limited  
Liability Company,  
Plaintiffs

vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and ADVANCED  
INDUSTRIAL CONTROLS, INC.,  
Defendants

\* CIVIL ACTION - LAW

FILED

10/31/04 Hopkins, Brew  
NOV 18 2004  
William A. Shaw Advanced  
Prothonotary/Clerk of Courts Industrial  
536 E. Main St.  
Bradford, PA  
16701

\* NO. 04-1577-CD

ORDER OF COURT

NOW, this 9th day of November, 2004, following  
testimony relative to the motion for preliminary  
injunction, the Court being satisfied that the plaintiffs  
would suffer immediate and irreparable injury, IT IS  
HEREBY ORDERED, ADJUDGED AND DECREED that defendants,  
their agents, servants, employees, consultants, officers,  
directors, successors and assigns and any other individual  
or entity within its control or supervision and all other  
persons or entities acting in concert with defendants or  
on their behalf are enjoined and restrained from:

1. Directly or indirectly violating any term or provision of the confidentiality agreement;
2. Using the confidential information from plaintiffs to manufacture, develop, produce or otherwise fabricate for sale or distribution any food processing equipment; and
3. Manufacturing, developing, producing or fabricating for sale or distribution any food processing equipment that performs the same function as any machinery previously produced or fabricated for or on behalf of plaintiffs.

This injunction shall remain in effect until further Order of Court.

This order is temporary in nature only and not intended to be the final order of this Court relative the preliminary injunction.

BY THE COURT:

  
Paul E. Cherry Judge

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

BACKUS USA, INC., a  
Pennsylvania Corporation,  
and FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC.,  
a Pennsylvania Limited  
Liability Company,

Plaintiffs

vs.  
PRECISION FABRICATION AND  
CONTROLS, INC., and ADVANCED  
INDUSTRIAL CONTROLS, INC.,

Defendants

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, INC.,

Plaintiffs

vs.  
PRECISION FABRICATION AND  
CONTROLS, INC., and ADVANCED  
INDUSTRIAL CONTROLS, INC.,

Defendants

\* CIVIL ACTION - LAW

FILED

10/25/04  
NOV 18 2004

William A. Shaw  
Prothonotary/Clerk of Courts  
1 CC Atlys Hopkins, Brew  
1 CC Advanced Industrial-  
536 E Main St, Bradford PA  
16701

NO. 04-1577-CD

\* CIVIL ACTION - LAW

\* NO. 04-1146-CD

IN THE COURT OF COMMON PLEAS  
OF MCKEAN COUNTY, PENNSYLVANIA  
PRECISION FABRICATION AND \* CIVIL ACTION - LAW  
CONTROLS, INC., \*  
Plaintiff \*  
vs. \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC, \*  
Defendant \* NO. 915 C.D. 2004

ORDER OF COURT

AND NOW, this 9th day of November, 2004, the Court being advised that the parties have reached an agreement relative to the petition for consolidation of actions, IT IS THE ORDER OF THIS COURT that the matter filed to McKean County Court Docket No. 915 CD 2004 shall be and is hereby consolidated with all Clearfield County matters filed to Docket Nos. 04-1577-CD and 04-1146-CD.

IT IS THE FURTHER ORDER OF THIS COURT that all stays entered by this Court are hereby lifted.

All three cases are hereby coordinated and shall be heard together for the purposes of discovery, trial and appeals.

The Prothonotary of McKean County shall forward the McKean County file to Clearfield County. Any costs associated with the transfer of the McKean County matter shall be the sole responsibility of plaintiffs.

BY THE COURT:

  
Paul E. Cherry Judge

04-1577-CD

04-1146-CD

No. 915 CD 2004

No. \_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF MCKEAN

SS:

I, BONNIE MOORE HOWARD, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein PRECISION FABRICATION & CONTROLS, INC.

Plaintiff, and FRESHTEC FOOD PROCESSING EQUIPMENT INTERNATIONAL LLC

Defendant, as the same remains of record before the said Court at No. 915 CD 2004.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 8TH day of DECEMBER, 2004.

Bonnie Moore Howard

Prothonotary

I, John M. Cleland, President Judge of the 48TH Judicial District, composed of the County of McKean, do hereby certify that BONNIE MOORE HOWARD, by whom the annexed record, certificate and attestation were made and given, and who is in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said County was at the time of so doing and now is Prothonotary in and for said County of McKean in the Commonwealth of Pennsylvania, duly commissioned and qualified, to all of who acts as such full faith and credit are and ought to be given as well in Court of judicature as elsewhere, and that the said record, certificate and attestation are in due form of law, and made by the proper officer.

John M. Cleland

President Judge

COMMONWEALTH OF PENNSYLVANIA SS:  
COUNTY OF MCKEAN

I, BONNIE MOORE HOWARD, Prothonotary of the Court of Common Pleas in and for the said County, do certify that the Honorable Judge John M. Cleland by whom the foregoing attestation was made, and who has hereunto subscribed his name was at the time of making thereof and still is the President Judge of the Court of Common Pleas, Orphans' Court and Court of Quarter Sessions of the Peace in and for said County, duly commissioned and qualified; to all whose acts as such full faith and credit are and ought to be given, as well in Court of judicature or elsewhere.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 13th day of December, 2004.

Bonnie Moore Howard  
Prothonotary

FILED

Original

filed to 04-1146-CD

EGK

DEC 15 2004

William A. Shaw  
Prothonotary/Clerk of Courts

# COPY

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

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC  
A Pennsylvania Limited Liability Company  
Plaintiff

\*  
\*  
\*  
\* No. 2004-1146-CD  
\*  
\*

vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

\*  
\*  
\*  
\*  
\*  
\*

FILED NO  
M 11:37 AM 00  
JAN 21 2005 OR  
K

William A. Shaw  
Prothonotary/Clerk of Courts

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

BACKUS USA, INC., a Pennsylvania  
Corporation, and  
FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC  
A Pennsylvania Limited Liability Company  
Plaintiff

\*  
\*  
\*  
\*  
\*  
\* No. 04-1577 - CD  
\*  
\*

vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

\* Type of Pleading: Motion for Sanctions  
\* No. 2  
\*  
\* Prepared on behalf of Precision  
Fabrication and Controls, Inc.  
\*  
\* Counsel of Record for this Party:  
\* Eugene J. Brew, Esq.  
\* McClure & Miller LLP  
\* 717 State St., Suite 701  
\* Erie, PA 16501  
\* (814) 453-3681  
\* Pa. I.D. No. 06500

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 2004-1146-CD

VS.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 04-1577 - CD

VS.

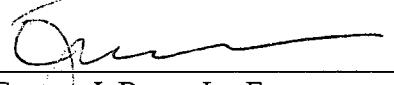
PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

**DEFENDANT, PRECISION FABRICATION AND CONTROLS, INC.**  
**MOTION FOR SANCTIONS REQUESTING**  
**ORDER DIRECTING RESPONSIVE ANSWERS TO INTERROGATORIES**

Precision Fabrication and Controls, Inc. (Precision) by its attorney, Eugene J. Brew, Esq., files this Motion for Sanctions requesting the Court to Order Plaintiffs, FreshTec Food Processing Equipment International LLC (FreshTec) and Backus USA, Inc. (Backus) to serve responsive answers to Precision's Interrogatories and Request for Documents (First Set) and sets forth:

1. Precision served Interrogatories and Request for Documents (First Set) on FreshTec's counsel on August 23, 2004.
2. After refusing to respond to the Interrogatories, and receiving a Sanctions Order from this Court, FreshTec served their response on or about December 30, 2004.
3. A copy of the Interrogatories and responses (paragraphs 7, 8, 9 and 10 only) is attached hereto, made a part hereof, and marked Exhibit "A".
4. The responses are not adequate responses, not addressing directly the information requested.
5. For example, in number 7, documents and names and addresses of individuals with knowledge of FreshTec's allegation that Precision advised FreshTec's customers that FreshTec had not satisfied its payment obligations, was completely ignored.
6. Likewise, in number 8, 9 and 10 there was no complete response.

WHEREFORE, the Court is requested to order and direct FreshTec and Backus to respond completely to the Interrogatories numbered 7, 8, 9 and 10.

  
Eugene J. Brew, Jr., Esq.

McCLURE & MILLER

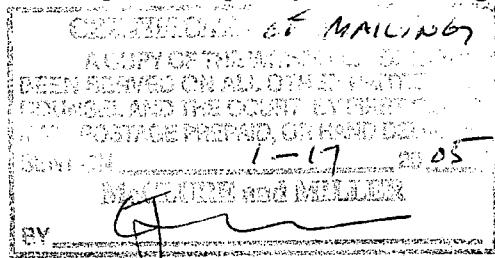
717 State Street, Suite 701

Erie, PA 16501

(814) 453-3681

Attorney for Precision Fabrication and Controls, Inc.

Dated: 1/19, 2005



5.

With respect to those persons identified in your answer to Interrogatory No. 3, please state:

(a) his or her occupation, specialization, qualification including education and other training and professional experience; and

Answer:

No response required.

(b) The substance of the facts and opinions to which each is expected to testify and a summary of the grounds for each opinion, including any text materials relied upon.

Answer:

No response required.

6.

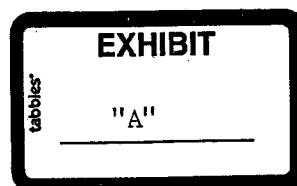
Submit copies of any documents that you intend to use as evidence at trial in support of Count II of your Complaint (Defamation).

Answer:

As stated in the Complaint, Benjamin Brechtel of Precision indicated in writing that he would notify Plaintiff's customers of Plaintiff's failure to pay the invoices, and would place liens on the equipment in their possession. However, due to the injunction entered by the Court on July 29, 2004, Defendant was barred from contacting any such customers. At the present time, Plaintiff is unaware of any violations of the injunction.

7.

State whether or not (yes or no) you have evidence or information that Precision has advised any of FreshTec's customers in the food processing industry who are currently using product received from FreshTec that FreshTec has not satisfied its payment obligations, and if



your answer is yes, state the names, present addresses, occupation, and phone number of any persons who have this knowledge, and attach copies of any documents that indicate that this is a fact.

Answer:

As Defendants are aware, an injunction has been in place in this case since October, 2004 barring Precision from contacting Fresh Tec's customers to notify them that Fresh Tec has not satisfied its payment obligations. At the present time, Plaintiff has no knowledge of any violations of the injunction.

8.

State what evidence or knowledge you have that Precision actually contacted any of Fresh Tec's customers to notify them of FreshTec's failure to pay invoices. If your answer is anything other than "none", state the details of the contact, who made the contact, to whom it was made, date, and what was said.

Answer:

As Defendants are aware, the Court entered an injunction in this case on July 29, 2004, and continued said injunction on August 19, 2004, pending a hearing on the merits, barring Precision from contacting Fresh Tec's customers to notify them that Fresh Tec has not satisfied its payment obligations. At the present time, Plaintiff has no knowledge of any violations of the injunction.

9.

State with specificity and details including date, description and any other details that would help identify the document, if there is a document, of confidential information you are referring to in Count IV, Specific Performance.

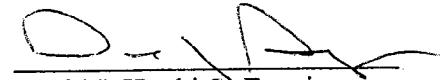
8

Answer:

As set forth in the Complaint entitled *Backus USA, Inc., and Fresh Tec Food Processing Equipment International, LLC v. Precision Fabrication and Controls, Inc. and Advanced Industrial Controls, Inc.* as filed in the Court of Common Pleas of Clearfield County, Pennsylvania, and as consolidated under the present docket number, Defendant AIC was party to a confidentiality agreement which barred disclosure of certain confidential information including customer lists and records, trade secrets, technical information, business records and plans, financial statements, products, inventions, product design information, pricing structure, discounts, costs, computer programs and listings, source codes and/or object codes and other proprietary information. The Confidential Information is not limited to a document per se but may well include other types of information that may have been incorporated into certain designs.

By way of further response, Plaintiff believes that Defendant Precision still has certain construction blueprints relating to bin dumpers, spin dryers, cutters and other equipment in its possession, as well as costing sheets for such machinery.

Respectfully submitted,



\_\_\_\_\_  
David J. Hopkins, Esquire  
Attorney for FreshTec Food Processing  
Equipment International, LLC

COPY

January 25, 2005

Eugene J. Brew, Esq.  
717 State St., Ste. 701  
Erie, PA 16501

Re: 04-1146-CD; 04-1577-CD  
Freshtec Food vs. Precision; Backus vs. Precision



Dear Mr. Brew,

Please find enclosed a copy of your request for status conference received by the Court Administrator. The court will not entertain your request without a proposed scheduling order. Please note that your original did not contain a case number. Please file an Amended Request for Status Conference showing both case numbers and captions, if that is your intention. We will require two originals, each with an order attached. Both originals can reflect both case captions.

Additionally, the court will not entertain your Motion for Sanctions No. 2 filed to both case numbers. Please submit to the Court Administrator's office two copies of a proposed scheduling order for this Motion, with a copy of the Motion being attached to each.

If you have any questions, please contact me at (814) 765-2641, ext. 1331 or the Court Administrator's office at (814) 765-2641, ext. 5982.

Sincerely,

William A. Shaw  
Prothonotary

Enclosures

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 2004-1146-CD  
\*  
\* vs.  
\*  
\* PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*  
Defendants \*

---

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* (No. 04-1577 - CD )  
\*  
\* vs.  
\*  
\* PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*  
Defendants \*

*AC* **FILED** *no*  
*mt 10681 cc*  
**JAN 3 1 2005**  
William A. Shaw  
Prothonotary/Clerk of Courts

---

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

\* IN THE COURT OF COMMON PLEAS  
\* OF CLEARFIELD COUNTY,  
\* PENNSYLVANIA

VS.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT

\*  
\*  
\*  
\*  
\*  
\* No. 2004 - 1146 - CD  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915  
\*  
\* Type of Case: Contract  
\*  
\* Type of Pleading:  
\* Request for Admissions  
\*  
\* Filed on behalf of:  
\* Precision Fabrication & Controls, Inc.  
\*  
\* Counsel of record:  
\*  
\* Eugene J. Brew, Esq.  
\* McClure & Miller LLP  
\* 717 State Street, Suite 701  
\* Erie, PA 16501  
\* (814) 453-3681  
\* Pa. I.D. No. 06500  
\*  
\* Dated: January 28, 2005

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 2004-1146-CD

vs.

PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*  
Defendants \*

---

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 04-1577 - CD

vs.

PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*  
Defendants \*

---

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

\* IN THE COURT OF COMMON PLEAS  
\* OF CLEARFIELD COUNTY,  
\* PENNSYLVANIA

vs.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT

\*  
\*  
\*  
\*  
\*  
\* No. 2004 - 1146 CD  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915  
\*

**REQUEST FOR ADMISSIONS**

Precision Fabrication and Controls, Inc., (Precision) by its attorney, Eugene J. Brew, Esq., requests the Defendant, FreshTec Food Processing Equipment International LLC (FreshTec) to admit the truth of the matters set forth herein, including the genuineness, authenticity, correctness, execution, signing, delivery and mailing or receipt of any document described herein.

Pursuant to Pa. RCP 4014, the matters set forth herein are admitted unless within thirty (30) days of service of this Request an Answer verified by the party, or an objection, signed by the party, or the party's attorney is served upon the below named counsel. If an objection is made, the reasons therefore must be stated.

References to invoice numbers are Precision Invoices to FreshTec.

1.

Attached hereto and marked Exhibit "A" is a true copy of a letter dated and sent July 27, 2004, from counsel of record for FreshTec to Precision.

(a) All the information set forth in Exhibit "A" is incorrect as of the date of this Request for Admissions.

(b) The total of the invoices referred to in the letter, on which counsel states "my client is prepared to pay" is as follows:

<u>Invoice No.</u>	<u>Amount</u>
1042	\$31,596.00
1054	12,950.00
1075	28,836.00
1076	5,640.00
1077	8,400.00
1079	150.00
1080	1,560.00
1090	7,560.00
1091	10,800.00
1108	6,480.00
1119	1,900.00
1120	1,900.00
1127	19,440.00
1135	1,900.00
1136	<u>1,900.00</u>
<b>TOTAL</b>	<b>\$141,012.00</b>

2.

FreshTec has agreed to pay invoice 1042, in the sum of \$31,596.00.

(a) FreshTec has never advised Precision or Precision's counsel of any reasons related to the machinery or equipment described in this invoice, why this invoice should not be paid.

(b) FreshTec never advised Precision in writing that there were any defects or deficiencies in this machinery.

3.

Invoice no. 1054, in the sum of \$12,950.00, was used by FreshTec's customer in 2004.

(a) FreshTec claims that \$5,000.00 should be withheld from this invoice, for payment for repairs to this machine.

(b) Withholding \$5,000.00 on this invoice, would leave a remaining balance due on the invoice of \$7,950.00.

(c) FreshTec has never given Precision any reason related to any defects or deficiencies in the machinery in this invoice, why the sum of \$7,950.00, should not be paid at this time on this invoice.

(d) FreshTec has never advised Precision in writing of any defects or deficiencies in this machinery.

4.

Invoice no. 1075, for \$28,836.00. FreshTec has given no reason to Precision, related to this specific machine, for not paying this invoice.

(a) This machine was shipped to FreshTec's customer, as being used by FreshTec's customer.

(b) FreshTec has given Precision no reason for non-payment of this invoice that is related to this machine.

(c) FreshTec has never advised Precision in writing of any defects or deficiencies in this machine.

5.

Invoice 1076. This machine was completed and shipped in 2004.

(a) FreshTec has never advised Precision of any reasons why this invoice should not be paid, that were related to the machine itself.

(b) The balance due on this machine is \$5,640.00.

(c) FreshTec has had no written correspondence with Precision advising of any defects or deficiencies in this machine.

6.

Invoice 1077 is in the amount of \$8,400.00.

(a) FreshTec claims that \$2,220.00 should be withheld from this invoice for the cost of weld repairs and shipping charges.

(b) This machine was shipped and used by FreshTec's customer in 2004.

(c) FreshTec agrees that the sum of \$6,200.00 is due on this invoice, subtracting the \$2,200.00, FreshTec claims for weld repairs from the invoice, \$8,400.00.

(d) FreshTec has never forwarded to Precision any document substantiating the claimed back-charge for weld repairs and shipping charges of \$2,220.00.

(e) Other than the claim for welding repairs and shipping charges, there were no other defects or repairs to this machine.

7.

Invoice 1079, in the amount of \$150.00, is admitted by FreshTec as a valid invoice and that it should be paid.

8.

Invoice 1080 in the sum of \$1060.00 is admitted by FreshTec as a valid invoice, and that it should be paid.

9.

Invoice 1090 in the sum of \$7,560.00. This machine was shipped on June 15, 2004.

(a) FreshTec claims that there were welding failures on this machine which were repaired by FreshTec's customer, and that the customer back-charged FreshTec \$2,800.00.

(b) FreshTec agrees that after subtracting the \$2,800.00 FreshTec claims as a credit, the balance on the invoice, \$4,760.00, should be paid.

(c) FreshTec has never submitted to Precision any document substantiating the claim back-charge of \$2,800.00 for welding failure repairs.

(d) Other than the claimed welding failures, there were no other defects or deficiencies in this machine. This machine has been used in 2004 by FreshTec's customer.

(e) FreshTec has been paid for this machine by FreshTec's customer.

10.

Invoice 1091 is in the total sum of \$10,800.00.

- (a) This machine was shipped on June 16, 2004.
- (b) This machine has been used in 2004 by FreshTec's customer.
- (c) FreshTec has been paid for this machine by FreshTec's customer.
- (d) FreshTec claims that the invoices totaling \$10,800.00 should be paid less the down payment made.

11.

Invoice 1108, for an invoice price of \$6,480.00, is for a bin dumpster.

- (a) FreshTec claims that the price should have been \$5,400.00.
- (b) FreshTec agrees that the sum of \$5,400.00 is due and payable on this invoice.
- (c) FreshTec has no complaints or objections to the machine itself.
- (d) FreshTec's customer has been using this machine.
- (e) FreshTec has been paid for this machine by its customer.

12.

FreshTec has no objections based on defects in the machine, to invoice 1119 in the sum of \$1,900.00.

13.

FreshTec has no objections based on defects to the machine, to the payment of invoice no. 1120 in the sum of \$1,900.00.

14.

FreshTec has no objections based on defects to the machine, to the payment of invoice no. 1127 in the sum of \$19,440.00.

- (a) This machine has been shipped to FreshTec's customer.
- (b) FreshTec's customer has been using the machine, and has never returned the machine to FreshTec.
- (c) FreshTec's customer has paid for the machine.

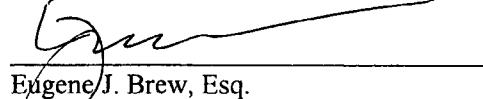
15.

FreshTec has no objections based upon defects or deficiencies in the machine, to the payment of invoice no. 1135 in the sum of \$1,900.00.

16.

FreshTec has no objections based upon defects or deficiencies in the machine, to the payment of invoice no. 1136 in the sum of \$1,900.00.

Submitted by:

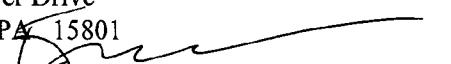
  
\_\_\_\_\_  
Eugene J. Brew, Esq.  
McCLURE & MILLER LLP  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication and Controls, Inc.

Dated: JAN 25, 2005

CERTIFICATE OF SERVICE

I, EUGENE J. BREW, ESQ., certify that I served a true copy of the within Request for Admissions on Defendant's counsel as follows:

David J. Hopkins, Esq.  
Hopkins Heltzel LLP  
900 Beaver Drive  
DuBois, PA 15801

  
Eugene J. Brew, Esq.  
McCLURE & MILLER LLP  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication and Controls,  
Inc.

Dated: *JAN 28*, 2005

# HOPKINS HELTZEL LLP

900 Beaver Drive • DuBois, PA 15801

**David J. Hopkins**  
Licensed in PA & NJ  
Masters in Taxation

- Voice: (814) 375 - 0300
- Fax: (814) 375 - 5035
- Email: hopkinslaw@adelphia.net

**Lea Ann Heltzel**  
Licensed in PA

July 27, 2004

**F A X D**  
7-27-04

Facsimile: (814) 368-5040

Precision Fabrication & Controls, Inc.  
Mr. Benjamin Brechtel  
195 Chestnut Street  
P.O. Box 331  
Bradford, PA 16701

Re: FreshTec Food Processing Equipment International LLC

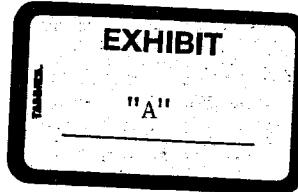
Dear Brechtel:

As a follow up to our telephonic conversation of last week, I enclose herewith for your review a Confidentiality and Non-Compete Agreement. Would you please review the document and if you have any questions or suggestions, please feel free to contact me or have your attorney contact me to iron out any suggestions you may have.

I have had some discussions with Mr. Salone who is now on the West Coast concerning this matter. My client has several concerns regarding the bills that you have sent which are set forth herein. My comments are based upon FreshTec's records.

## Invoice 1042

- a. Item 1 is okay.
- b. Item 2 is okay.
- c. By way of further response this machine was ordered and a down payment was made on January 8, 2004. The machine was not shipped until July 25, 2004. The delay caused FreshTec's client to be very unhappy. I understand the delay was caused by Precision's inability to purchase materials. Notwithstanding the above, assuming all other provisions of this letter is satisfied, FreshTec will pay Invoice 1042.



July 27, 2004  
Page two

Invoice 1054

- c. This machine is breaking welds in Canada. FreshTec has had to visit the site and make repairs inasmuch as the customer cannot pull the machine out of production. FreshTec has paid \$1,800 USD in repair work to date. FreshTec believes another \$3,000.00 will be expended for repairs to this machine.

By way of further comment, this machine was ordered February 19, 2004 and a down payment made. The machine was not shipped until May 25, 2004 causing another FreshTec client to be unhappy. Notwithstanding the above, assuming all other provisions of this letter are satisfied, FreshTec will pay Invoice No. 1054 less \$5,000.00.

Invoice 1075

- a. This machine was ordered on January 8, 2004 and a down payment was made. The machine was not shipped until June 1, 2004 causing another unhappy customer. Notwithstanding the above, assuming all other provisions of this letter are satisfied, FreshTec will pay Invoice No. 1075.

Invoice 1076

- a. This machine was ordered on March 30, 2004 and not shipped until June 1, 2004. Notwithstanding the above, assuming all other provisions of this letter are satisfied, FreshTec will pay Invoice No. 1076.

Invoice 1077

- a. This machine has broken welds and has been returned to Wilcox. FreshTec has not yet fully evaluated the problem but it has spent \$980.00 on one way freight. It will cost another \$980.00 to return the machine. FreshTec anticipates 4 hours in repairing the welds at \$65.00 per hour. Notwithstanding the above, assuming all other provisions of this letter are satisfied, FreshTec will pay Invoice No. 1077 less \$2,220.00.

July 27, 2004

Page three

Invoice 1079

- a. Assuming all other provisions of this letter are met, FreshTec will pay this invoice.

Invoice 1080

- a. Assuming all other provisions of this letter are met, FreshTec will pay this invoice.

Invoice 1090

- a. This machine was ordered on February 29, 2004 but not shipped until June 15, 2004. I understand welds have broken on this machine because it was skip welded rather than using continuous welds. The customer was initially angry with the delay in shipment and then became furious with the welding failures. The customer did not send the machine back, but rather, had it repaired at his facility. The customer billed FreshTec \$2,800.00 for repairs that FreshTec credited the customer. Assuming all the other issues concerning the bin dumpster are resolved, FreshTec will pay this invoice less \$2,800.00 it credited its customer for repairs.

Invoice 1091

- a. This machine was ordered on March 30, 2004 but not shipped until June 16, 2004. The customer was angry over the delays. I understand Precision claims the units were not safe and had to be redesigned. However, FreshTec disputes this position. FreshTec gave J. R. pictures of other bin dumpsters it had purchased. If AIC or Precision could build the machines at FreshTec's cost, FreshTec would buy them. Design issues were not FreshTec's concern. FreshTec was able to buy the machine in Canada for the same price.
- b. If Precision guarantees its workmanship on all bin dumpsters and the other provisions of this letter are completed, FreshTec will pay this bill less the down payment. I am advised the down payment was not included on the invoice.

July 27, 2004  
Page four

Invoice 1108

- a. The invoice is incorrect. The invoice lists the price as \$6,480.00 and all of the bin dumpsters are \$5,400.00.
- b. As set forth above, assuming all of the other provisions of this document are met and the machine is guaranteed, my clients will pay the correct invoice.

Invoice 1119

- a. This invoice is not due until August 7, 2004.

Invoice 1120

- a. This invoice is not due until August 13, 2004.

Invoice 1135

- a. This invoice is not due until August 18, 2004.

Invoice 1136

- a. This invoice is not due until August 19, 2004.

As we discussed last week, my client is concerned that AIC creditors will make a claim against FreshTec for machines notwithstanding FreshTec's payments to Precision as set forth in this letter. My client requires an opinion letter with indemnification from your attorney prior to making payment.

My client is prepared to pay for invoices 1042, 1054, 1075, 1076, 1077, 1079, 1080, 1090, 1091 and 1108 pursuant to the terms of this letter.

I am in court most of today, although I am prepared to meet with you on Wednesday and FreshTec will pay the invoices pursuant to this letter provided we execute the enclosed Confidentiality and Non-Compete Agreement, receive the opinion letter with indemnification from your lawyer and you deliver the blueprints, CAD files and other documents relating to the machines.

July 27, 2004

Page five

Thank you for your consideration of this matter.

Very truly yours,



David J. Hopkins  
Attorney at Law

DJH/bjt

cc: FreshTech Food Processing Equipment International, LLC

**FAXED**  
7-27-04

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 2004-1146-CD  
\*

vs.

PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*  
Defendants \*

---

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 04-1577 - CD

vs.

PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*  
Defendants \*

**FILED**  
M 12/10/04 1006 AM  
Clerk's Office

JAN 31 2005

William A. Shaw  
Prothonotary

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PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

vs.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT

\* IN THE COURT OF COMMON PLEAS  
\* OF CLEARFIELD COUNTY,  
\* PENNSYLVANIA

\*

\*

\*

\*

\* No. 2004 -  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915

\*

\* Type of Case: Contract

\*

\* Type of Pleading:  
\* Amended Request for Status Conference

\*

\*

\* Filed on behalf of:  
\* Precision Fabrication & Controls, Inc.

\*

\* Counsel of record:

\*

\* Eugene J. Brew, Esq.  
\* McClure & Miller LLP  
\* 717 State Street, Suite 701  
\* Erie, PA 16501  
\* (814) 453-3681  
\* Pa. I.D. No. 06500

\*

\* Dated: January 28 , 2005

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

FRESHTEC FOOD PROCESSING	*
EQUIPMENT INTERNATIONAL, LLC	*
A Pennsylvania Limited Liability Company	*
Plaintiff	* No. 2004-1146-CD
vs.	*
PRECISION FABRICATION AND	*
CONTROLS, INC., and	*
ADVANCED INDUSTRIAL CONTROLS,	*
INC.	*
Defendants	*

---

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

BACKUS USA, INC., a Pennsylvania	*
Corporation, and	*
FRESHTEC FOOD PROCESSING	*
EQUIPMENT INTERNATIONAL, LLC	*
A Pennsylvania Limited Liability Company	*
Plaintiff	* No. 04-1577 - CD
vs.	*
PRECISION FABRICATION AND	*
CONTROLS, INC., and	*
ADVANCED INDUSTRIAL CONTROLS,	*
INC.	*
Defendants	*

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

VS.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT

\* IN THE COURT OF COMMON PLEAS  
\* OF CLEARFIELD COUNTY,  
\* PENNSYLVANIA

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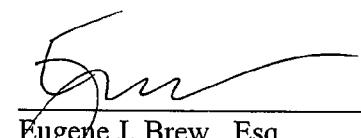
\* No. 2004 - 1146 CD  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915

\*

**AMENDED REQUEST FOR STATUS CONFERENCE**

Plaintiff, Precision Fabrication and Controls, Inc., by its attorney, Eugene J. Brew, Esq., requests the Court or the Court Administrator to schedule a Status Conference pursuant to Local Rule 212.1:

1. This action was filed August 9, 2004, in McKean County.
2. The action has been transferred by Order of this Court to Clearfield County.
3. The pleadings are closed.
4. The Plaintiff requests the Court to set a date for the close of discovery and to make any other and further Orders as the Court may deem appropriate in order to bring the case to trial.
5. This action, which is for breach of contract for payment for machines manufactured and sold, shall be severed or tried separately from the other two actions, for separate trial.



Eugene J. Brew, Esq.  
McCLURE & MILLER LLP  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication and Controls,  
Inc.

Dated: January 28, 2005

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 2004-1146-CD

vs. \*

PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*  
Defendants \*

---

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 04-1577 - CD

vs. \*

PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*  
Defendants \*

FILED <sup>cc</sup>  
01/30/04 AM Atty Brew  
FEB 01 2005  
WAS William A. Shaw Orig to 04-1146-CD  
Prothonotary/Clerk of Courts ~~cc~~

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

\* IN THE COURT OF COMMON PLEAS  
\* OF CLEARFIELD COUNTY,  
\* PENNSYLVANIA

VS.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT

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\*  
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\*  
\* No. 2004 - 1146 CD  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915  
\*

ORDER OF COURT

AND NOW, this 1<sup>st</sup> day of February 2005, after Status Conference, IT IS  
ORDERED:

1. The action, Precision Fabrication & Controls, Inc., vs. FreshTec Food processing Equipment International LLC, which was transferred from McKean County by order of Court, shall be given a separate case number, and tried separately.
2. Discovery will close sixty (60) days from the date of this order, after which discovery may not be sought without agreement of the parties or special leave of court.
3. A further Status Conference will be held on March 17, 2005. Counsel for Precision may participate by telephone conference call. at 10:00 A.M.
4. Trial of the within case will be held before this Court on March 17, 2005.

BY THE COURT:

Paul E. Cleary  
J.

cc: David J. Hopkins, Esq.  
Eugene J. Brew, Esq.

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

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC  
A Pennsylvania Limited Liability Company  
Plaintiff

\*  
\*  
\*  
\* No. 2004-1146-CD  
\*  
\*

vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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

BACKUS USA, INC., a Pennsylvania  
Corporation, and  
FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC  
A Pennsylvania Limited Liability Company  
Plaintiff

\*  
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\*  
\* No. 04-1577 - CD  
\*  
\*

vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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**FILED**

*M 12/10/04 100 to attorney*

JAN 31 2005

William A. Shaw  
Prothonotary

*orig. to 04-1146-CD*

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

\* IN THE COURT OF COMMON PLEAS  
\* OF CLEARFIELD COUNTY,  
\* PENNSYLVANIA  
\*  
\*

vs.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT

- \*
  - \*
  - \*
    - \* No. 2004 - 1146 CD
    - \* Case transferred from McKean County
    - \* by Order of Court. McKean County No.
    - \* 2004-10915
  - \*
  - \* Type of Case: Contract
  - \*
  - \* Type of Pleading:
    - \* Motion for Sanctions II
  - \*
  - \*
  - \* Filed on behalf of:
    - \* Precision Fabrication & Controls, Inc.
  - \*
  - \* Counsel of record:
    - \*
    - \* Eugene J. Brew, Esq.
    - \* McClure & Miller LLP
    - \* 717 State Street, Suite 701
    - \* Erie, PA 16501
    - \* (814) 453-3681
    - \* Pa. I.D. No. 06500
  - \*
  - \* Dated: January 28, 2005

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 2004-1146-CD

vs.

PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*  
Defendants \*

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 04-1577 - CD

vs.

PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*  
Defendants \*

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PRECISION FABRICATION & \* IN THE COURT OF COMMON PLEAS  
CONTROLS, INC., \* OF CLEARFIELD COUNTY,  
PLAINTIFF \* PENNSYLVANIA

vs.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT

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\* No. 2004 - 1146 CD  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915  
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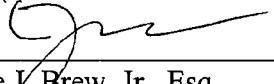
**DEFENDANT, PRECISION FABRICATION AND CONTROLS, INC.**  
**MOTION FOR SANCTIONS REQUESTING**  
**ORDER DIRECTING RESPONSIVE ANSWERS TO INTERROGATORIES**

Precision Fabrication and Controls, Inc. (Precision) by its attorney, Eugene J. Brew, Esq., files this Motion for Sanctions requesting the Court to Order Plaintiffs, FreshTec Food Processing Equipment International LLC (FreshTec) and Backus USA, Inc. (Backus) to serve responsive answers to Precision's Interrogatories and Request for Documents (First Set) and sets forth:

1. Precision served Interrogatories and Request for Documents (First Set) on FreshTec's counsel on August 23, 2004.
2. After refusing to respond to the Interrogatories, and receiving a Sanctions Order from this Court, FreshTec served their response on or about December 30, 2004.
3. A copy of the Interrogatories and responses (paragraphs 7, 8, 9 and 10 only) is attached hereto, made a part hereof, and marked Exhibit "A".
4. The responses are not adequate responses, not addressing directly the information requested.
5. For example, in number 7, documents and names and addresses of individuals with knowledge of FreshTec's allegation that Precision advised FreshTec's customers that FreshTec had not satisfied its payment obligations, was completely ignored.

6. Likewise, in number 8, 9 and 10 there was no complete response.

WHEREFORE, the Court is requested to order and direct FreshTec and Backus to respond completely to the Interrogatories numbered 7, 8, 9 and 10.

  
\_\_\_\_\_  
Eugene J. Brew, Jr., Esq.  
McCLURE & MILLER  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication and Controls,  
Inc.

Dated: Jan 28, 2005

5.

With respect to those persons identified in your answer to Interrogatory No. 3, please state:

(a) his or her occupation, specialization, qualification including education and other training and professional experience; and

Answer:

No response required.

(b) The substance of the facts and opinions to which each is expected to testify and a summary of the grounds for each opinion, including any text materials relied upon.

Answer:

No response required.

6.

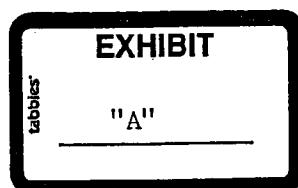
Submit copies of any documents that you intend to use as evidence at trial in support of Count II of your Complaint (Defamation).

Answer:

As stated in the Complaint, Benjamin Brechtel of Precision indicated in writing that he would notify Plaintiff's customers of Plaintiff's failure to pay the invoices, and would place liens on the equipment in their possession. However, due to the injunction entered by the Court on July 29, 2004, Defendant was barred from contacting any such customers. At the present time, Plaintiff is unaware of any violations of the injunction.

7.

State whether or not (yes or no) you have evidence or information that Precision has advised any of FreshTec's customers in the food processing industry who are currently using product received from FreshTec that FreshTec has not satisfied its payment obligations, and if



your answer is yes, state the names, present addresses, occupation, and phone number of any persons who have this knowledge, and attach copies of any documents that indicate that this is a fact.

Answer:

As Defendants are aware, an injunction has been in place in this case since October, 2004 barring Precision from contacting Fresh Tec's customers to notify them that Fresh Tec has not satisfied its payment obligations. At the present time, Plaintiff has no knowledge of any violations of the injunction.

8.

State what evidence or knowledge you have that Precision actually contacted any of Fresh Tec's customers to notify them of FreshTec's failure to pay invoices. If your answer is anything other than "none", state the details of the contact, who made the contact, to whom it was made, date, and what was said.

Answer:

As Defendants are aware, the Court entered an injunction in this case on July 29, 2004, and continued said injunction on August 19, 2004, pending a hearing on the merits, barring Precision from contacting Fresh Tec's customers to notify them that Fresh Tec has not satisfied its payment obligations. At the present time, Plaintiff has no knowledge of any violations of the injunction.

9.

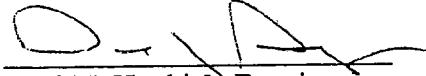
State with specificity and details including date, description and any other details that would help identify the document, if there is a document, of confidential information you are referring to in Count IV, Specific Performance.

Answer:

As set forth in the Complaint entitled *Backus USA, Inc., and Fresh Tec Food Processing Equipment International, LLC v. Precision Fabrication and Controls, Inc. and Advanced Industrial Controls, Inc.* as filed in the Court of Common Pleas of Clearfield County, Pennsylvania, and as consolidated under the present docket number, Defendant AIC was party to a confidentiality agreement which barred disclosure of certain confidential information including customer lists and records, trade secrets, technical information, business records and plans, financial statements, products, inventions, product design information, pricing structure, discounts, costs, computer programs and listings, source codes and/or object codes and other proprietary information. The Confidential Information is not limited to a document per se but may well include other types of information that may have been incorporated into certain designs.

By way of further response, Plaintiff believes that Defendant Precision still has certain construction blueprints relating to bin dumpers, spin dryers, cutters and other equipment in its possession, as well as costing sheets for such machinery.

Respectfully submitted,



\_\_\_\_\_  
David J. Hopkins, Esquire  
Attorney for FreshTec Food Processing  
Equipment International, LLC

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

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC  
A Pennsylvania Limited Liability Company  
Plaintiff

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\* No. 2004-1146-CD  
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vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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FILED

03/03/05  
FEB 01 2005

1CC  
Atty Brew

REC  
William A. Shaw Orig. to  
Prothonotary/Clerk of Courts

04-1146-CD

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

BACKUS USA, INC., a Pennsylvania  
Corporation, and  
FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC  
A Pennsylvania Limited Liability Company  
Plaintiff

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\* No. 04-1577 - CD  
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vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

\* IN THE COURT OF COMMON PLEAS  
\* OF CLEARFIELD COUNTY,  
\* PENNSYLVANIA  
\*

vs.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT

\*  
\*  
\*  
\* No. 2004 - 1146 CD  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915  
\*

**ORDER OF COURT**

AND NOW, this 15<sup>th</sup> day of February, 2005, upon receipt of Plaintiff, Precision Fabrication and Controls, Inc.'s Motion for Sanctions II, IT IS ORDERED:

1. Argument shall be heard on this Motion before the Court on March 17 2005, at 10:00 A.M.
2. Counsel for Precision Fabrication and Controls, Inc. may participate in this Argument by telephone conference call.

BY THE COURT:

  
Paul E. Cheaney  
j.

cc: David J. Hopkins, Esq.  
Eugene J. Brew, Esq.

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

FRESHTEC FOOD PROCESSING :  
EQUIPMENT INTERNATIONAL, LLC, :  
A Pennsylvania limited liability company, :  
Plaintiff, :  
v. : No. 2004-1146 C.D.

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC. :  
Defendants. :  
:

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

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC. :  
Defendants. : Prepared on behalf of: FreshTec Food

Prepared on behalf of: FreshTec Food Processing Equipment International, LLC and Backus USA, Inc.

Counsel of Record for this Party:

HOPKINS HELTZEL LLP

David J. Hopkins, Esquire  
Attorney at Law  
Supreme Court No. 42519

900 Beaver Drive  
DuBois, Pennsylvania 15801  
(814) 375-0300

6<sup>th</sup>  
**FILED** <sup>6<sup>th</sup></sup>  
cc  
01/15/2004 <sup>cc</sup> **Aug Hopkins**  
FEB 03 2005  
Orig. to **OH-1410-C**  
William A. Shaw  
Prothonotary/Clerk of Courts

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

FRESHTEC FOOD PROCESSING :  
EQUIPMENT INTERNATIONAL, LLC, :  
A Pennsylvania limited liability company, :  
Plaintiff, :  
v. : No. 2004-1146 C.D.  
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PRECISION FABRICATION AND :  
CONTROLS, INC. and ADVANCED :  
INDUSTRIAL CONTROLS, INC. :  
Defendants. :  
: :  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)

BACKUS USA, INC., a Pennsylvania :  
Corporation, and FRESHTEC FOOD :  
PROCESSING EQUIPMENT :  
INTERNATIONAL, LLC, :  
A Pennsylvania limited liability company, :  
Plaintiff, :  
v. : No. 2004-1577 C.D.  
: :  
PRECISION FABRICATION AND :  
CONTROLS, INC. and ADVANCED :  
INDUSTRIAL CONTROLS, INC. :  
Defendants. :  
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**ANSWER TO MOTION FOR SANCTIONS NO. II**

AND NOW, comes FreshTec Food Processing Equipment International, LLC  
(hereinafter "FreshTec") and Backus USA, Inc. (hereinafter "Backus") by and through their  
undersigned counsel, Hopkins Heltzel LLP, and answers Precision Fabrication and Controls,  
Inc.'s Motion for Sanctions as follows:

1. Admitted.

2. Neither admitted nor denied. The Order of Court is self explanatory and does not need to be amplified.

3. Admitted.

4. Denied. The answers are completely responsive to the questions asked of Interrogatory 7, Interrogatory 8, Interrogatory 9 and Interrogatory 10.

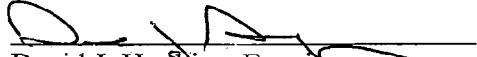
5. Denied. The answers are completely responsive to the questions asked of Interrogatory 7, Interrogatory 8, Interrogatory 9 and Interrogatory 10.

6. Denied. The answers are completely responsive to the questions asked of Interrogatory 7, Interrogatory 8, Interrogatory 9 and Interrogatory 10.

WHEREFORE, FreshTec and Backus respectfully request Precision Fabrication Controls, Inc.'s Motion for Sanctions be denied and the Court order such other and further relief as it deems fair, just and equitable.

Respectfully submitted,

Hopkins Heltzel LLP



David J. Hopkins, Esquire  
Attorney for FreshTec Food Processing  
Equipment International, LLC

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

FRESHTEC FOOD PROCESSING :  
EQUIPMENT INTERNATIONAL, LLC, :  
A Pennsylvania limited liability company, :  
Plaintiff, :  
v. : No. 2004-1146 C.D.  
PRECISION FABRICATION AND :  
CONTROLS, INC. and ADVANCED :  
INDUSTRIAL CONTROLS, INC. :  
Defendants. :  
\_\_\_\_\_

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

BACKUS USA, INC., a Pennsylvania :  
Corporation, and FRESHTEC FOOD :  
PROCESSING EQUIPMENT :  
INTERNATIONAL, LLC, : No. 2004-1577 C.D.  
A Pennsylvania limited liability company, :  
Plaintiffs, :  
v. :  
PRECISION FABRICATION AND :  
CONTROLS, INC. and ADVANCED :  
INDUSTRIAL CONTROLS, INC. :  
Defendants. :  
\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of Answer to Precision  
Fabrication Controls, Inc.'s Motion for Sanctions No. 2, filed on behalf of FreshTec Food  
Processing Equipment International, LLC and Backus USA, Inc., was forwarded by first class

mail, postage prepaid, on the 3rd day of February, 2005, to all counsel of record, addressed as follows:

Eugene J. Brew, Esquire  
McClure & Miller LLP  
717 State Street, Suite 701  
Erie, PA 16501



David J. Hopkins, Esquire  
Attorney for FreshTec Food Processing  
International LLC and Backus USA, Inc.

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

FRESHTEC FOOD PROCESSING

EQUIPMENT INTERNATIONAL, LLC

A Pennsylvania Limited Liability Company

Plaintiff

vs.

PRECISION FABRICATION AND

CONTROLS, INC., and

ADVANCED INDUSTRIAL CONTROLS,

INC.

Defendants

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\* No. 2004-1146-CD

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FILED NO

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FEB 07 2005

WAS William A. Shaw  
Prothonotary/Clerk of Courts

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

BACKUS USA, INC., a Pennsylvania

Corporation, and

FRESHTEC FOOD PROCESSING

EQUIPMENT INTERNATIONAL, LLC

A Pennsylvania Limited Liability Company

Plaintiff

vs.

PRECISION FABRICATION AND

CONTROLS, INC., and

ADVANCED INDUSTRIAL CONTROLS,

INC.

Defendants

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truth of the matters set forth herein, including the genuineness, authenticity, correctness, execution, signing, delivery and mailing or receipt of any document described herein.

Pursuant to Pa. RCP 4014, the matters set forth herein are admitted unless within thirty (30) days of service of this Request an Answer verified by the party, or an objection, signed by the party, or the party's attorney is served upon the below named counsel. If an objection is made, the reasons therefore must be stated.

References to invoice numbers are Precision Invoices to FreshTec.

This is an amendment to the Request for Admissions previously submitted and filed, and dated January 28, 2005. The amendments are either in *italics*, or underlined.

1.

Attached hereto and marked Exhibit "A" is a true copy of a letter dated and sent July 27, 2004, from counsel of record for FreshTec to Precision.

- (a) All the information set forth in Exhibit "A" is *correct* as of the date of this Request for Admissions.
- (b) The total of the invoices referred to in the letter, on which counsel states "my client is prepared to pay" is as follows:

<u>Invoice No.</u>	<u>Amount</u>
1042	\$31,596.00
1054	12,950.00
1075	28,836.00
1076	5,640.00
1077	8,400.00
1079	150.00
1080	1,560.00
1090	7,560.00

1091	<u>3,240.00</u>
1108	6,480.00
1119	<u>3,800.00</u>
1120	1,900.00
1127	19,440.00
1135	<u>3,800.00</u>
1136	<u>11,400.00</u>
TOTAL	<u>\$146,752.00</u>

2.

FreshTec has agreed to pay invoice 1042, in the sum of \$31,596.00.

- (a) FreshTec has never advised Precision or Precision's counsel of any reasons related to the machinery or equipment described in this invoice, why this invoice should not be paid.
- (b) FreshTec never advised Precision in writing that there were any defects or deficiencies in this machinery.

3.

Invoice no. 1054, in the sum of \$12,950.00, was used by FreshTec's customer in 2004.

- (a) FreshTec claims that \$5,000.00 should be withheld from this invoice, for payment for repairs to this machine.
- (b) Withholding \$5,000.00 on this invoice, would leave a remaining balance due on the invoice of \$7,950.00.
- (c) FreshTec has never given Precision any reason related to any defects or deficiencies in the machinery in this invoice, why the sum of \$7,950.00, should not be paid at this time on this invoice.
- (d) FreshTec has never advised Precision in writing of any defects or deficiencies in this

machinery.

4.

Invoice no. 1075, for \$28,836.00. FreshTec has given no reason to Precision, related to this specific machine, for not paying this invoice.

- (a) This machine was shipped to FreshTec's customer, as being used by FreshTec's customer.
- (b) FreshTec has given Precision no reason for non-payment of this invoice that is related to this machine.
- (c) FreshTec has never advised Precision in writing of any defects or deficiencies in this machine.

5.

Invoice 1076. This machine was completed and shipped in 2004.

- (a) FreshTec has never advised Precision of any reasons why this invoice should not be paid, that were related to the machine itself.
- (b) The balance due on this machine is \$5,640.00.
- (c) FreshTec has had no written correspondence with Precision advising of any defects or deficiencies in this machine.

6.

Invoice 1077 is in the amount of \$8,400.00.

- (a) FreshTec claims that \$2,220.00 should be withheld from this invoice for the cost of weld repairs and shipping charges.
- (b) This machine was shipped and used by FreshTec's customer in 2004.
- (c) FreshTec agrees that the sum of \$6,200.00 is due on this invoice, subtracting the \$2,200.00, FreshTec claims for weld repairs from the invoice, \$8,400.00.

(d) FreshTec has never forwarded to Precision any document substantiating the claimed back-charge for weld repairs and shipping charges of \$2,220.00.

(e) Other than the claim for welding repairs and shipping charges, there were no other defects or repairs to this machine.

7.

Invoice 1079, in the amount of \$150.00, is admitted by FreshTec as a valid invoice and that it should be paid.

8.

Invoice 1080 in the sum of \$1060.00 is admitted by FreshTec as a valid invoice, and that it should be paid.

9.

Invoice 1090 in the sum of \$7,560.00. This machine was shipped on June 15, 2004.

(a) FreshTec claims that there were welding failures on this machine which were repaired by FreshTec's customer, and that the customer back-charged FreshTec \$2,800.00.

(b) FreshTec agrees that after subtracting the \$2,800.00 FreshTec claims as a credit, the balance on the invoice, \$4,760.00, should be paid.

(c) FreshTec has never submitted to Precision any document substantiating the claim back-charge of \$2,800.00 for welding failure repairs.

(d) Other than the claimed welding failures, there were no other defects or deficiencies in this machine. This machine has been used in 2004 by FreshTec's customer.

(e) FreshTec has been paid for this machine by FreshTec's customer.

10.

Invoice 1091 is in the total sum of \$3,240.00.

(a) This machine was shipped on June 16, 2004.

(b) This machine has been used in 2004 by FreshTec's customer.

(c) FreshTec has been paid for this machine by FreshTec's customer.

(d) FreshTec claims that the invoices totaling \$3,240.00 should be paid less the down payment made.

11.

Invoice 1108, for an invoice price of \$6,480.00, is for a bin dumpster.

(a) FreshTec claims that the price should have been \$5,400.00.

(b) FreshTec agrees that the sum of \$5,400.00 is due and payable on this invoice.

(c) FreshTec has no complaints or objections to the machine itself.

(d) FreshTec's customer has been using this machine.

(e) FreshTec has been paid for this machine by its customer.

12.

FreshTec has no objections based on defects in the machines, to invoice 1119 in the sum of \$3,800.00.

13.

FreshTec has no objections based on defects to the machine, to the payment of invoice no. 1120 in the sum of \$1,900.00.

14.

FreshTec has no objections based on defects to the machine, to the payment of invoice no. 1127 in the sum of \$19,440.00.

- (a) This machine has been shipped to FreshTec's customer.
- (b) FreshTec's customer has been using the machine, and has never returned the machine to FreshTec.
- (c) FreshTec's customer has paid for the machine.

15.

FreshTec has no objections based upon defects or deficiencies in the machines, to the payment of invoice no. 1135 in the sum of \$3,800.00.

16.

FreshTec has no objections based upon defects or deficiencies in the machines (6), to the payment of invoice no. 1136 in the sum of \$11,400.00.

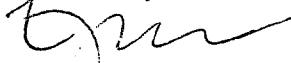
17.

*Attached hereto, made a part hereof and marked Exhibit "A-9" is an invoice number 76317 dated April 15, 2004 from Advanced Industrial Controls, Inc. to FreshTec for repairs to an onion slicer machine.*

- (a) *This machine was manufactured and shipped by AIC.*
- (b) *It was agreed by FreshTec that this invoice would be paid to Precision.*
- (c) *The valuation and repairs were properly completed by Precision.*
- (d) *The machine was returned to FreshTec or FreshTec's customer.*
- (e) *This invoice has never been paid by FreshTec to either AIC or Precision.*

18. The invoices referenced in paragraphs 12, 13, 15 and 16 were for upcharges authorized and approved by Larry Salone from FreshTec on June 11, 2004.

Submitted by:



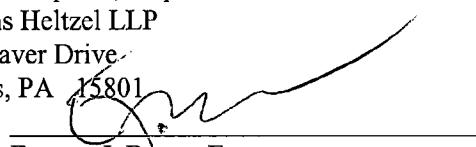
Eugene J. Brew, Esq.  
McCLURE & MILLER LLP  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication and Controls, Inc.

Dated: 3/3 , 2005

**CERTIFICATE OF SERVICE**

I, EUGENE J. BREW, ESQ., certify that I served a true copy of the within Request for Admissions on Defendant's counsel as follows:

David J. Hopkins, Esq.  
Hopkins Heltzel LLP  
900 Beaver Drive  
DuBois, PA 15801

  
Eugene J. Brew, Esq.  
McCLURE & MILLER LLP  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication and Controls,  
Inc.

Dated: 3/3 , 2005

# HOPKINS HELTZEL LLP

900 Beaver Drive • DuBois, PA 15801

**David J. Hopkins**  
Licensed in PA & NJ  
Masters in Taxation

- Voice: (814) 375 - 0300
- Fax: (814) 375 - 5035
- Email: hopkinslaw@adelphia.net

**Lea Ann Heltzel**  
Licensed in PA

July 27, 2004

7-27-04

Facsimile: (814) 368-5040

Precision Fabrication & Controls, Inc.  
Mr. Benjamin Brechtel  
195 Chestnut Street  
P.O. Box 331  
Bradford, PA 16701

Re: FreshTec Food Processing Equipment International LLC

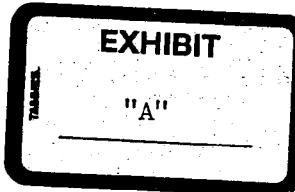
Dear Brechtel:

As a follow up to our telephonic conversation of last week, I enclose herewith for your review a Confidentiality and Non-Compete Agreement. Would you please review the document and if you have any questions or suggestions, please feel free to contact me or have your attorney contact me to iron out any suggestions you may have.

I have had some discussions with Mr. Salone who is now on the West Coast concerning this matter. My client has several concerns regarding the bills that you have sent which are set forth herein. My comments are based upon FreshTec's records.

## Invoice 1042

- a. Item 1 is okay.
- b. Item 2 is okay.
- c. By way of further response this machine was ordered and a down payment was made on January 8, 2004. The machine was not shipped until July 25, 2004. The delay caused FreshTec's client to be very unhappy. I understand the delay was caused by Precision's inability to purchase materials. Notwithstanding the above, assuming all other provisions of this letter is satisfied, FreshTec will pay Invoice 1042.



Invoice 1054

- c. This machine is breaking welds in Canada. FreshTec has had to visit the site and make repairs inasmuch as the customer cannot pull the machine out of production. FreshTec has paid \$1,800 USD in repair work to date. FreshTec believes another \$3,000.00 will be expended for repairs to this machine.

By way of further comment, this machine was ordered February 19, 2004 and a down payment made. The machine was not shipped until May 25, 2004 causing another FreshTec client to be unhappy. Notwithstanding the above, assuming all other provisions of this letter are satisfied, FreshTec will pay Invoice No. 1054 less \$5,000.00.

Invoice 1075

- a. This machine was ordered on January 8, 2004 and a down payment was made. The machine was not shipped until June 1, 2004 causing another unhappy customer. Notwithstanding the above, assuming all other provisions of this letter are satisfied, FreshTec will pay Invoice No. 1075.

Invoice 1076

- a. This machine was ordered on March 30, 2004 and not shipped until June 1, 2004. Notwithstanding the above, assuming all other provisions of this letter are satisfied, FreshTec will pay Invoice No. 1076.

Invoice 1077

- a. This machine has broken welds and has been returned to Wilcox. FreshTec has not yet fully evaluated the problem but it has spent \$980.00 on one way freight. It will cost another \$980.00 to return the machine. FreshTec anticipates 4 hours in repairing the welds at \$65.00 per hour. Notwithstanding the above, assuming all other provisions of this letter are satisfied, FreshTec will pay Invoice No. 1077 less \$2,220.00.

July 27, 2004  
Page three

Invoice 1079

- a. Assuming all other provisions of this letter are met, FreshTec will pay this invoice.

Invoice 1080

- a. Assuming all other provisions of this letter are met, FreshTec will pay this invoice.

Invoice 1090

- a. This machine was ordered on February 29, 2004 but not shipped until June 15, 2004. I understand welds have broken on this machine because it was skip welded rather than using continuous welds. The customer was initially angry with the delay in shipment and then became furious with the welding failures. The customer did not send the machine back, but rather, had it repaired at his facility. The customer billed FreshTec \$2,800.00 for repairs that FreshTec credited the customer. Assuming all the other issues concerning the bin dumpster are resolved, FreshTec will pay this invoice less \$2,800.00 it credited its customer for repairs.

Invoice 1091

- a. This machine was ordered on March 30, 2004 but not shipped until June 16, 2004. The customer was angry over the delays. I understand Precision claims the units were not safe and had to be redesigned. However, FreshTec disputes this position. FreshTec gave J. R. pictures of other bin dumpsters it had purchased. If AIC or Precision could build the machines at FreshTec's cost, FreshTec would buy them. Design issues were not FreshTec's concern. FreshTec was able to buy the machine in Canada for the same price.
- b. If Precision guarantees its workmanship on all bin dumpsters and the other provisions of this letter are completed, FreshTec will pay this bill less the down payment. I am advised the down payment was not included on the invoice.

July 27, 2004  
Page four

Invoice 1108

- a. The invoice is incorrect. The invoice lists the price as \$6,480.00 and all of the bin dumpsters are \$5,400.00.
- b. As set forth above, assuming all of the other provisions of this document are met and the machine is guaranteed, my clients will pay the correct invoice.

Invoice 1119

- a. This invoice is not due until August 7, 2004.

Invoice 1120

- a. This invoice is not due until August 13, 2004.

Invoice 1135

- a. This invoice is not due until August 18, 2004.

Invoice 1136

- a. This invoice is not due until August 19, 2004.

As we discussed last week, my client is concerned that AIC creditors will make a claim against FreshTec for machines notwithstanding FreshTec's payments to Precision as set forth in this letter. My client requires an opinion letter with indemnification from your attorney prior to making payment.

My client is prepared to pay for invoices 1042, 1054, 1075, 1076, 1077, 1079, 1080, 1090, 1091 and 1108 pursuant to the terms of this letter.

I am in court most of today, although I am prepared to meet with you on Wednesday and FreshTec will pay the invoices pursuant to this letter provided we execute the enclosed Confidentiality and Non-Compete Agreement, receive the opinion letter with indemnification from your lawyer and you deliver the blueprints, CAD files and other documents relating to the machines.

July 27, 2004  
Page five

Thank you for your consideration of this matter.

Very truly yours,



David J. Hopkins  
Attorney at Law

DJH/bjt

cc: FreshTech Food Processing Equipment International, LLC

**FAXED**  
7-27-04

# ADVANCED INDUSTRIAL CONTROLS, INC.

536 E. MAIN STREET  
P.O. BOX 977  
BRADFORD, PA. 16701

CONTROL PANEL SYSTEMS  
METAL FABRICATION  
PH. (814) 368-4176  
FAX (814) 368-5040

## INVOICE

FEDERAL ID# 25-1792709  
PLEASE PAY FROM THIS INVOICE  
WE DO NOT ISSUE STATEMENTS.

4/15/04	76317
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FRESHTEC, INT'L LLC  
PO BOX 585  
DUBOIS PA  
15801

SNIPPER FRESH PRODUCE  
ATTN: JOEY  
85 MARKET STREET  
CHELSEA MA 02153

ITEM #  
4/15/04  
43959  
NET 30 DAY  
600.00 EA  
600.00

### EXHIBIT

"A-9"

ITEM #	DESCRIPTION	QUANTITY	UNIT	AMOUNT	TERMINATION
25141	VUL-DAVID KNOB	1	PITT. OHIO	4/15/04	43959

ITEMS NOT SHIPPED WILL BE BACK ORDERED OTHERWISE NOTED.

NO CREDIT WILL BE ALLOWED FOR GOODS RETURNED WITHOUT OUR PERMISSION. A MINIMUM OF 15% SERVICE CHARGE WILL BE MADE. TRANSPORTATION CHARGES ON GOODS RETURNED MUST BE PREPAID.

WE HEREBY CERTIFY THAT WE ARE COMPLYING WITH THE REQUIREMENTS OF THE "FAIR LABOR STANDARDS ACT" OR FLSA AS AMENDED. THE RATES ON THIS INVOICE ARE TO THE BEST OF OUR KNOWLEDGE AND SEWER, NOT IN VIOLATION OF ANY APPLICABLE COLLECT PRICE LAWS OR REGULATIONS.

NO MATERIAL RETURNS WILL BE ACCEPTED WITHOUT PRIOR AUTHORIZATION

ORIGIN/

PLEASE REMIT TO P O BOX 977  
BRADFORD PA 16701

PAY THIS AMOUNT  
0.00 - 00

1 1/2% Per Month (18% PER ANNUM) Charged on Delinquent Accounts.

ITEMS NOT SHIPPED WILL BE BACK ORDERED OTHERWISE NOTED.

NO CREDIT WILL BE ALLOWED FOR GOODS RETURNED WITHOUT OUR PERMISSION. A MINIMUM OF 15% SERVICE CHARGE WILL BE MADE. TRANSPORTATION CHARGES ON GOODS RETURNED MUST BE PREPAID.

WE HEREBY CERTIFY THAT WE ARE COMPLYING WITH THE REQUIREMENTS OF THE "FAIR LABOR STANDARDS ACT" OR FLSA AS AMENDED. THE RATES ON THIS INVOICE ARE TO THE BEST OF OUR KNOWLEDGE AND SEWER, NOT IN VIOLATION OF ANY APPLICABLE COLLECT PRICE LAWS OR REGULATIONS.

NO MATERIAL RETURNS WILL BE ACCEPTED WITHOUT PRIOR AUTHORIZATION

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

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC,  
A Pennsylvania limited liability company,  
Plaintiff,

v.

No. 2004-01146 C.D.

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
Defendants.

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

BACKUS USA, INC, a Pennsylvania  
Corporation, and FRESHTEC FOOD  
PROCESSING EQUIPMENT  
INTERNATIONAL, LLC,  
a Pennsylvania limited liability company,  
Plaintiff,

v.

No. 2004-1577-CD

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
Defendants.

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

PRECISION FABRICATION AND  
CONTROLS, INC.,  
Plaintiff

v.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC,  
Defendant

No. 2004-1146

Case transferred from McKean County  
by Order of Court. McKean County No.  
2004-10915

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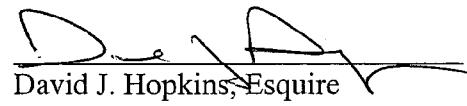
04-1146-CD

William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of Response to Amended Request for Admissions, filed on behalf of FreshTec Food Processing Equipment International, LLC, was forwarded by facsimile and overnight carrier, on the 28<sup>th</sup> day of February, 2005, to all counsel of record, addressed as follows:

(814) 454-1154  
Eugene J. Brew, Esquire  
McClure & Miller LLP  
717 State Street, Suite 701  
Erie, PA 16501

  
David J. Hopkins, Esquire  
Attorney for FreshTec Food Processing  
International LLC

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

FRESHTEC FOOD PROCESSING

\*

EQUIPMENT INTERNATIONAL, LLC

\*

A Pennsylvania Limited Liability Company

\*

Plaintiff

\* No. 2004-1146-CD

\*

\*

\*

\*

\*

\*

\*

vs.

PRECISION FABRICATION AND

\*

CONTROLS, INC., and

\*

ADVANCED INDUSTRIAL CONTROLS,

\*

INC.

\*

Defendants

\*

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

BACKUS USA, INC., a Pennsylvania  
Corporation, and

\*

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC  
A Pennsylvania Limited Liability Company

\*

Plaintiff

\*

\* No. 04-1577 - CD

\*

\*

\*

\*

\*

vs.

PRECISION FABRICATION AND

\*

CONTROLS, INC., and

\*

ADVANCED INDUSTRIAL CONTROLS,  
INC.

\*

Defendants

\*

FILED

APR 04 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

\*

\*

\*

\*

\*

\*

\*

\*

\* No. 2004 - 1146 CD

\* Case transferred from McKean County

\* by Order of Court. McKean County No.

\* 2004-10915

\*

\* Type of Case: Contract

\* Type of Pleading: Motion to Order Bond Posted

\* Filed on behalf of: Precision Fabrication & Controls, Inc.

\* Counsel of Record: Eugene J. Brew, Esq.

\* McClure & Miller LLP

\* 717 State St., Suite 701, Erie, PA 16501

\* (814) 453-3681

\* Pa. I.D. No. 06500

\* Dated: April / , 2005

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 2004-1146-CD

vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 04-1577 - CD

vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

vs.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT

\*  
\*  
\* No. 2004 - 1146 CD  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915  
\*

**DEFENDANT, PRECISION FABRICATION & CONTROLS, INC.**  
**MOTION TO REQUIRE PLAINTIFFS TO POST BOND**

Precision Fabrication & Controls, Inc. (Precision) by its attorney, Eugene J. Brew, Esq., files this Motion requesting the Court to order and direct the Plaintiffs, FreshTec Food Processing Equipment International LLC

(FreshTec) and Backus USA, Inc. (Backus) to post an Injunction Bond in accordance with Rules of Court and to deposit the funds currently escrowed with counsel with the Prothonotary, in accordance with Rules of Court and sets forth:

1. By Order of Court dated November 9, 2004, in the action Backus vs. Precision, at No. 04-1577-CD, this Court enjoined Precision from

manufacturing, developing, producing or fabricating for sale or distribution any food processing equipment that performs the same function as any machinery previously produced or fabricated for or on behalf of Plaintiffs (Backus and FreshTec).

2. The Injunction was to remain in effect until further Order of Court. It was temporary in nature and not intended to be the final Order of the Court relative to the Preliminary Injunction.

3. As of April 9, 2005, the Temporary Order will be in effect for five (5) months.

4. Precision has been obeying the Temporary Order.

5. The Court issued no Order requiring the Plaintiffs, Backus and FreshTec, to file a bond or deposit funds with the Prothonotary under the same condition as provided in an Injunction Bond. Pa. R.C.P. 1531(b)(1), (2).

6. Pa. R.C.P. 1531 requires either the posting of a bond, or a deposit with the Prothonotary.

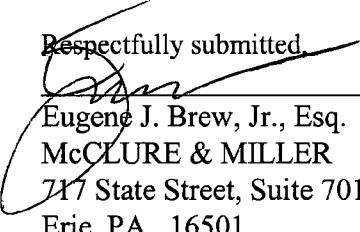
7. On September 16, 2004, counsel for FreshTec deposited the sum of Ninety-one Thousand Twelve Dollars (\$91,012.00) in an individual account, in counsels' name, at the Farmers National Bank, DuBois, PA. Prior to that time these funds were in counsel's general account.

8. Precision requests the Court to order that this account, plus any accumulated interest, be immediately deposited with the Prothonotary of Clearfield County, PA, pursuant to Pa. R.C.P. 1531(b)(2), upon the same condition as provided for in the Injunction Bond.

9. The Court is requested to order that FreshTec and Backus sign and file with the Prothonotary an Injunction Bond in the form attached hereto and marked Exhibit "A".

WHEREFORE, Precision requests the Court for the relief as set forth herein.

Respectfully submitted,

  
Eugene J. Brew, Jr., Esq.

McCLURE & MILLER

717 State Street, Suite 701

Erie, PA 16501

(814) 453-3681

Attorney for Precision Fabrication & Controls, Inc.

Plaintiff

Dated: April / , 2005

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 2004-1146-CD

VS.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 04-1577 - CD

VS.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

vs.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT \*  
\*  
\*  
\* No. 2004 - 1146 CD  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915  
\*

## BOND

KNOW ALL MEN BY THESE PRESENTS, that we, FRESHTEC FOOD PROCESSING EQUIPMENT INTERNATIONAL LLC, and BACKUS USA, INC., are held and firmly bound unto the Commonwealth of Pennsylvania, in the sum of Ninety-One Thousand Twelve Dollars (\$91,012.00) to be paid to the Commonwealth

**EXHIBIT "A"**

of Pennsylvania; to which payment, well and truly to be made we bind ourselves, our and each of our assigns and transferees, firmly by these presents.

Sealed with our seals.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

WHEREAS, the Plaintiffs, Backus USA, Inc., and FreshTec Food Processing Equipment International LLC filed a Complaint in Equity in the Court of Common Pleas of Clearfield County, PA, at No. 04-1577-CD against Precision Fabrication & Controls, Inc. and Advanced Industrial Controls, Inc., Defendants, requesting an injunction to restrain the Defendants as therein particularly set forth, which said injunction was duly granted by the Court by Order dated November 9, 2004.

NOW the condition of this obligation is such that if the injunction is dissolved because improperly granted, or for failure to hold a Hearing, the Plaintiffs shall pay to any of the Defendants injured all damages sustained by reason of granting the injunction and all legally taxable costs and fees, this obligation then to be void; otherwise, it is to remain in full force and effect.

BACKUS USA, INC.

By \_\_\_\_\_

FRESHTEC FOOD PROCESSING EQUIPMENT  
INTERNATIONAL LLC

By \_\_\_\_\_

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 2004-1146-CD

VS.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 04-1577 - CD

VS.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

vs.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT \*  
\*  
\*  
\* No. 2004 - 1146 CD  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915  
\*

## **ORDER OF COURT**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2005, after Argument on Defendant, Precision Fabrication & Controls, Inc.'s Motion to Post Bond, IT IS ORDERED:

1. Plaintiffs, FreshTec Food Processing Equipment International LLC and Backus USA, Inc., shall

within ten (10) days of the date of this Order, post a Bond in the form attached to the Motion as Exhibit "A", by filing the same with the Prothonotary, and serving a copy upon counsel for Precision.

2. Within ten (10) days from the date of this Order, counsel for FreshTec and Backus shall deposit with the Prothonotary of Clearfield County, PA, the Ninety-one Thousand Twelve Dollars (\$91,012.00) plus any accumulated interest, that counsel is presently holding in an individual account, said amount to be held by the Prothonotary upon the same condition as provided for in the Injunction Bond, to be filed pursuant to this Order.

3. Upon failure to comply with this Order, the injunction entered by Order on November 9, 2004, will be dissolved.

BY THE COURT:

---

J.

cc: David J. Hopkins, Esq.

Eugene J. Brew, Esq.

**CERTIFICATE OF SERVICE**

I, EUGENE J. BREW, ESQ., certify that I served a true copy of the within Motion on Plaintiffs' counsel on the below address, on the below date by First Class Mail, postage pre-paid:

David J. Hopkins, Esq.  
Hopkins Heltzel, LLP  
900 Beaver Drive  
DuBois, PA 15801

  
\_\_\_\_\_  
Eugene J. Brew, Jr., Esq.  
McCLURE & MILLER  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication & Controls, Inc.

Dated: April / , 2005

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 2004-1146-CD

vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 04-1577 - CD

vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

vs.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT

No. 2004 - 1146 CD  
Case transferred from McKean County  
by Order of Court. McKean County No.  
2004-10915

**ORDER OF COURT**

AND NOW, this 8<sup>th</sup> day of April, 2005, upon receipt of Precision Fabrication & Controls, Inc.'s Motion for Sanctions III, IT IS ORDERED:

1. Argument shall be heard on this Motion before the Court on May 11, 2005, at 10:30 A.M.

2. Counsel for Precision Fabrication & Controls, Inc. may participate in this Argument by telephone conference call.

BY THE COURT:

Paul E. Cheung J.

cc: David J. Hopkins, Esq.  
Eugene J. Brew, Esq.

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \*  
\* No. 2004-1146-CD

vs.

PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*  
Defendants \*

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \*  
\* No. 04-1577 - CD

vs.

PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*  
Defendants \*

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

PRECISION FABRICATION & \*  
CONTROLS, INC., \*  
PLAINTIFF \*

vs.

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL LLC \*  
DEFENDANT \*

\* No. 2004 - 1146 CD  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
2004-10915  
\* Type of Case: Contract  
\* Type of Pleading: Motion for Sanctions III  
\* Filed on behalf of: Precision Fabrication & Controls, Inc.  
\* Counsel of Record: Eugene J. Brew, Esq.  
\* McClure & Miller LLP  
\* 717 State St., Suite 701, Erie, PA 16501  
\* (814) 453-3681  
\* Pa. I.D. No. 06500  
\* Dated: April 4, 2005

FILED NO CC  
APR 06 2005

APR 06 2005  
William A. Shaw  
Prothonotary/Clerk of Courts

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 2004-1146-CD

VS.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
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Plaintiff \* No. 04-1577 - CD

VS.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

vs.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT \*  
\*  
\* No. 2004 - 1146 CD  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915

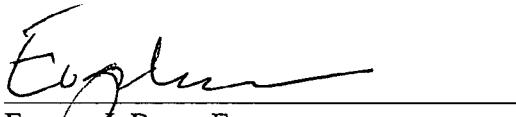
**DEFENDANT, PRECISION FABRICATION & CONTROLS, INC.'S MOTION FOR SANCTIONS III**  
**REQUESTING AN ORDER DIRECTING DEFENDANT TO ANSWER INTERROGATORIES**

Precision Fabrication & Controls, Inc. (Precision) by its Attorney Eugene J. Brew, files this Motion for Sanctions III Requesting the Court to Order and Direct FreshTec Food Processing Equipment International LLC (FreshTec) and Backus USA, Inc. (Backus) to serve responsive answers to Precision's Interrogatories and Request

for Production of Documents and sets forth:

1. Precision served Interrogatories and Request for Documents on counsel for FreshTec and Backus on January 24, 2005.
2. A copy of the Interrogatories are attached hereto and made a part hereof and marked Exhibit "A".
3. The responses to the Interrogatories were due on or about February 25, 2005.
4. When requested to file the responses, when they became overdue, counsel for Backus and FreshTec advised that the responses would be filed on or before March 31, 2005.
5. The responses have not been filed.

WHEREFORE, Precision requests the Court to Order and direct FreshTec and Backus to file responses to the Request for Documents and Interrogatories.



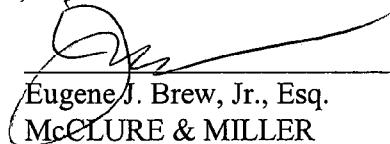
Eugene J. Brew, Esq.  
McCLURE & MILLER LLP  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication & Controls, Inc.

Dated: April 4, 2005

**CERTIFICATE OF SERVICE**

I, EUGENE J. BREW, ESQ., certify that I served a true copy of the within Motion for Sanctions III on Plaintiffs' counsel on the below address, on the below date by First Class Mail, postage pre-paid:

David J. Hopkins, Eq.  
Hopkins Heltzel, LLP  
900 Beaver Drive  
DuBois, PA 15801



Eugene J. Brew, Jr., Esq.  
McCLURE & MILLER  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication & Controls, Inc.

Dated: April 4, 2005

1-24-05

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

vs.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT

\* IN THE COURT OF COMMON PLEAS  
\* OF CLEARFIELD COUNTY,  
\* PENNSYLVANIA

\*

\*

\*

\*

\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915

\*

\* Type of Case: Contract

\*

\* Type of Pleading: Interrogatories and  
\* Request for Production of Documents to  
\* Defendant

\*

\* Filed on behalf of:

\* Precision Fabrication & Controls, Inc.

\*

\* Counsel of record:

\*

\* Eugene J. Brew, Esq.  
\* McClure & Miller LLP  
\* 717 State Street, Suite 701  
\* Erie, PA 16501  
\* (814) 453-3681  
\* Pa. I.D. No. 06500

\*

\* Dated: January 24, 2005



PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

vs.

FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT

\* IN THE COURT OF COMMON PLEAS  
\* OF CLEARFIELD COUNTY,  
\* PENNSYLVANIA

\*

\*

\*

\*

\* No. 2004 -

**INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS  
TO DEFENDANT (FIRST SET)**

TO: FreshTec Food Processing Equipment International LLC  
c/o David Hopkins, Esq.

Plaintiff, by their attorney, EUGENE J. BREW, ESQ., serves the following Interrogatories and Request for Production of Documents on the Defendant, requiring answers under oath within thirty (30) days after service of the Interrogatories in accordance with Pa. R.C.P. 4006, and requesting responses to the Request for Documents within thirty (30) days after service in accordance with Pa. R.C.P. 4009.12, et. seq.:

**DEFINITIONS**

1. "Defendant", "FreshTec", or "you" shall mean FreshTec Food Processing Equipment International LLC, and/or its employees, representatives, agents, attorney, supervisors, elected officials, and successors, and any and all persons acting or purporting to act on its behalf.

2. "Plaintiff", or "Precision" shall mean Precision Fabrications & Controls, Inc., its officers, employees, representatives, agents, and attorneys.

3. The term "document" refers to written, printed, typed, computerized, computer-generated, computer-stored, tape recorded, and visually or orally reproduced material of any kind, whether or not privileged, and includes, but is not limited to, correspondences, faxes, e-mail communications, stenographic, handwritten or any other notes, memoranda, books,

pamphlets, records, minutes, bills, contracts, agreements, orders, receipts, drawings or sketches, advertising or promotional literature, operating manuals or instructions, bulletins, cables or telegrams, tape or other recordings, computer disks, test data, studies, surveys, reports, publications, pictures, computer printouts, films, objects and other tangible things, including all non-identical copies of any such material.

4. The term "person" refers both to natural persons and to corporate or other business entities. Documents within the possession or control of a person are defined to include the documents in the possession or control of that person's supervisors, elected officials, officers, members, employees, representatives, agents and attorneys.
5. The term "Answer" or "your answer" refers to your Answer filed in the within case.

1.

State the name, address, job title, employer of all persons who assisted in responding to these Interrogatories.

ANSWER:

2.

State the name, address, job title, employer and phone number of all persons who have any knowledge of any of the facts set forth in the Complaint in the within action, or in your Answer to the Complaint:

ANSWER:

3.

Please state the names and present addresses of each person who is an expert whom you expect to call as an expert witness at trial.

ANSWER:

4.

With respect to those persons identified in your answer to Interrogatory No. 3, please state the subject matter on which each expert witness is expected to testify.

ANSWER:

5.

With respect to those persons identified in your answer to Interrogatory No. 3, please state:

(a) His or her occupation, specialization, qualifications, including education and other training and professional experience; and

ANSWER:

(b) The substance of the facts and opinions to which each is expected to testify and a summary of the grounds for each opinion, including any text materials relied upon.

ANSWER:

(In answering Interrogatories 4 and 5, the signature of each person is required to be affixed to the answer hereto or to a separate report provided in lieu of an answer hereto.)

6.

Submit copies of any documents that you intend to use as evidence at trial of the within matter.

ANSWER:

The following Interrogatories and Request for Documents pertain to your Answer.

7.

In paragraph ¶ 7, you state that "delivery of the machinery was so untimely". State separately, for each machine delivered, date of its delivery, and to whom the delivery was made.

ANSWER:

8.

In paragraph ¶ 7, you state that "Defendant received numerous complaints from its customers". State specifically, for each machine delivered, whether or not a complaint was made, whether it was oral or written, the date it was made, and specifically what the complaint was for each machine. If the complaint was written, attach a copy of the writing. If the complaint was oral, state by whom the complaint was made, and to whom.

ANSWER:

9.

In paragraph ¶ 7 and ¶ 10, you state that certain machines "required extensive repairs". For each machine that required repairs, identify the machine and the purchase order, and state with specificity what repairs were made, the date they were made, by whom they were made, the cost of the repairs, and the amount of any money paid for any repairs.

ANSWER:

10.

In paragraph ¶ 10, you state that "welds have broken". Identify by purchase order number and description of machine, all machines on which welds have broken. State the date when you were first advised on each machine that welds had broken. State who repaired the welds, the date repairs were made, any charge or cost to repair the welds.

ANSWER:

11.

In paragraph ¶ 10 you state that "machines have collapsed". Identify by types of machine, purchase order, all of the machines that collapsed, and give the date you were first notified of the collapse, who notified you, what if any repairs were made to the machine that collapsed, by whom, and the cost of making the repairs.

ANSWER:

12.

In paragraph ¶ 10, you state that "finishes have eroded." State in detail which machines, identifying them by name or description, purchase order, had finishes eroded. State the dates you first learned on each machine that finishes had eroded. State any repairs or corrections that were made to machines on which finishes had eroded, who made the repairs or corrections, and the cost of making the repairs.

ANSWER:

13.

In paragraph ¶ 10, you state that you have "incurred significant shipping" costs in connection with the defective machinery. State in detail the total amount of shipping costs incurred, attaching documents in support of the same.

ANSWER:

14.

In paragraph ¶ 10, you state that you incurred "repair costs" in connection with the defective machinery. If you have not answered previously, state in detail for each machine repaired, by description of machine and purchase order, the repair costs that you incurred for each machine.

ANSWER:

15.

In paragraph ¶ 10, you state that you believe Precision "improperly substituted materials". State with specificity each and every machine, identifying by description of machine, purchase order which machines you believe materials were substituted in, and state whether or not you have made any repairs, changes or corrections to these machines, and the cost of any such repairs or corrections.

ANSWER:

16.

State specifically what you mean by "improperly substituted materials".

ANSWER:

16.

State specifically what you mean by "improperly substituted materials".

ANSWER:

17.

In paragraph ¶ 10, you state that Precision "failed to follow Defendant's specifications or industry standards". For each machine or purchase order that you believe this occurred, state specifically, and identify by machine, purchase order that this occurred on, and state specifically what specifications or industry standards were not followed for each machine or purchase order.

ANSWER:

18.

In paragraph ¶ 10, you state that your customers have "refused to pay" for some of the machines. State specifically what machines, what purchase orders, and what customers, with amounts, have not been made as of the date of your Answer. State the date that payments were made on all machines by all customers. State the name and address of the customers.

ANSWER:

19.

In paragraph ¶ 12, you state that there were "certain errors in pricing" on invoices. State specifically by invoice number and date, what the pricing errors were, the amount of the error, whether and what date the errors were corrected.

ANSWER:

Submitted by:

  
Eugene J. Brew, Esq.  
McCLURE & MILLER LLP  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication & Controls, Inc.

Date Submitted: January 24, 2005

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 2004-1146-CD

VS.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 04-1577 - CD

vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

FILED 2cc  
04/06/2005 Atty  
APR 11 2005 Brew  
(

William A. Shaw (6K)  
Prothonotary/Clerk of Courts

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

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

vs.

**FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT**

No. 2004 - 1146 CD  
Case transferred from McKean County  
by Order of Court. McKean County No.  
2004-10915

**ORDER OF COURT**

AND NOW, this 8<sup>th</sup> day of April, 2005, upon receipt of Plaintiff, Precision Fabrication & Controls, Inc.'s Motion to Require Bond, IT IS ORDERED:

1. Argument shall be heard on this Motion before the Court on May 11, 2005, at 10:30  
A.M.
2. Counsel for Precision Fabrication & Controls, Inc. may participate in this Argument by telephone conference call.

BY THE COURT:

Paul E. Cherry  
J.

cc: David J. Hopkins, Esq.

Eugene J. Brew, Esq.

**COPY FILED** <sup>(6)</sup> <sub>NO cc</sub>  
m/23/04 MAY 09 2005 orig. to  
04-1146-CD

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

William A. Shaw  
Prothonotary/Clerk of Courts

**FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC**  
A Pennsylvania Limited Liability  
Company,

Plaintiff

Vs.

**PRECISION FABRICATION AND  
CONTROLS, INC., and ADVANCED  
INDUSTRIAL CONTROLS, INC.,**  
Defendants

No. 2004-1146-CD

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

**BACKUS USA, INC.,** a Pennsylvania  
Corporation, and **FRESHTEC FOOD  
PROCESSING EQUIPMENT  
INTERNATIONAL, LLC**, a Pennsylvania  
Limited Liability Company,

Plaintiff

Vs.

No. 04-1577-CD

**PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.,**  
Defendants

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

**PRECISION FABRICATION &  
CONTROLS, INC.**

Plaintiff

Vs.

**FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC**  
Defendant

No. 2004 - 1146 C.D.  
Case transferred from McKean  
County by Order of Court McKean  
County No. 2004-10915  
Type of Case: Contract

**P R A E C I P E**

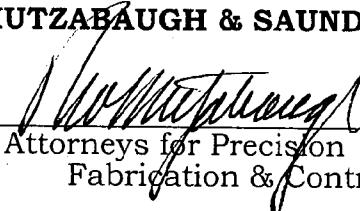
**TO THE PROTHONTARY:**

Kindly enter our appearance for **Precision Fabrication and Controls**,

Inc., in the above entitled matter.

**MUTZABAUGH & SAUNDERS**

By

  
Attorneys for Precision  
Fabrication & Controls, Inc.

Dated: May 6, 2005

Mutzabaugh & Saunders, LLP  
13 Main St., P.O. Box 647  
Bradford, Pennsylvania 16701  
(814) 362-3538

PA

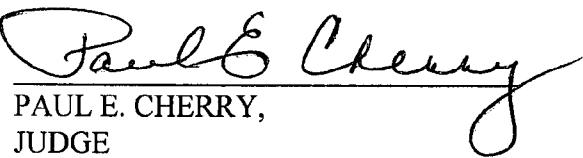
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

BACKUS USA, INC., a Pennsylvania	:	NO. 04-1577-CD
Corporation, and FRESHTEC FOOD	:	
PROCESSING EQUIPMENT	:	
INTERNATIONAL, LLC., a Pennsylvania	:	
Limited Liability Company,	:	
Plaintiffs	:	
	:	
V.	:	
	:	
PRECISION FABRICATION AND	:	
CONTROLS, INC., and ADVANCED	:	
INDUSTRIAL CONTROLS, INC.,	:	
Defendants	:	

**ORDER**

AND NOW, this 18<sup>th</sup> day of May, 2005, following argument on Defendant's Motion to Require Bond and upon consideration of the same, the Court being satisfied that the Defendant provided no evidence which would support the imposition of a bond in the amount requested by Defendant, it is the ORDER of this Court that said Motion be and is hereby GRANTED. Plaintiff shall post bond in the amount of Seventy Five Thousand Dollars (\$75,000.00) within no more than ten (10) days from today's date.

BY THE COURT,

  
PAUL E. CHERRY,  
JUDGE

FILED *cc Atlys:*  
*03/08/05* *Murtagh*  
**MAY 19 2005** *Brew*  
William A. Shaw *Hopkins*  
Prothonotary/Clerk of Court *Advanced Ind.*  
*6P*

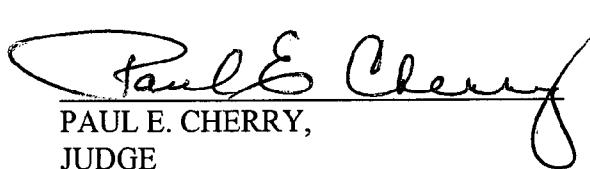
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

BACKUS USA, INC., a Pennsylvania Corporation, and FRESHTEC FOOD PROCESSING EQUIPMENT INTERNATIONAL, LLC., a Pennsylvania Limited Liability Company, Plaintiffs v. PRECISION FABRICATION AND CONTROLS, INC., and ADVANCED INDUSTRIAL CONTROLS, INC., Defendants

**ORDER**

AND NOW, this 18<sup>th</sup> day of May, 2005, following argument on Defendant's Preliminary Objections and the timely receipt of Briefs and upon consideration of same, it is the ORDER of this Court that said Preliminary Objections be and are hereby DISMISSED.

BY THE COURT,

  
PAUL E. CHERRY,  
JUDGE

FILED

03/00/05  
MAY 19 2005

William A. Shaw  
Prothonotary/Clerk of Courts

icc  
Atlys:  
Hopkins  
Brew  
Mutzabaugh  
Advanced Ind.

60

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

BACKUS USA, INC., a Pennsylvania Corporation, and FRESHTEC FOOD PROCESSING EQUIPMENT : NO. 04-1577-CD  
INTERNATIONAL, LLC., a Pennsylvania Limited Liability Company, :  
Plaintiffs :  
V. :  
PRECISION FABRICATION AND :  
CONTROLS, INC., and ADVANCED :  
INDUSTRIAL CONTROLS, INC., :  
Defendants :

## ORDER

AND NOW, this 19<sup>th</sup> day of May, 2005, it is the ORDER of this Court that  
hearing shall be held on the 11<sup>th</sup> and 12<sup>th</sup> days of July, 2005, beginning at 9:00 o'clock  
A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield,  
Pennsylvania.

BY THE COURT.

PAUL E. CHERRY,  
JUDGE

FILED 1cc  
01/30/05 Attns:  
MAY 19 2005 Hopkins  
William A. Shaw Brew  
Prothonotary/Clerk of Courts Mutzabaugh  
Advanced Ind.

63

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

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 2004-1146-CD

vs. \*

PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*

Defendants \*

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

BACKUS USA, INC., a Pennsylvania \*  
Corporation, and \*  
FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL, LLC \*  
A Pennsylvania Limited Liability Company \*  
Plaintiff \* No. 04-1577 - CD

vs. \*

PRECISION FABRICATION AND \*  
CONTROLS, INC., and \*  
ADVANCED INDUSTRIAL CONTROLS, \*  
INC. \*

Defendants \*

*FILED* 6/1/4607  
JUL 07 2005 Orig. to  
William A. Shaw 04-1146-CD  
Prothonotary/Clerk of Courts  
Copy to CIA

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

PRECISION FABRICATION & \*  
CONTROLS, INC., \*  
PLAINTIFF \*

vs. \*

FRESHTEC FOOD PROCESSING \*  
EQUIPMENT INTERNATIONAL LLC \*  
DEFENDANT \*

\* No. 2004 - 1146 CD  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915  
\* Type of Case: Contract  
\* Type of Pleading: Withdrawal of Appearance  
\* Filed on behalf of: Precision Fabrication & Controls, Inc.  
\* Counsel of Record: Eugene J. Brew, Esq.  
\* McClure & Miller LLP  
\* 717 State St., Suite 701, Erie, PA 16501  
\* (814) 453-3681  
\* Pa. I.D. No. 06500  
\* Dated: *JUL 5, 2005*

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

**FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC  
A Pennsylvania Limited Liability Company  
Plaintiff**

\*  
\*  
\*  
\* No. 2004-1146-CD

vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

\* \* \* \* \*

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

BACKUS USA, INC., a Pennsylvania  
Corporation, and  
FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC  
A Pennsylvania Limited Liability Company  
Plaintiff

vs.

PRECISION FABRICATION AND  
CONTROLS, INC., and  
ADVANCED INDUSTRIAL CONTROLS,  
INC.  
Defendants

\* \* \* \* \*

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

PRECISION FABRICATION &  
CONTROLS, INC.,  
PLAINTIFF

2

vs.

**FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL LLC  
DEFENDANT**

\*  
\*  
\* No. 2004 - 1146 CD  
\* Case transferred from McKean County  
\* by Order of Court. McKean County No.  
\* 2004-10915

- \* Type of Case: Contract
- \* Type of Pleading: Withdrawal of Appearance
- \* Filed on behalf of: Precision Fabrication & Controls, Inc.
- \* Counsel of Record: Eugene J. Brew, Esq.
- \* McClure & Miller LLP
- \* 717 State St., Suite 701, Erie, PA 16501
- \* (814) 453-3681
- \* Pa. I.D. No. 06500

**WITHDRAWAL OF APPEARANCE**

TO THE PROTHONOTARY:

Withdraw my appearance for Precision Fabrication & Controls, Inc., in all three (3) of the above pending actions.

  
\_\_\_\_\_  
Eugene J. Brew, Esq.  
McCLURE & MILLER LLP  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication & Controls, Inc.

Dated: July 5, 2005

**CERTIFICATE OF SERVICE**

I, EUGENE J. BREW, ESQ., certify that I mailed a true copy of the within Withdrawal of Appearance to the following on the below date:

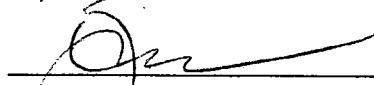
David J. Hopkins, Esq.  
Hopkins Heltzel LLP  
900 Beaver Drive  
DuBois, PA 15801  
Attorney for FreshTec and Backus

Richard W. Mutzbaugh, Esq.  
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P. O. Box 647  
13 Main Street  
Bradford, PA 16701  
Attorney for Precision Fabrication & Controls, Inc.

Robert J. Stewart  
Precision Fabrication & Controls, Inc.  
195 Chestnut St.  
P. O. Box 331  
Bradford, PA 16701

Honorable Paul E. Cherry, Judge  
Court of Common Pleas  
Clearfield County Court House  
230 E. Market St.  
Clearfield, PA 16830

Civil Court Administrator  
Clearfield County  
Clearfield County Court House  
230 E. Market St.  
Clearfield, PA 16830

  
\_\_\_\_\_  
Eugene J. Brew, Esq.  
McCLURE & MILLER LLP  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication & Controls, Inc.

Dated: July 5, 2005

(C) 11-4-04-130

**McCLURE & MILLER LLP**

ATTORNEYS AT LAW  
SUITE 701, 717 STATE STREET  
ERIE, PENNSYLVANIA 16501

Daniel L. R. Miller  
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David J. Rhodes

Harvey D. McClure, Esq. (of counsel)  
Herbert J. Johnson, Esq. (of counsel)

Telephone: (814) 453-3681  
Telecopier: (814) 454-1554  
E-mail address:  
gbrew@mclure-miller.com

November 5, 2004

Clearfield County Prothonotary  
Clearfield County Court House  
230 E. Market Street  
Clearfield, PA 16830

**IN Re: Backus, et al. vs. Precision, et al.**  
**No. 2004-1577 C.D.**

Dear Prothonotary:

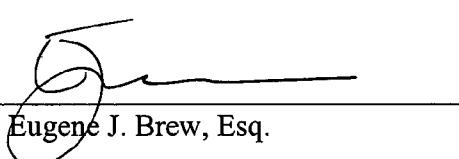
Enclosed please find a copy for filing of our Brief on behalf of Precision Fabrication & Controls, Inc. in Support of our Preliminary Objections.

Would you kindly time-stamp the second cover page and return it to me in the enclosed, stamped, self-addressed envelope? Thank you.

Very truly yours,

McCLURE & MILLER LLP

By \_\_\_\_\_

  
Eugene J. Brew, Esq.

**RECEIVED**

NOV 08 2004

COURT ADMINISTRATOR'S  
OFFICE

EJB:shb  
Enclosure

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - (LAW)

BACKUS USA, INC., a Pennsylvania  
Corporation, and  
FRESHTEC FOOD PROCESSING  
EQUIPMENT INTERNATIONAL, LLC  
A Pennsylvania Limited Liability Company  
PLAINTIFF

vs.

PRECISION FABRICATION AND  
CONTROLS, INC. and ADVANCED  
INDUSTRIAL CONTROLS, INC.  
DEFENDANTS

No. 2004-1577 - CD

Type of Case: Equity -  
Injunctive Relief

Type of Pleading:  
Precision Fabrication and  
Controls, Inc. Brief in Support of  
Preliminary Objections

Filed on behalf of:  
Precision Fabrication & Controls,  
Inc.  
Defendant

Counsel of record for this party:

Eugene J. Brew, Esq.  
McClure & Miller LLP  
717 State St., Suite 701  
Erie, PA 16501  
(814) 453-3681  
Supreme Court No. 06500

Counsel of Record for Adverse  
Party:

David J. Hopkins, Esq.  
Hopkins Heltzel, LLP  
900 Beaver Drive  
DuBois, PA 15801

Dated: November 5, 2004

RECEIVED

NOV 08 2004

COURT ADMINISTRATOR'S  
OFFICE

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

BACKUS USA, INC., a Pennsylvania	*
Corporation, and	*
FRESHTEC FOOD PROCESSING	*
EQUIPMENT INTERNATIONAL, LLC	*
A Pennsylvania Limited Liability Company	*
Plaintiff	* No. 04-1577 - CD
vs.	
PRECISION FABRICATION AND	*
CONTROLS, INC., and	*
ADVANCED INDUSTRIAL CONTROLS,	*
INC.	*
Defendants	*

**PRECISION FABRICATION AND CONTROLS, INC.**  
**BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS**

Defendant, Precision Fabrication and Controls, Inc. (Precision) by its attorney, Eugene J. Brew, Esq., files this Brief in Support of the Preliminary Objections filed to the Plaintiffs' Complaint in Equity in the above matter.

**I. HISTORY OF THE CASE.**

Backus USA, Inc. (Backus) and FreshTec Food Processing Equipment International, LLC (FreshTec) file this Complaint in Equity against Precision Fabrication and Controls, Inc. (Precision) and Advanced Industrial Controls, Inc. (AIC) claiming that they were in the business of designing and selling food processing machines, and that AIC and Precision were in the business of constructing such machines. Backus and FreshTec ordered the fabrication of "several items of machinery" for Backus and AIC in June, 2002. Complaint ¶ 5. Backus disclosed

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

BACKUS USA, INC., a Pennsylvania Corporation, and	*
FRESHTEC FOOD PROCESSING EQUIPMENT INTERNATIONAL, LLC	*
A Pennsylvania Limited Liability Company	*
Plaintiff	*
vs.	*
PRECISION FABRICATION AND CONTROLS, INC., and	*
ADVANCED INDUSTRIAL CONTROLS, INC.	*
Defendants	*

**PRECISION FABRICATION AND CONTROLS, INC.**  
**BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS**

Defendant, Precision Fabrication and Controls, Inc. (Precision) by its attorney, Eugene J. Brew, Esq., files this Brief in Support of the Preliminary Objections filed to the Plaintiffs' Complaint in Equity in the above matter.

**I. HISTORY OF THE CASE.**

Backus USA, Inc. (Backus) and FreshTec Food Processing Equipment International, LLC (FreshTec) file this Complaint in Equity against Precision Fabrication and Controls, Inc. (Precision) and Advanced Industrial Controls, Inc. (AIC) claiming that they were in the business of designing and selling food processing machines, and that AIC and Precision were in the business of constructing such machines. Backus and FreshTec ordered the fabrication of "several items of machinery" for Backus and AIC in June, 2002. *Complaint ¶ 5.* Backus disclosed

confidential information to AIC necessary to complete the manufacture of the machines. Backus and AIC entered into a Confidentiality Agreement dated June 1, 2002 which required that certain enumerated information remained confidential. This Agreement specifically stated that it was not assignable. Complaint Exhibit "A", ¶ VII. AIC went out-of-business, without completing the work for Backus. Precision agreed to complete AIC's unfinished work and this was acceptable to Backus. Backus claims Precision is using confidential information in violation of Backus's Confidentiality Agreement with AIC. Backus and Precision have no Confidentiality Agreement.

## **II. STATEMENT OF QUESTION INVOLVED.**

**DOES THE COMPLAINT STATE A CAUSE OF ACTION AGAINST THE DEFENDANT, PRECISION?**

**SUGGESTED ANSWER: NO.**

## **III. RELEVANT DOCUMENTS.**

Plaintiffs' Complaint.

## **IV. ARGUMENT.**

A demurrer tests the sufficiency of the Complaint. The Court's review is confined to the content of the Complaint, upon the filing of Preliminary Objections. The Court should determine whether on the basis of the allegations in the Complaint, the Plaintiff possesses a cause of action recognized at law. In Re: Adoption of SPT, 783 A.2d 779 (Super. 2001); Werner v. Plater - Zyberk, 779 A.2d 776 (Pa. Super. 2002). The cause of action is based entirely on the written

Confidentiality Agreement between Backus and AIC, to which Precision was not a party.

Complaint, ¶14, 16, 17, 18, 22, 24, 25, 28, 29, 30, 31 and 34. The Confidentiality Agreement between Backus and AIC specifically states in paragraph VII:

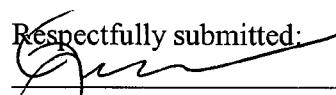
*“This Agreement shall not be assignable by either party, and neither party may delegate its duties under this Agreement, without the prior written consent of the other party.”*

The Complaint does not state a cause of action against Precision.

#### **V. CONCLUSION.**

The Court is requested to dismiss with prejudice the Complaint in the within action.

Respectfully submitted:

  
\_\_\_\_\_  
Eugene J. Brew, Esq.  
McCLURE & MILLER LLP  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication and  
Controls, Inc.

Dated: November 5, 2004

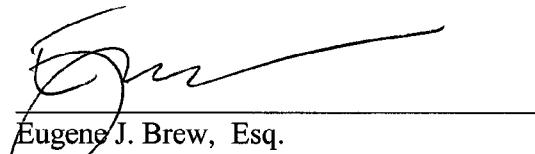
**CERTIFICATE OF MAILING**

I, EUGENE J. BREW, ESQ., certify that on the below date I served a true copy of the within Brief on the following by mailing the same to the following by first class mail, postage prepaid:

Court Administrator  
Clearfield County  
230 E. Market Street  
Clearfield, PA 16830

David J. Hopkins, Esq.  
Hopkins Heltzel, LLP  
900 Beaver Drive  
DuBois, PA 15801  
Attorney for Plaintiff

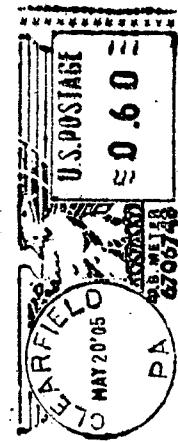
Advanced Industrial Controls, Inc.  
536 East Main Street  
Bradford, PA 16701  
Defendant



Eugene J. Brew, Esq.  
McCLURE & MILLER LLP  
717 State Street, Suite 701  
Erie, PA 16501  
(814) 453-3681  
Attorney for Precision Fabrication and Controls,  
Inc.

Dated: November 5, 2004

WILLIAM A. SHAW  
PROTHONOTARY  
and CLERK of COURTS  
P.O. BOX 549  
CLEARFIELD, PENNSYLVANIA 16830



6  
MAY 27 2005  
will Shaw  
FILED

William A. Shaw  
Prothonotary/Clerk of Courts

Advanced Industrial Controls  
536 E. Main Street  
Bradford, PA 16701

ADV-A977 RETURN TO SENDER 07 05/24/05  
ADVANCED END CONTROL  
UNABLE TO FORWARD  
RETURN TO SENDER

16701-1577-C  
44-146-C  
and  
44-1577-C

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

BACKUS USA, INC., a Pennsylvania	:	NO. 04-1577-CD
Corporation, and FRESHTEC FOOD	:	
PROCESSING EQUIPMENT	:	
INTERNATIONAL, LLC., a Pennsylvania	:	
Limited Liability Company,	:	
Plaintiffs	:	
	:	
V.	:	
	:	
PRECISION FABRICATION AND	:	
CONTROLS, INC., and ADVANCED	:	
INDUSTRIAL CONTROLS, INC.,	:	
Defendants	:	

**ORDER**

AND NOW, this 18<sup>th</sup> day of May, 2005, following argument on Defendant's Preliminary Objections and the timely receipt of Briefs and upon consideration of same, it is the ORDER of this Court that said Preliminary Objections be and are hereby DISMISSED.

BY THE COURT,

/s/ Paul E. Cherry

---

PAUL E. CHERRY,  
JUDGE

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

MAY 19 2005

Attest.

*William B. Cherry*  
Prothonotary/  
Clerk of Courts

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

BACKUS USA, INC., a Pennsylvania	:	NO. 04-1577-CD
Corporation, and FRESHTEC FOOD	:	
PROCESSING EQUIPMENT	:	
INTERNATIONAL, LLC., a Pennsylvania	:	
Limited Liability Company,	:	
Plaintiffs	:	
	:	
V.	:	
	:	
PRECISION FABRICATION AND	:	
CONTROLS, INC., and ADVANCED	:	
INDUSTRIAL CONTROLS, INC.,	:	
Defendants	:	

**ORDER**

AND NOW, this 19<sup>th</sup> day of May, 2005, it is the ORDER of this Court that  
hearing shall be held on the 11<sup>th</sup> and 12<sup>th</sup> days of July, 2005, beginning at 9:00 o'clock  
A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield,  
Pennsylvania.

BY THE COURT,

*/s/ Paul E. Cherry*

---

PAUL E. CHERRY,  
JUDGE

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

MAY 19 2005

Attest.

*William L. Cherry*  
Prothonotary/  
Clerk of Courts

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

BACKUS USA, INC., a Pennsylvania	:	NO. 04-1577-CD
Corporation, and FRESHTEC FOOD	:	
PROCESSING EQUIPMENT	:	
INTERNATIONAL, LLC., a Pennsylvania	:	
Limited Liability Company,	:	
Plaintiffs	:	
	:	
V.	:	
	:	
PRECISION FABRICATION AND	:	
CONTROLS, INC., and ADVANCED	:	
INDUSTRIAL CONTROLS, INC.,	:	
Defendants	:	

**ORDER**

AND NOW, this 18<sup>th</sup> day of May, 2005, following argument on Defendant's Motion to Require Bond and upon consideration of the same, the Court being satisfied that the Defendant provided no evidence which would support the imposition of a bond in the amount requested by Defendant, it is the ORDER of this Court that said Motion be and is hereby GRANTED. Plaintiff shall post bond in the amount of Seventy Five Thousand Dollars (\$75,000.00) within no more than ten (10) days from today's date.

BY THE COURT,

*/s/ Paul E. Cherry*

---

PAUL E. CHERRY,  
JUDGE

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

MAY 19 2005

Attest.

*William L. Shan*  
Prothonotary/  
Clerk of Courts