

07-754-CD

Gortech Global vs DMG Chicago

CIVIL ACTION

Date		Judge
5/14/2007	New Case Filed.	No Judge
	✓ Filing: Praecipe for Writ of Summons Paid by: Schnader Harrison Segal & Lewis Receipt number: 1918995 Dated: 5/14/2007 Amount: \$85.00 (Check) 2 Cert. with 2 writs to Atty.	No Judge
	Case Filed.	Fredric Joseph Ammerman
5/15/2008	✓ Entry of Appearance, on behalf of Plaintiff, enter appearance of Gregory H. Teufel, Esquire, Amy J. Roy, Esquire, and Eckert Seamans Cherin & Mellott, LLC. Filed by s/ Gregory H. Teufel, Esquire. no CC	No Judge
5/19/2008	✓ Notice of Withdrawal of Appearance, on behalf fo Gortech Global Fabrication, Inc., withdraw appearance of Sarah B. Heineman, Esquire, and Schnader Harrison Segal & Lewis LLP. Filed by s/ Sarah B. Heineman, Esquire. No CC	No Judge
8/20/2008	✓ Affidavit of Service filed. Praecipe for Writ of Summons served upon DMG Chicago, Inc., by certified mail, at Illinois Corporation Service, on May 21, 2007, and to James Gondeck, President DMG Chicago, Inc. on May 18, 2007. Filed by s/ Gregory H. Teufel, Esquire. nO CC	No Judge
1/28/2009	✓ Complaint, filed by s/ Gregory H. Teufel, Esquire. 1CC Atty. Teufel	No Judge
2/23/2009	✓ Entry of Appearance, on behalf of Defendant, enter appearance of Stephen J. Summers, Esquire. No CC	No Judge
	✓ Notice of Intent to File Praecipe For Entry of Judgment by Default For Failure to Plead, filed by s/ Gregory H. Teufel, Esquire. No CC	No Judge
3/12/2009	✓ Answer and New Matter, filed by s/ Joseph A. Hudock, Jr., Esquire. No CC	No Judge
3/27/2009	✓ Plaintiff's Reply to New Matter, filed by s/ Gregory H. Teufel, Esquire. 1CC to Atty.	No Judge
10/13/2009	✓ Certification Pursuant to Local Rule 208.2(e), filed by s/Joseph A. Hudock, Jr., Esq. No CC	No Judge
	✓ Motion to Compel, filed by s/Joseph A. Hudock, Jr., Esq. No CC	No Judge
10/16/2009	✓ Order, this 15th day of Oct., 2009, Argument to be held Nov. 13, 2009 @ 2:00 p.m. Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Hudock	Fredric Joseph Ammerman
11/13/2009	✓ Order, this 13th day of Nov., 2009, it is Ordered that the plaintiff shall provide defense counsel with documentation of plaintiff's alleged lost profits within 30 days from the date of this Order. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. for Def.	Fredric Joseph Ammerman
12/21/2009	✓ Plaintiff's Motion to Vacate Order, filed by s/ Gregory H. Teufel, Esquire. 1CC Atty. Teufel	Fredric Joseph Ammerman
	✓ Plaintiff's Response to Motion to Compel, filed by s/ Gregory H. Teufel, Esquire. 1CC Atty. Teufel	Fredric Joseph Ammerman
12/23/2009	✓ Order, this 22nd day of Dec., 2009, Motion to Vacate Order is Granted. The Court's Order of Nov. 13, 2009 granting Defendant's Motion to Compel is vacated. The hearing on Defendant's Motion to Compel is scheduled to occur on Jan. 26, 2010 at 1:30 p.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Teufel	Fredric Joseph Ammerman

9. Notice of Intention to Foreclose as set forth in Act 6 of 1974, Notice of Homeowner's Emergency Assistance Program pursuant to Act 91 of 1983, as amended in 1998, and/or Notice of Default as required by the mortgage document, as applicable, have been sent to the Defendant(s) on the date(s) set forth thereon, and the temporary stay as provided by said notice has terminated because Defendant(s) has/have failed to meet with the Plaintiff or an authorized consumer credit counseling agency, or has/have been denied assistance by the Pennsylvania Housing Finance Agency.
10. Defendants' application for assistance under Act 91 of 1983 has been rejected by the Pennsylvania Housing Finance Agency.

WHEREFORE, PLAINTIFF demands an in rem Judgment against the Defendant(s) in the sum of \$60,063.12, together with interest from 07/09/2009 at the rate of \$10.09 per diem to the date of Judgment, and other costs and charges collectible under the mortgage and for the foreclosure and sale of the mortgaged property.

PHELAN HALLINAN & SCHMIEG, LLP

By: 

Lawrence T. Phelan, Esquire
Francis S. Hallinan, Esquire
Daniel G. Schmieg, Esquire
Michele M. Bradford, Esquire
Judith T. Romano, Esquire
Sheetal R. Shah-Jani, Esquire
Jenine R. Davey, Esquire
Lauren R. Tabas, Esquire
Vivek Srivastava, Esquire
Jay B. Jones, Esquire
Peter J. Mulcahy, Esquire
Andrew L. Spivack, Esquire
Jaime McGuinness, Esquire
Chrisovalante P. Fliakos, Esquire
Joshua I. Goldman, Esquire
Courtenay R. Dunn, Esquire
Andrew C. Bramblett, Esquire
Attorneys for Plaintiff

CIVIL ACTION

Date		Judge
1/27/2010	✓ Order, this 26th day of Jan., 2010, this being the date set for Hearing on Defendant's Motion to Compel, the Court noting that the procedural history is as follows: (see original). Hearing on Defendant's original Motion to Compel was scheduled for Jan. 26, 2010; Neither party having appeared before the Court this date for hearing, it is ordered that the Defendant's Motion to Compel is Dismissed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys; Teufel; Summers/Hudock	Fredric Joseph Ammerman
5/11/2011	✓ Plaintiff's Motion to Compel Discovery Responses, filed by s/ Teufel Esq. No CC.	Fredric Joseph Ammerman
5/12/2011	✓ Scheduling Order, AND NOW, this 12th day of May, 2011, upon consideration of Motion to Compel Discovery Responses, Ordered that: 1)Rule issued 2) Respondent shall file an answer within 15 days 3) argument shall be held on June 22, 2011, at 2:30 p.m. 4) Notice shall be provided by moving party. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney Teufel	Fredric Joseph Ammerman
5/26/2011	✓ Answer to Plaintiff's Motion to Compel, filed by s/ Joseph A. Hudock Jr Esq. No CC.	Fredric Joseph Ammerman
6/22/2011	✓ Certificate of Readiness for Jury Trial, filed by s/ Christopher E. Mohny, Esq. No CC	Fredric Joseph Ammerman
6/23/2011	✓ Order, this 22nd of June, 2011, pre-trial conference is scheduled for July 1, 2011 at 10:00 a.m. in Judge's Chambers. Civil Jury Selection is scheduled for July 27, 2011 at 9:00 a.m. in Courtroom 1. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC w/memo to: Attys. Mohny, Teufel, Hudock	Fredric Joseph Ammerman
6/24/2011	✓ Order, filed Cert. to Atty's Teufel and Summers NOW, this 22nd day of June, 2011, RE: Plaintiff's Motion to Compel Discovery.	Fredric Joseph Ammerman
	✓ Order, filed Cert. to Atty's Teufel and Summers. NOW, this 22nd day of June, 2011, RE: Plaintiff's Motion to Compel Discover, and in regard to redacted e-mails.	Fredric Joseph Ammerman
7/5/2011	✓ Plaintiff's Motion For Stipulated Protective Order, filed by s/ Gregory H. Teufel, Esq. 3CC Atty. Teufel	Fredric Joseph Ammerman
	✓ Stipulated Protective Order, NOW, this 5th of July, 2011, it is Ordered that this Protective Order shall govern all discovery herein: (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. So Stipulated: July 1, 2011, signed by Gregory H. Teufel, Esq., and Joseph A. Hudock, Jr., Esq. 3CC Atty. Teufel	Fredric Joseph Ammerman
7/6/2011	✓ Order, this 1st day of July 2011, following pre-trial conference, it is the ORDER of this Court as follows: 1. Jury selection will be held on July 27, 2011 at 9:00 am. 2. Jury Trial is hereby scheduled for October 19, 20, and 21, 2011 at 9:00 am with Senior Judge Charles C. Brown Jr, specially presiding. (see original for details) BY THE COURT: Fredric J. Ammerman, P. Judge. 1CC Attys: Teufel/Roy and Summers/Hudock.	Fredric Joseph Ammerman

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

Debra Kal

Jacqueline A. Quackenbush (Seal)
JACQUELINE A. QUACKENBUSH -Borrower

As To Both

Jack D. Way (Seal)
JACK D. WAY -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

CIVIL ACTION

Date		Judge
7/20/2011	✓ Order, this 19th of July, 2011, it is Ordered that sentences four and five of the redacted email dated May 30, 2007, at time of 8:50 p.m. is appropriate for discovery. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2C C Attys: Summers/Hudock; Teufel/Roy	Fredric Joseph Ammerman
8/3/2011	✓ Motion For Extension of Time To File Expert Report, filed by s/ Joseph A. Hudock, Jr., Esq. No CC	Fredric Joseph Ammerman
	✓ Motion to Compel, filed by s/ Joseph A. Hudock, Jr., Esq. No CC	Fredric Joseph Ammerman
8/8/2011	✓ Order this 8th day of August 2011 upon receipt and review of the Plaintiff's Motion to Compel and Motion for Extension to Time to File Expert Report; it is the ORDER of this Court that argument on said Motions is hereby scheduled for the 12th day of September 2011 at 2:30 pm. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Teufel/Roy and Summers/Hudock	Fredric Joseph Ammerman
8/22/2011	✓ Plaintiff's Motion For Partial Summary Judgment, filed by s/ Gregory H. Teufel, Esq. No CC	Fredric Joseph Ammerman
	✓ Scheduling Order, AND NOW, this 22nd day of August, 2011, upon consideration of Motion for Partial Summary Judgment, Ordered that: Rule issued; respondent shall file an answer within 15 days; argument shall be held on September 12, 2011, at 2:30 p.m.; notice of entry of this Order shall be provided by moving party. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney Teufel	Fredric Joseph Ammerman
8/29/2011	✓ Consent Motion for Telephonic Hearing and Change of Argument Date, filed by Atty. Teufel no cert. copies.	Fredric Joseph Ammerman
	✓ Affidavit in Opposition to Motion to Compel, filed by Atty. Teufel no cert. copies.	Fredric Joseph Ammerman
8/31/2011	✓ Order this 30th day of August 2011, it is the ORDER of this Court as follows 1. Request for change of argument is granted. 2. Request for telephonic hearing is granted. 3. Arugment on Plaintiff's Motion for Partial Summary Judgment is rescheduled to September 23, 2011 at 1:15 pm at Luzerne County Courthouse. 4. Plaintiff's counsel is to initiate the conference call with defendant's counsel and than contact Senior Judge Brown. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Teufel.	Fredric Joseph Ammerman
9/16/2011	✓ Reply to Plaintiff's Motion for Partial Summary Judgment, filed by Atty. Hudock no cert. copies.	Fredric Joseph Ammerman
9/21/2011	✓ Plaintiff's First Motion in Limine, filed by s/ Gregory H. Teufel, Esq. No CC	Fredric Joseph Ammerman
	✓ Plaintiff's Second Motion in Limine, filed by s/ Gregory H. Teufel, Esq. No CC	Fredric Joseph Ammerman
	✓ Plaintiff's Third Motion in Limine, filed by s/ Gregory H. Teufel, Esq. No CC	Fredric Joseph Ammerman
	✓ Plaintiff's Fourth Motion in Limine, filed by s/ Gregory H. Teufel, Esq. No CC	Fredric Joseph Ammerman
10/4/2011	✓ Reply to Plaintiff's First Motion in Limine, filed by Atty. Hudock no cert. copies.	Fredric Joseph Ammerman
	✓ Reply to Plaintiff's Second Motion in Limine, filed by Atty. Hudock no cert. copies.	Fredric Joseph Ammerman
	✓ Reply to Plaintiff's Third Motion in Limine, filed by Atty. Hudock, no cert. copies.	Fredric Joseph Ammerman

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). Lender shall notify Borrower of, among other things: (a) the default; (b) the action required to cure the default; (c) when the default must be cured; and (d) that failure to cure the default as specified may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. Lender shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured as specified, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, attorneys' fees and costs of title evidence to the extent permitted by Applicable Law.

23. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument and the estate conveyed shall terminate and become void. After such occurrence, Lender shall discharge and satisfy this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Waivers. Borrower, to the extent permitted by Applicable Law, waives and releases any error or defects in proceedings to enforce this Security Instrument, and hereby waives the benefit of any present or future laws providing for stay of execution, extension of time, exemption from attachment, levy and sale, and homestead exemption.

25. Reinstatement Period. Borrower's time to reinstate provided in Section 19 shall extend to one hour prior to the commencement of bidding at a sheriff's sale or other sale pursuant to this Security Instrument.

26. Purchase Money Mortgage. If any of the debt secured by this Security Instrument is lent to Borrower to acquire title to the Property, this Security Instrument shall be a purchase money mortgage.

27. Interest Rate After Judgment. Borrower agrees that the interest rate payable after a judgment is entered on the Note or in an action of mortgage foreclosure shall be the rate payable from time to time under the Note.

Jad

J. D. W.

CIVIL ACTION

Date		Judge
10/10/2011	✓ Order, this 5th of Oct., 2011, the Fourth Motion in Limine is GRANTED. It is Ordered that Plff. and Def. shall refrain from making any reference to or offering any evidence of settlement negotiations. By The Court, /s/ Charles C. Brown, Jr., Senior Judge. 1CC to Attys: Teufel, Mohny, Hudock ✓ Order, this 5th of Oct., 2011, the Third Motion in Limine is DENIED. By The Court, /s/ Charles C. Brown, Jr., Senior Judge. 1CC to Attys: Teufel, Mohny, Hudock ✓ Order, this 5th of Oct., 2011, the Second Motion in Limine is DENIED. By The Court, /s/ Charles C. Brown, Jr., Senior Judge. 1CC to Attys: Teufel, Mohny, Hudock ✓ Order, this 5th of Oct., 2011, the First Motion in Limine is DENIED. By The Court, /s/ Charles C. Brown, Senior Judge. 1CC to Attys: Teufel, Mohny, Hudock ✓ Order, this 5th of Oct., 2011, Re: Motion to Compel, it is Ordered that Plaintiff Gortech Global Fabrications, LLC is to produce its tax returns for the years 2004 to the present to Defendant's Counsel within 10 days from the date of this Order. By The Court, /s/ Charles C. Brown, Jr., Senior Judge. 1CC to Attys: Teufel, Mohny, Hudock ✓ Order, this 5th of Oct., 2011, it is Ordered that Motion for Extension of Time to File Expert Report is Denied, Without Prejudice to DMG Chicago, Inc.'s right to seek permission to file an amended expert report after the current deadline of Aug. 29, 2011, set forth in the Court's July 1, 2011 Order, based on any new information obtained subsequent to that date. By The Court, /s/ Charles C. Brown, Jr., Senior Judge. 1CC to Attys: Teufel, Mohny, Hudock ✓ Order, this 5th of Oct., 2011, the Motion for Partial Summary Judgment is DENIED. By The Court, /s/ Charles C. Brown, Jr., Senior Judge. 1CC to Attys: Teufel, Mohny, Hudock	Charles C. Brown Jr. Charles C. Brown Jr. Charles C. Brown Jr. Charles C. Brown Jr. Charles C. Brown Jr. Charles C. Brown Jr. Charles C. Brown Jr.
10/11/2011	✓ Plaintiff's Motion for Reconsideration/Clarification Re: Order Denying Plaintiff's Third Motion in Limine, filed by Atty. Teufel no cert. copies.	Fredric Joseph Ammerman

agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

PA 3115

VMP -6A(PA) (0508).01

Page 13 of 16

Initials: _____

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Form 3039 1/01

Jaa

J. D. No

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, :
LLC, :
215 Beaver Drive :
Dubois, Pennsylvania 15801 :

Plaintiff, :

vs. :

DMG CHICAGO, INC., :
James Gondeck, President :
Illinois Corporation Service C :
801 Adlai Stevenson Drive :
Springfield, Illinois 62703 :

Defendant. :

CIVIL DIVISION

GD No. 07- 754-CD

Code:

PRACIPE FOR WRIT OF SUMMONS

Filed on Behalf of Plaintiff, Gortech Global
Fabrication, Inc.

Counsel of Record for this Party:

Gregory Teufel, Esquire
Pa. I.D. #73062

Schnader Harrison Segal & Lewis LLP
Pa. Firm I.D. #061
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001
Telephone: (412) 577-5200
Facsimile: (412) 765-3858

Christopher E. Mohny, Esquire
Pa. I.D. #63494

25 East Park Avenue, Suite 6
DuBois, PA 15801
Telephone: (814) 375-1044
Facsimile: (814) 375-1088

FILED

MAY 14 2007

W/11:55/u

William A. Shaw
Prothonotary/Clerk of Courts

2 cert to Arr
w/2 writs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, :
LLC, :

Plaintiff, :

vs. :

DMG CHICAGO, INC. :

Defendant. :

CIVIL DIVISION

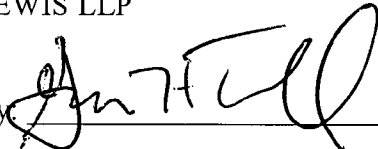
GD No. 07-

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in Civil Action against the within named Defendant.

SCHNADER HARRISON SEGAL &
LEWIS LLP

By: 

Gregory H. Teufel
Pa. I.D. #73062

Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001

Christopher E. Mohnery
Pa. I.D. # 63494

25 East Park Avenue, Suite 6
DuBois, PA 15801

Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

Dated: May 11, 2007

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION**

SUMMONS

Gortech Global Fabrication, LLC

Vs.

NO.: 2007-00754-CD

DMG Chicago, Inc.

TO: DMG CHICAGO, INC.

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 5/14/2007

William A. Shaw
Prothonotary

Issuing Attorney:

Gregory H. Teufel, Esq.
Schnader harrison Segal & Lewis LLC
Fifth Ave Place, Suite 2700
Pittsburgh, PA 15222-3010
412-577-5200

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

ENTRY OF APPEARANCE

DMG CHICAGO, INC.,

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Defendant.

Counsel of Record for Defendant:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohnhey, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

FILED ^{NOCC}
MAY 15 2008 ⁶²

William A. Shaw
Prothonotary/Clerk of Courts

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

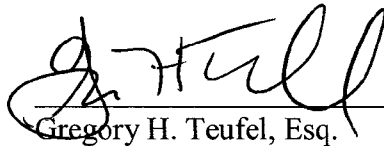
Defendant.

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter the appearance of Gregory H. Teufel, Esq., Amy J. Roy, Esq., and Eckert
Seamans Cherin & Mellott, LLC on behalf of Plaintiff Gortech Global Fabrication, LLC

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Teufel', is written over a horizontal line.

Gregory H. Teufel, Esq.

Eckert Seamans Cherin & Mellott, LLC

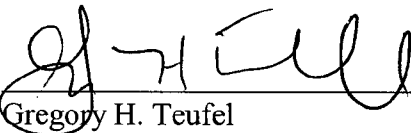
CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Entry of Appearance were served upon the following by deposit in the United States mail, first class postage prepaid, this 13th day of May, 2008.

James Gondeck, President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173

Sarah B. Heineman, Esq.
Schnader Harrison Segal & Lewis, LLP
120 Fifth Avenue, Suite 2700
Fifth Avenue Place
Pittsburgh, PA 15222

Christopher E. Mohnhey, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801



Gregory H. Teufel

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION,
LLC,
215 Beaver Drive
Dubois, Pennsylvania 15801

Plaintiff,

vs.

DMG CHICAGO, INC.,
James Gondeck, President
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, Illinois 62703

Defendant.

CIVIL DIVISION

GD No. 07- 754-CD

Code:

**NOTICE OF WITHDRAWAL OF
APPEARANCE**

Filed on Behalf of Plaintiff, Gortech Global
Fabrication, Inc.

Counsel of Record for this Party:

Sarah B. Heineman, Esquire
PA Id. 91040

Schnader Harrison Segal & Lewis LLP
Pa. Firm I.D. #061
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001
Telephone: (412) 577-5200
Facsimile: (412) 765-3858

FILED

MAY 19 2008

William A. Shaw
Prothonotary/Clerk of Courts

NO CC

Copy to CIA

(62)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

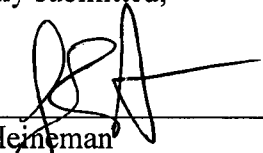
GORTECH GLOBAL FABRICATION, LLC,	:	CIVIL DIVISION
	:	
Plaintiff,	:	GD No. 07-
	:	
vs.	:	
	:	
DMG CHICAGO, INC.	:	
	:	
Defendant.	:	
	:	

NOTICE OF WITHDRAWAL OF APPEARANCE

Kindly withdraw the appearance of the undersigned counsel and Schnader Harrison Segal & Lewis LLP on behalf of the Plaintiff Gortech Global Fabrication, LLC in the above-captioned action.

Respectfully submitted,

DATED: May 15, 2008



Sarah B. Heineman
Schnader Harrison Segal & Lewis LLP
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3010
Telephone: (412) 577-5200
Facsimile: (412) 765-3858

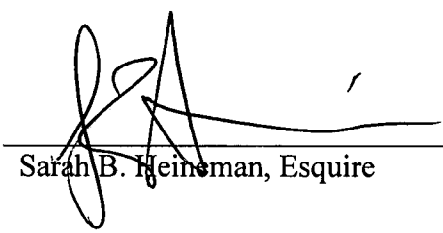
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **NOTICE TO WITHDRAWAL APPEARANCE** has been served upon counsel this ____ day of May 2008 via first-class U.S. Mail:

James Gondeck, President
DMG Chicago, Inc.
Schaumburg, IL 60173

Christopher E. Mohny, Esq.
25 East Park Avenue, Suite 6
DuBois, PA 15801

Gregory H. Teufel
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower, 44th Floor
600 Grant Street
Pittsburgh, PA 15219



Sarah B. Heineman, Esquire

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

GORTECH GLOBAL FABRICATION,
LLC

PLAINTIFF

VS.

DMG CHICAGO, INC.,

DEFENDANT

NO. 2007-00754- C.D.

TYPE OF CASE: CIVIL

TYPE OF PLEADING:
AFFIDAVIT OF SERVICE

FILED ON BEHALF OF:
PLAINTIFF

COUNSEL OF RECORD:
CHRISTOPHER E. MOHNEY,
ESQUIRE
SUPREME COURT NO.: 63494

25 EAST PARK AVENUE,
SUITE 6
DUBOIS, PA 15801
(814) 375-1044

GREGORY H. TEUFEL, ESQUIRE
SUPREME COURT NO.: 73062

ECKERT SEAMANS CHERIN &
MELLOT, LLC
U. S. STEEL TOWER
600 GRANT STREET, 44TH FLOOR
PITTSBURGH, PA 15219
(412) 566-6000

FILED NO CC
m10:596x
AUG 27 2008 (EK)

William A. Shaw
Prothonotary/Clerk of Courts

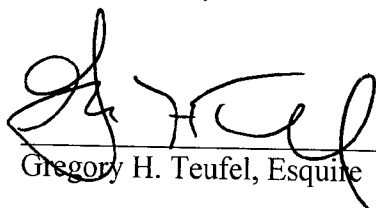
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GORTECH GLOBAL FABRICATION, LLC	:	NO. 2007 - 00754 - C.D.
	:	
PLAINTIFF	:	TYPE OF CASE: CIVIL
	:	
VS.	:	
	:	
DMG CHICAGO, INC.	:	
	:	
DEFENDANT	:	

AFFIDAVIT OF SERVICE

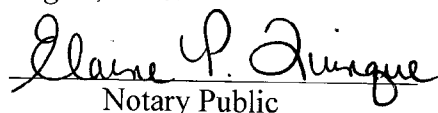
COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF ALLEGHENY :

I, **GREGORY H. TEUFEL, ESQUIRE**, being duly sworn according to law, deposes and says that as attorney for Plaintiff **GORTECH GLOBAL FABRICATION, LLC**, in the above captioned action, he did serve a true and correct copies of Praecipe for Writ of Summons and Summons in the above-captioned case on the Defendant, **DMG CHICAGO, INC.**, by certified mail, return receipt requested, at ILLINOIS CORPORATION SERVICE, 801 Adlai Stevenson Dr., Springfield, IL 62703 and to James Gondeck, President, DMG CHICAGO, INC., 1665 Penny Lane, Schaumburg, IL 60173, both mailings with the return address of Plaintiff's counsel appearing thereon, on May 21, 2007 as to DMG Chicago, Inc. and May 18, 2007 as to James Gondeck, President, DMG Chicago, Inc., as evidenced by the return receipts attached hereto.



Gregory H. Teufel, Esquire

SWORN TO and SUBSCRIBED
before me this 18 day of
August, 2008.


Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Elaine P. Quinke, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires May 17, 2012
Member, Pennsylvania Association of Notaries

May 16, 2007

Gregory H. Teufel
Direct Dial 412-577-5289
Direct Fax 412-765-3858
E-mail: gteufel@schnader.com

VIA CERTIFIED MAIL
VIA FIRST CLASS MAIL

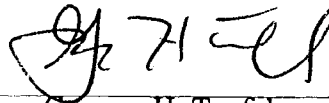
DMG Chicago, Inc.
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, IL 62703

RE: Notice of Civil Action Against DMG Chicago, Inc.

Dear DMG Chicago, Inc. Service Agent:

This is a notice of civil action against DMG Chicago, Inc. in the Court of Common Pleas of Clearfield County, Pennsylvania. Enclosed you will find a Praecipe for Writ of Summons and the Summons.

Sincerely,



Gregory H. Teufel

GHT
Enclosures

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DMG CHICAGO, INC.,
ILLINOIS CORPORATION SERVICE C
801 Adlai Stevenson Dr.
Springfield, IL 62703

2. Article Number

(Transfer from sender)

7007 0220 0004 0971 3239

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Tom Jarvis

☐ Agent☐ Address

B. Received by (Printed Name)

C. Date of Delivery

5-21

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ YesU.S. Postal ServiceTMCERTIFIED MAILTM RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage

\$

Certified Fee

Return Receipt Fee
(Endorsement Required)Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees

\$

5.72

5-16-07

Postmark
Here

Sent To

DMG Chicago Inc. - Illinois Corporation Service C

Street, Apt. No.,

or PO Box No.

801 Adlai Stevenson Drive

City, State, ZIP+4

Springfield Illinois 62703

PS Form 3800, August 2006

See Reverse for Instructions

UNITED STATES POSTAL SERVICE



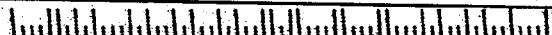
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

- Sender: Please print your name, address, and ZIP+4 in this box •

Gregory H. Teufel, Esquire
SCHNADER HARRISON SEGAL & LEWIS LLP
Suite 2700, 120 Fifth Avenue
Fifth Avenue Place
Pittsburgh, PA 15222

3007645.0003

C007



May 16, 2007

Gregory H. Teufel
Direct Dial 412-577-5289
Direct Fax 412-765-3858
E-mail: gteufel@schnader.com

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED
VIA FIRST CLASS MAIL

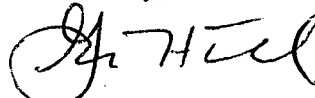
James Gondeck
President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173

RE: Notice of Civil Action

Dear Mr. Gondeck:

This is a notice of civil action against DMG Chicago, Inc. in the Court of
Common Pleas of Clearfield County, Pennsylvania. Enclosed you will find a Praeipe for Writ
of Summons and the Summons.

Sincerely,



Gregory H. Teufel

GHT
Enclosures

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James Gondeck, President
DMG CHIACAGO INC.
1665 Penny Lane
Schaumburg, IL 60173

2. Article Number

(Transfer from service label)

7007 0220 0004 0971 3222

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1E

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Address

B. Received by (Printed Name)

C. Date of Delivery

5-18

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service™

CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage

\$

Certified Fee

Return Receipt Fee
(Endorsement Required)Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees

\$ 5.72

Postmark
Here

Sent To

James Gondeck, President DMG Chicago, Inc.

Street, Apt. No.,

or PO Box No. 1665 Penny Lane

City, State, ZIP+4

Schaumburg, IL 60173

PS Form 3800, August 2006

See Reverse for Instructions

UNITED STATES POSTAL SERVICE

15 MAY 2007 PM 1 T

March is
First-Class Mail
Postage and Fees Paid
USPS
Permit No. 6801

- Sender: Please print your name, address, and ZIP+4 in this box •

Gregory H. Teufel, Esquire
SCHNADER HARRISON SEGAL & LEWIS LLP
Suite 2700, 120 Fifth Avenue
Fifth Avenue Place
Pittsburgh, PA 15222

3007645.0003

15 0034



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION,
LLC,
215 Beaver Drive
Dubois, Pennsylvania 15801

Plaintiff,

vs.

DMG CHICAGO, INC.,
James Gondeck, President
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, Illinois 62703

Defendant.

CIVIL DIVISION

GD No. 07-

Code:

PRACIPE FOR WRIT OF SUMMONS

Filed on Behalf of Plaintiff, Gortech Global
Fabrication, Inc.

Counsel of Record for this Party:

Gregory Teufel, Esquire
Pa. I.D. #73062

Schnader Harrison Segal & Lewis LLP
Pa. Firm I.D. #061
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001
Telephone: (412) 577-5200
Facsimile: (412) 765-3858

Christopher E. Mohnhey, Esquire
Pa. I.D. #63494

25 East Park Avenue, Suite 6
DuBois, PA 15801
Telephone: (814) 375-1044
Facsimile: (814) 375-1088

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, :
LLC, :

Plaintiff, :

vs. :

DMG CHICAGO, INC. :

Defendant. :

CIVIL DIVISION

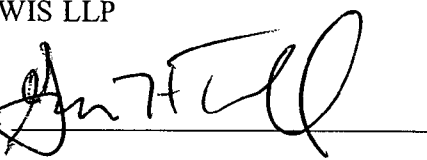
GD No. 07-

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in Civil Action against the within named Defendant.

SCHNADER HARRISON SEGAL &
LEWIS LLP

By 

Gregory H. Teufel
Pa. I.D. #73062

Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001

Christopher E. Mohnhey
Pa. I.D. # 63494

25 East Park Avenue, Suite 6
DuBois, PA 15801

Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

Dated: May 11, 2007

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

SUMMONS

Gortech Global Fabrication, LLC

Vs.

NO.: 2007-00754-CD

DMG Chicago, Inc.

TO: DMG CHICAGO, INC.

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 5/14/2007



William A. Shaw
Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

Issuing Attorney:

Gregory H. Teufel, Esq.
Schnader harrison Segal & Lewis LLC
Fifth Ave Place, Suite 2700
Pittsburgh, PA 15222-3010
412-577-5200

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

COMPLAINT

DMG CHICAGO, INC.,

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Defendant.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohny, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

5
FILED ICC
JAN 28 2009 Amy Teufel
William A. Shaw
Prothonotary/Clerk of Courts
610

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

NOTICE TO DEFEND

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 50-51

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff, No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

COMPLAINT IN CIVIL ACTION

Plaintiff, Gortech Global Fabrication, LLC (“Gortech”), by its undersigned attorneys, hereby files the following Complaint in Civil Action against Defendant DMG Chicago, Inc., the grounds of which the following are statements:

Introduction

1. This action seeks to recover damages from Defendant for breach of a contract to supply a machine as a trade-in for another machine.

Parties

2. Plaintiff Gortech is a Limited Liability Company organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business at 215 Beaver Dr. DuBois, PA 15801.

3. Upon information and belief, Defendant DMG Chicago, Inc. t/d/b/a “DMG, INC.” and “DMG Used Machine Division” (hereafter “DMG”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 265 Spring Lake Drive, Itasca, IL 60143.

4. At the time of the commencement of this lawsuit via praecipe for writ of summons, DMG's principal place of business was at 1665 Penny Lane, Schaumburg, IL 60173.

Jurisdiction and Venue

5. This Court has original jurisdiction over this action pursuant to 42 Pa.Cons.Stat. § 931.

6. Venue is proper in this Court under Pa.R.Civ.P. 2179 because transactions and occurrences out of which the causes of action set forth herein arose took place in Clearfield County and DMG regularly conducts business in Clearfield County.

Factual Background

7. Predator Performance, LLC ("Predator"), a company related to Gortech, originally purchased two machines from DMG; a DMU 100T 5 for \$325,500, and a CTX 320 Linear CNC for \$199,500.

8. Predator gave a 10% down payment totaling \$52,500 toward both machines, via check dated February 9, 2005.

9. The DMU 100T 5 was returned because it would not perform the functions promised (breach of written warranties).

10. DMG wanted Predator to take a credit toward future purchases, but Predator insisted on applying the monies toward the CTX 320 Linear CNC.

11. In addition, DMG agreed to reimburse Predator for the expenses associated with the DMU 100T 5, which consisted of \$3,750 in shipping, \$7,903.85 in scaffolding, and \$3,000 in rigging, totaling \$14,653.85.

12. After subtracting the \$52,500 down payment and the \$14,653.85 reimbursement from the \$199,500 purchase price for the CTX 320 Linear CNC, the amount remaining that Predator owed toward that purchase price was \$132,346.15.

13. Predator sent DMG a check for that balance, \$132,346.15, on October 12, 2005, leaving a balance owed to DMG for the CTX 320 Linear CNC of zero dollars.

14. Predator conveyed the CTX 320 Linear CNC to Gortech, and Gortech had discussions with DMG regarding trading in the CTX 320 Linear CNC.

15. DMG sold the CTX 320 Linear CNC that Gortech had to another DMG customer and gave Gortech a used CTX 420 V4, which Gortech presently possesses, in trade for the CTX 320 Linear CNC ("the first trade-in Agreement"). A true and correct copy of the first trade-in Agreement is attached hereto as Exhibit A, along with the fax cover sheet by which York Franke of DMG sent the first trade-in Agreement to Todd Gordon of Gortech.

16. Gortech honored all terms and conditions of the first trade-in Agreement.

17. After discussing it but before agreement was reached on trading it in, DMG had already sold the CTX 320 Linear CNC to another customer.

18. Gortech had decided against doing a trade-in of the CTX 320 Linear CNC by that point, but accepted the first trade-in Agreement as an accommodation to DMG in light of the fact that DMG had made a commitment to another customer in the interim.

19. York Franke referenced that accommodation in the fax cover sheet included in Exhibit A hereto where he stated "THANK YOU AGAIN FOR HELPING ME OUT OF THIS BIND!"

20. As part of that first trade-in Agreement, DMG agreed to provide training on the CTX 420 V4.

21. The CTX 420 V4 had been crashed; possibly more than one collision.
22. DMG expressed disbelief when this was discovered, asserting that the CTX 420 V4 had been used in a laboratory and had a total of 200 hours of use.
23. Gortech requested to know the name of the facility and a contact from where the CTX 420 V4 originated, but this information was not provided.
24. DMG sent Gortech replacement parts for those parts on the CTX 420 V4 that needed to be replaced due to the prior collision(s).
25. Despite Gortech replacing those parts, there were significant vibration problems with the CTX 420 V4.
26. For months, DMG kept promising Gortech that it would send someone to fix the CTX 420 V4 and provide training, but DMG repeatedly failed to send someone when promised and rescheduled numerous times.
27. A DMG technician finally came to Gortech to align the CTX 420 V4 and stop the vibration problems.
28. However, when a subsequent DMG person came to Gortech to provide training for the CTX 420 V4, software problems surfaced with the CTX 420 V4.
29. Thus, time that was supposed to be spent training was instead spent dealing with those software problems.
30. The CTX 420 V4 was delivered in February 2006, and, by May 2006, Gortech still had not received the training necessary to use it.
31. A DMG person came to Gortech and installed new software, to correct the software problems.

32. At that point DMG again promised to send someone to provide training for the CTX 420 V4, but again DMG failed to send anyone.

33. In light of the year of lost production and the problems experienced with the CTX 420 V4 and the prior machine and the delays in receiving training, to its credit, in an apparent effort to make things right, DMG entered into a contract ("the Contract") on June 8, 2006, promising to provide a new CTX 420 V6, along with a new machine warranty, in trade for the CTX 420 V4. A true and correct copy of the Contract is attached hereto as Exhibit B.

34. Mark Henne, Area Sales Manager for DMG, sent the Contract to Todd Gordon of Gortech via fax, and signed it on behalf of DMG.

35. Mark Henne, by email on June 8, 2006, represented that he was authorized to enter into the Contract on behalf of DMG. A true and correct copy of said June 8, 2006 email is attached hereto as Exhibit C.

36. Todd Gordon signed the Contract on behalf of Gortech and hand delivered the fully executed Contract to Mark Henne on June 8, 2006.

37. This was a highly favorable trade-in, in that the new CTX 420 V6 that was promised was substantially more valuable and had a substantially higher market price than the used CTX 420 V4 that Gortech had.

38. DMG did not deliver the CTX 420 V6 as required by the Contract.

39. Instead, DMG reverted back to offering to provide training on the CTX 420 V4.

40. By September 6, 2006, Gortech was fed up waiting for either delivery of the CTX 420 V6 or training on the CTX 420 V4 and Gortech issued an ultimatum, demanding performance as promised within two weeks and threatening legal action.

41. Rather than actually sending someone to provide training within those two weeks, DMG responded by merely offering to send someone to provide training on September 25, 2006, more than two weeks after the date of the ultimatum.

42. Gortech was no longer interested in promise after broken promise of training and responded by insisting that DMG honor the Contract or refund money.

43. Thereafter, DMG has consistently failed and refused to refund money or to honor the Contract.

Count I – Breach of Contract

44. Gortech hereby incorporates the averments contained in the preceding paragraphs 1 through 43 by reference as if fully set forth herein.

45. The Contract was a valid and binding agreement.

46. DMG breached the Contract by failing to deliver the CTX 420 V6.

47. DMG's breach of contract caused damages to Gortech in excess of \$20,000, including but not limited to the difference in value between the used CTX 420 V4 and the new CTX 420 V6 and the loss of profits due to the loss of use of the CTX 420 V6.

48. Gortech intended to use the CTX 420 V6 to produce parts for Gortech's customers.

49. The CTX 420 V6 would have allowed Gortech to perform a greater volume of work without having to do multiple setups to produce one part, and to take on additional customers. In addition, the CTX 420 V6 had an automatic feeder, which helped to speed up the process. The CTX 420 V4 lacked an automatic feeder.

50. Because Gortech did not have the CTX 420 V6, Gortech was unable to obtain certain work from customers that it would have been able to obtain if it had the CTX 420 V6.

51. DMG was aware of how Gortech intended to use the CTX 420 V6, was aware that the CTX 420 V6 would have expanded and improved Gortech's capabilities, and had reason to know and knew that Gortech would suffer lost profits as a result of DMG's failure to deliver the CTX 420 V6.

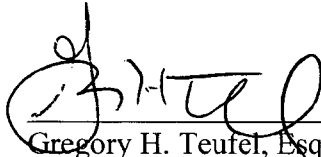
WHEREFORE, Plaintiff Gortech Global Fabrication, LLC respectfully requests that this Court enter judgment in its favor against Defendant DMG Chicago, Inc. in an amount in excess of \$20,000, plus interest, costs, and such other and further relief as this Court deems just and proper.

A JURY TRIAL IS DEMANDED

Plaintiff demands trial by jury on all issues so triable.

Respectfully submitted,

1/26/09

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

Gregory H. Teufel, Esq.

Amy J. Roy, Esq.

Christopher E. Mohnney, Esq.

Attorneys for Plaintiff,

Gortech Global Fabrication, LLC

02/02/2006 11:55 8477815053

DMG USED MACHINE DIV

PAGE 09/18

**INVOICE #2006-5**

Thursday February 2, 2006

A member of the
GILDEMEISTER
group

Sold To:
Mr. Todd Gordon, General Manager
Gortech Global Fabrication
215 Beaver Dr.
Dubois, PA 15801

DMG Chicago Inc.
1403 Perry Ave
Schmiedung, IL 60123
Phone (847) 781-0777
Fax (847) 781-5033
E-mail info@dmgamerica.com
Internet www.dmgamerica.com

2003 Gildemeister CTX420V4 S/N 02260002581 as equipped per proposal number 164355-056148 dated February 2, 2006.

\$140,000.00 USD 2003 Gildemeister CTX420V4 S/N 02260002581
\$26,717.30 USD WTO tooling package per WTO quote# 06M026Q-03 (see attachment A)

(\$140,000.00 USD) Trade in value for 2005 Gildemeister CTX320V4 S/N 8039937279C
Gortech Global Fabrication guarantees free and clear title to machine and will pay open AR to DMG Chicago, Inc. if applicable

(\$26,717.30 USD) Trade in value for tooling package for CTX320V4 consisting of:
-5 live tool holders

- 1/5: 90 degree long driven unit for drilling/milling
- 2/5: 0 degree driven unit, short, for drilling/milling
- 3/5: 0 degree driven unit, long, for drilling/milling
- 4/5: Special 0 degree driven unit, max turning speed 8000 RPM-8 Nm-for drilling/milling
- 5/5: 90 degree driven unit, universal H=100, Max turning speed 8000 RPM for drill/milling

-1 set of seven (7) collets

-All items listed on Gortech Global Fabrication purchase order number 11979 dated 01/26/06 issued to ITI Tooling Company, Inc. (see attachment B); total of eighteen (18) items

-In House tooling (see attachment C) already at Gortech Global Fabrication consisting of:

- 1 Sauter straight drill/milling unit
- 1 Sauter right angle drill/mill units
- 3 LH turning tool holders-metric
- 3 RH turning tool holders-metric
- 6 32 mm boring bar holders
- 6 32 mm various ID boring bar adaptors
- 6 Boring bars to match adaptors
- 1 32 mm collet chuck for ER25 collet
- 3 Iscar metric LH turning tools
- 1 Sauter straight (2:1) mill unit
- 1 Sauter right angle (2:1) mill unit

John L. White
President
2-2-06

If any of the above listed tooling is not received, Gortech Global Fabrication will pay for the actual cost to replace missing items

DMG Used Machine Division

DECKEL MAHO GILDEMEISTER

EXHIBIT

tabbies

A

02/02/2006 11:55 8477815053

DMG USED MACHINE DIV

PAGE 10/10

DMG

Used Machine Division

A member of the
GILDENEISTER
group

DMG Chicago Inc.

1665 Perry Ave

Schmaling, IL 60173

Phone (847) 781-0277

Fax (847) 781-5053

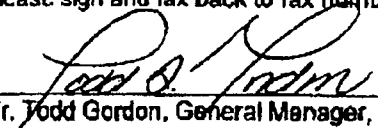
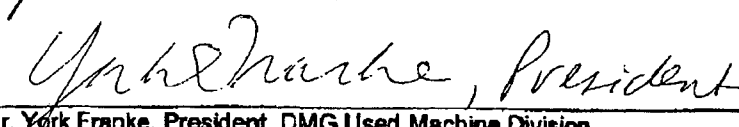
E-mail info@ilgomeica.comInternet www.dugomato.com**INVOICE #2006-5 continued****TERMS:**

1. 2005 Gildemeister CTX320V4 S/N 8039937279C to be released for pickup immediately upon acceptance of this invoice. Machine to be loaded out onto truck that delivers the CTX420. Date to disconnect CTX320V4 Monday February 6. Removal date CTX320/Delivery date CTX420 Tuesday February 7, 2006.

2. DMG Used Machine Division to pay for engineer to disconnect and prep for shipment CTX320.

Upon acceptance of this invoice ownership of the machine is conveyed, before machine shipment.

Please sign and fax back to fax number 847-781-5053. AGREED/ACCEPTED:


Mr. Todd Gordon, General Manager, Gortech Global Fabrication2-2-06
Date
Mr. York Franke, President, DMG Used Machine Division2-2-06
Date

Thank you for your order. We sincerely appreciate your business.

DATE: 02/02/2006

TO: GORTECH GLOBAL FABRICATION
215 BEAVER DRIVE
DUBOIS, PA 15801

PHONE: 1(814)372-5456

FAX: 1(814)375-5455

ATTN: TODD GORDON

FROM: YORK FRANKE

TODD, ATTACHED IS THE SIGNED INVOICE FOR YOUR RECORDS. I WILL ALSO SCAN
AND EMAIL TO YOU.

THANK YOU AGAIN FOR HELPING ME OUT OF THIS BIND!

I LOOK FORWARD TO MEETING YOU IN PERSON IN PA.

DMG, INC.
Corporate Office
 1665 Penny Lane
 Schaumburg, IL 60173
 (847) 781-0277 • (847) 781-0388

Office:
☒ Chicago ☐ Charlotte ☐ Los Angeles

Contract Date	6-8-06	Invoice# - MHS Quote #	31030007567
Dealer Name	<i>B</i>	Customer PO #	
Sales Engineer	HENNE	Payment Terms	SEE BELOW
Customer MIS #	476097	Customer Expected Receipt Date	ASAP
The undersigned customer offers to purchase from you the following described goods upon the terms, covenants, and conditions shown below.		F.O.B.	DUBOIS, PA

Customer	GORTCH GLOBAL FABRICATING		Phone	814-375-0829	Fax	814-372-5455
Address	PO BOX 347		City	DUBOIS	State	PA
Ship To	215 BEAVER DRIVE		Ship to City	DUBOIS	Ship to State	PA
Ship Via	BEST WAY		Customer Shipping Contact	TODD GORDON		

Qty.	Item Number	Description of Goods	Unit \$	Total \$
1	022600003961	CTX 420 V6	\$199,500.00	\$199,500.00
		WITH FANUC CONTROL		
		WITH ALL OPTIONS AND ACCESSORIES		
1		T.C. SERVICES TOOLING	<i>2</i>	<i>2</i>
		PACKAGE PER ATTACHED		
		DETAIL SHEET		
1		MACHINE INSTALLATION	<i>2</i>	<i>2</i>
		AND TRAINING		
1		TRADE-IN OF CTX 420 V4	\$199,500.00	\$199,500.00
1		NEW MACHINE WARRANTY	<i>2</i>	<i>2</i>

Specify for this machine	Volts	Cycles	Phase	Total
Who will arrange Freight?	☒ DMG	☐ Customer	☐ Other	Sales / Use Tax or Tax Exempt #
Who will pay for Freight?	☒ DMG	☐ Customer/Collect	☐ Other	TRADE-IN Sub-Total
Who will arrange Rigging?	☒ DMG	☐ Customer	☐ Other	< Less Deposit >
Who will pay for Rigging?	☒ DMG	☐ Customer/Collect	☐ Other	Attached Need to be Invoked
Any Special Delivery Instructions: (i.e., ship to showroom first)				Total Due

Acceptance Criteria: (CPK, Cycle Times, Part Programmed)

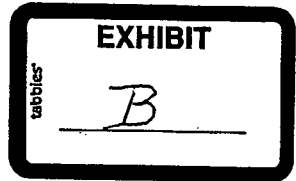
General Remarks / Comments / Financial Institution *NO ADDITIONAL CHARGES FOR THIS ORDER TO GORTCH / PREDATOR*

Contract: The terms and conditions set forth herein and on the reverse side hereof shall govern all sales of materials or equipment (the "Product") described on the front side hereof by DMG, Inc.

See other side for complete terms and conditions.

Signature	<i>Paul D. Trimm</i>
Print Name	
Title	
Accepted by an officer of DMG this	Day of
By	<i>Paul D. Trimm</i>
Title	AREA SALES MANAGER

White-Customer • Yellow-Office • Pink-ASM



Teufel, Gregory

From: Mark.Henne@dmgamerica.com
Sent: Thursday, June 08, 2006 8:50 AM
To: Todd Gordon
Cc: mhenne8420@aol.com
Subject: Machine switchout
Importance: High

Todd,

I have the OK to move ahead and switch out your machine and replace it with the subspindle machine. Again, you will pay NO ADDITIONAL MONEY. We will rig the old machine out and the new machine in, pay the freight for both machines in both directions, include the new tooling package, chucks and accessories. I do however need to get your signatures asap before someone else sells this new machine.

I can be at your place later this afternoon,,,,,,and yes I'm buying for whoever wants to go.

Please let me know if I should head up or not....

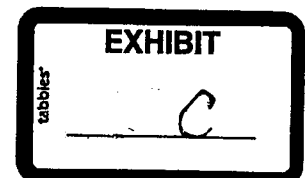
Regards,
Mark A. Henne, CMTSE
Area Sales Manager
DMG-Chicago
(847) 781-0277 (office)
(412) 480-5227 (cell)
(412) 821-2983 (home office/fax)
Mark.Henne@DMGAmerica.com
<http://www.gildemeister.com>

E-Mail Disclaimer

Der Inhalt dieser E-Mail ist ausschliesslich fuer den/die bezeichneten
Empfaenger bestimmt. Wenn Sie nicht der vorgesehene Adressat dieser
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Weitergabe des Inhalts dieser E-Mail unzuessaessig ist. Wir bitten Sie,
sich in diesem Fall mit dem Absender der E-Mail in Verbindung zu
setzen.
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grundsaeztlich die Moeglichkeit der Kenntnisnahme und Manipulation
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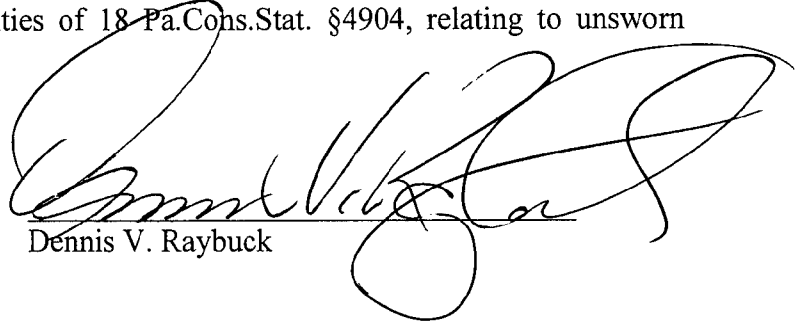
3/21/2007



VERIFICATION

Dennis V. Raybuck, the undersigned individual, as President of Gortech Global Fabrication, LLC, deposes and says that he is authorized to execute this Verification on behalf of Gortech Global Fabrication, LLC, that the averments in the foregoing Complaint in Civil Action are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Dated: January 23, 2009



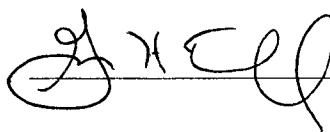
Dennis V. Raybuck

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing Complaint were served upon the following by deposit in the United States mail, first class postage prepaid, this 26th day of January, 2009.

James Gondeck, President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173

Dr. Christoph Reinkemeier (CEO)
DMG Chicago Inc.
265 Spring Lake Drive
Itasca, IL 60143

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FRABRICATION,
LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

NO.: 07-754-CD

PRAECIPE FOR APPEARANCE

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

Counsel of Record for this Party:

Stephen J. Summers, Esquire
PA I.D. #40213

SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, L.L.P.
Firm #911

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

16887

FILED NO CC
m/10:43/01
FEB 23 2009 @

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FRABRICATION,
LLC,

CIVIL DIVISION

NO.: 07-754-CD

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

PRAECIPE FOR APPEARANCE

TO: THE PROTHONOTARY

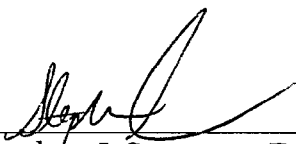
Kindly enter the Appearance of the undersigned, Stephen J. Summers, Esquire, of the law firm of Summers, McDonnell, Hudock, Guthrie & Skeel, L.L.P., on behalf of Defendant, DMG Chicago, Inc., in the above case.

JURY TRIAL DEMANDED

Respectfully submitted,

**SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, LLP**

s/s:



Stephen J. Summers, Esquire
Counsel for Defendant

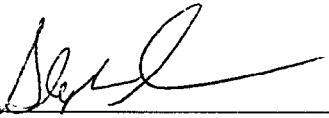
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Praecipe for Appearance** has been served via first-class U.S. mail, postage prepaid, this 19th day of February 2009, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
44TH Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

**SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, LLP**

s/s:



Stephen J. Summers, Esquire
Counsel for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

**NOTICE OF INTENT TO FILE
PRAECIPE FOR ENTRY OF JUDGMENT
BY DEFAULT FOR FAILURE TO PLEAD**

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohney, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

FILED NO CC
M/10:0784
FEB 23 2009 (G)

§ William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

IMPORTANT NOTICE

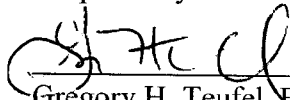
To: DMG Chicago, Inc.

Date: Feb. 20, 2009

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY AN ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTION TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 50-51

Respectfully submitted,



Gregory H. Teufel, Esq.

Amy J. Roy, Esq.

Christopher E. Mohnhey, Esq.

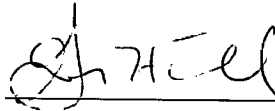
*Attorneys for Plaintiff,
Gortech Global Fabrication, LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing **NOTICE OF INTENT TO FILE PRAECIPE FOR ENTRY OF JUDGMENT BY DEFAULT FOR FAILURE TO PLEAD** were served upon the following by deposit in the United States mail, first class postage prepaid, this 20th day of February, 2009.

James Gondeck, President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173

Dr. Christoph Reinkemeier (CEO)
DMG Chicago Inc.
265 Spring Lake Drive
Itasca, IL 60143



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

NO.: 07-754-CD

FILED

MAR 12 2009

William A. Shaw

Prothonotary/Clerk of Courts

no c/c (60)

ANSWER AND NEW MATTER

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

Counsel of Record for this Party:

Joseph A. Hudock, Jr.
PA I.D. #66064

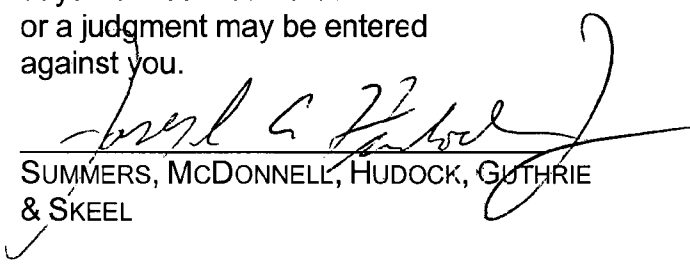
SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, L.L.P.
Firm #911

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

TO: PLAINTIFF

You are hereby notified to
file a written response to
the enclosed Answer and New
Matter within twenty (20)
days from service hereof
or a judgment may be entered
against you.


SUMMERS, McDONNELL, HUDOCK, GUTHRIE
& SKEEL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

NO.: 07-754-CD

ANSWER AND NEW MATTER

AND NOW, comes the defendant, DMG Chicago, Inc., by and through its counsel, Summers, McDonnell, Hudock, Guthrie & Skeel, L.L.P. and sets forth the following Answer and New Matter and in support thereof avers as follows:

1. Paragraph 1 of the plaintiff's Complaint is denied pursuant to Pa.R.C.P. 1029(d) and (e).

2. Paragraph 2 of the plaintiff's Complaint is admitted.

3. Paragraph 3 of the plaintiff's Complaint is admitted.

4. Paragraph 4 of the plaintiff's Complaint is admitted.

5. Paragraph 5 of the plaintiff's Complaint is admitted.

6. Paragraph 6 of the plaintiff's Complaint is admitted.

7. It is admitted that Predator Performance, LLC purchased two machines from defendant at the price in question. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 7 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

8. Paragraph 8 of the plaintiff's Complaint is admitted.

9. It is admitted that the machine in question was returned. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 9 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

10. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 10 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

11. Paragraph 11 of the plaintiff's Complaint is admitted.

12. Paragraph 12 of the plaintiff's Complaint is admitted.

13. Paragraph 13 of the plaintiff's Complaint is admitted.

14. Paragraph 14 of the plaintiff's Complaint is admitted.

15. Paragraph 15 of the plaintiff's Complaint is admitted.

16. Paragraph 16 of the plaintiff's Complaint is admitted.

17. Paragraph 17 of the plaintiff's Complaint is admitted.

18. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 18 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

19. Paragraph 19 of the plaintiff's Complaint refers to a document which speaks for itself. Consequently, no response is required.

20. Paragraph 20 of the plaintiff's Complaint is admitted.

21. Paragraph 21 of the plaintiff's Complaint is admitted.

22. Paragraph 22 of the plaintiff's Complaint is admitted.

23. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 23 of the

plaintiff's Complaint. Strict proof is demanded at the time of trial.

24. Paragraph 24 of the plaintiff's Complaint is admitted.

25. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 25 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

26. Paragraph 26 of the plaintiff's Complaint is admitted in part and denied in part. It is admitted that DMG promised to send someone to fix the machine in question and provide training. It is specifically denied that DMG failed to send someone when promised. To the contrary, DMG did fulfill its promises.

27. It is admitted that the defendant's technician aligned the machine in question.

28. Paragraph 28 of the plaintiff's Complaint is admitted.

29. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 29 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

30. Paragraph 30 of the plaintiff's Complaint is admitted in part and denied in part. It is admitted that the machine in question was delivered at the time in question. It is specifically denied that the plaintiff had not received the training to use the machine in question by May, 2006. To the contrary, the plaintiff did receive the necessary training in a timely manner.

31. It is admitted that a representative of the defendant installed new software on the machine in question. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 31 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

32. After reasonable investigation, defendant is without knowledge or information

sufficient to form a belief as to the truth of the averments contained in Paragraph 32 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

33. Paragraph 33 of the plaintiff's Complaint references a document which speaks for itself. Therefore, no response is required.

34. Paragraph 34 of the plaintiff's Complaint is admitted in part and denied in part. It is admitted that Mark Henne signed the contract on behalf of DMG. It is specifically denied that Mark Henne sent the contract to the plaintiff via fax. To the contrary, the contract was hand delivered.

35. Paragraph 25 of the plaintiff's Complaint references a document which speaks for itself. Therefore, no response is required.

36. Paragraph 36 of the plaintiff's Complaint is admitted.

37. Paragraph 37 of the plaintiff's Complaint is admitted.

38. Paragraph 38 of the plaintiff's Complaint sets forth a legal conclusion to which no responsive pleading is required. To the extent a response is deemed necessary, defendant complied with the contract at all times relevant hereto.

39. It is admitted that defendant offered training on the machine in question.

40. It is admitted that Gortech delivered an ultimatum to defendant. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 40 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

41. Paragraph 41 of the plaintiff's Complaint is admitted.

42. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 42 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

43. Paragraph 43 of the plaintiff's Complaint sets forth a legal conclusion to which no responsive pleading is required. To the extent a response is deemed necessary, defendant complied with the contract at all times relevant hereto.

COUNT I – BREACH OF CONTRACT

44. Defendant incorporates by reference the preceding paragraphs of this Answer and New Matter the same as if fully set forth at length herein.

45. Paragraph 45 of the plaintiff's Complaint sets forth a legal conclusion to which no responsive pleading is required.

46. Paragraph 46 of the plaintiff's Complaint sets forth a legal conclusion to which no responsive pleading is required.

47. Paragraph 47 of the plaintiff's Complaint sets forth a legal conclusion to which no responsive pleading is required.

48. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 48 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

49. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 49 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

50. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 50 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

51. Paragraph 51 of the plaintiff's Complaint sets forth a legal conclusion to which no responsive pleading is required.

WHEREFORE, defendant demands judgment in its favor and against the plaintiff.

NEW MATTER

52. Defendant pleads the defense of accord and satisfaction as an affirmative defense to all of the plaintiff's claims.

53. Defendant pleads the defense of impossibility of performance as an affirmative defense to all of the plaintiff's claims.

54. Defendant pleads the defense of impracticability of performance as an affirmative defense to all of the plaintiff's claims.

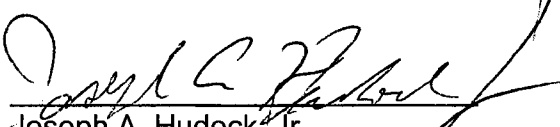
55. Defendant pleads the defense of release as an affirmative defense to all of the plaintiff's claims.

56. To the extent justified by information developed during discovery, the plaintiff's alleged damages were caused by intervening and/or superseding causes over which this defendant had no control.

WHEREFORE, defendant demands judgment in its favor and against the plaintiff.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, LLP



Joseph A. Hudock, Jr.
Counsel for Defendant.

VERIFICATION

I, MARK A. HENNE, a duly authorized representative of DMG Chicago, Inc., verify that the averments of fact set forth in the foregoing **ANSWER AND NEW MATTER** are true and correct to the best of my knowledge, information and belief.

I understand that the averments of fact made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Dated: 10-MAR-2009

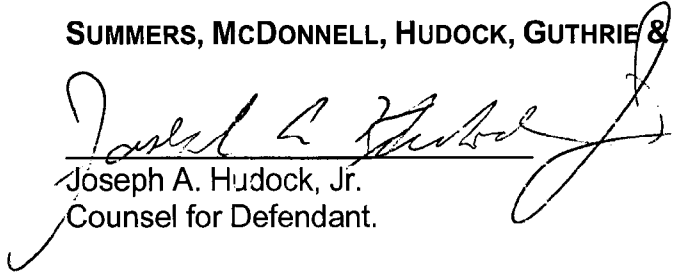
Mark A. Henne

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Answer and New Matter** has been served via first-class U.S. mail, postage prepaid, this 11th day of March, 2009, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, LLP



Joseph A. Hudock, Jr.
Counsel for Defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC

Plaintiff,

v.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No. 07-754-CD

PLAINTIFF'S REPLY TO NEW MATTER

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohny, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

FILED
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MAR 27 2009
1 SENT TO ATT
William A. Shaw
Prothonotary/Clerk of Courts
(GU)

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff, No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

PLAINTIFF’S REPLY TO NEW MATTER

NOW COMES Plaintiff Gortech Global Fabrication, LLC (“Gortech”), by and through its undersigned attorneys, and files the following Reply to New Matter of Defendant DMG Chicago, Inc. (“DMG”):

52. The allegations contained in Paragraph 52 of DMG’s New Matter are legal conclusions to which no response is required. To the extent a response may be required, the same are denied and strict proof thereof is demanded. By way of further response, there was no clear and unequivocal offer of payment in full satisfaction of DMG’s debt to Gortech and there was no acceptance or retention of any such payment by Gortech.

53. The allegations contained in Paragraph 53 of DMG’s New Matter are legal conclusions to which no response is required. To the extent a response may be required, the same are denied and strict proof thereof is demanded. By way of further response, nothing that the Contract required of DMG was impossible to perform.

54. The allegations contained in Paragraph 54 of DMG’s New Matter are legal conclusions to which no response is required. To the extent a response may be required, the

same are denied and strict proof thereof is demanded. By way of further response, nothing that the Contract required of DMG was impracticable to perform.

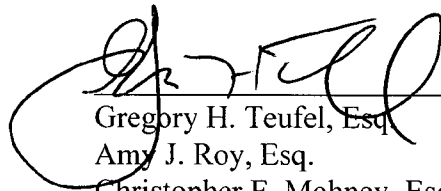
55. The allegations contained in Paragraph 54 of DMG's New Matter are legal conclusions to which no response is required. To the extent a response may be required, the same are denied and strict proof thereof is demanded. By way of further response, Gortech never released the claim set forth in the Complaint.

56. The allegations contained in Paragraph 54 of DMG's New Matter are legal conclusions to which no response is required. To the extent a response may be required, the same are denied and strict proof thereof is demanded. By way of further response, there were no intervening and/or supervening causes of Gortech's damages over which DMG had no control. On the contrary, the damages alleged in the Complaint were caused solely and exclusively by DMG's breach of the Contract and the circumstances allow for no possibility of any intervening or superseding cause.

WHEREFORE, Plaintiff Gortech Global Fabrication, LLC respectfully requests that this Court enter judgment in its favor against Defendant DMG Chicago, Inc. in an amount in excess of \$20,000, plus interest, costs, and such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: March 25, 2009



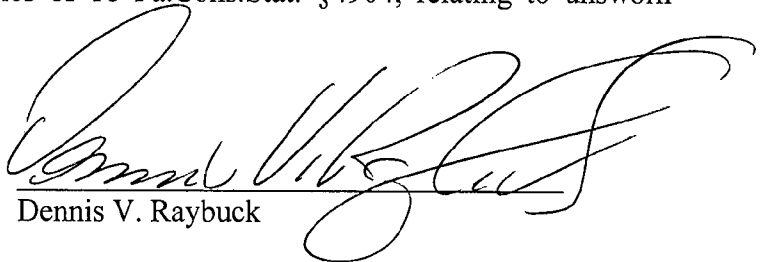
Gregory H. Teufel, Esq.
Amy J. Roy, Esq.
Christopher E. Mohney, Esq.

*Attorneys for Plaintiff,
Gortech Global Fabrication, LLC*

VERIFICATION

Dennis V. Raybuck, the undersigned individual, as President of Gortech Global Fabrication, LLC, deposes and says that he is authorized to execute this Verification on behalf of Gortech Global Fabrication, LLC, that the averments in the foregoing Reply to New Matter are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Dated: March 20, 2009

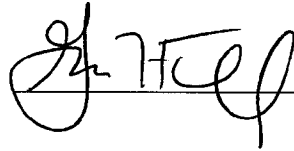


Dennis V. Raybuck

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Plaintiff's Reply to New Matter was served upon the following by deposit in the United States mail, first class postage prepaid, this 25th day of March, 2009.

Joseph A. Hudock, Jr., Esq.
Summers, McDonnell, Hudock, Guthrie & Skeel, L.L.P.
Suite 2400, Gulf Tower
707 Grant Street
Pittsburgh, PA 15219

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

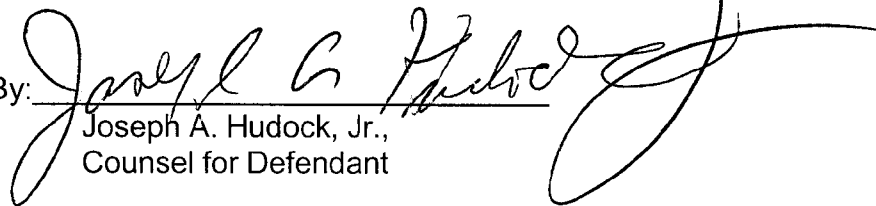
CERTIFICATION PURSUANT TO LOCAL RULE 208.2(e)

On October 6, 2009, counsel for the defendant spoke to counsel for the plaintiff concerning defendant's request for documentation of the plaintiff's alleged lost profits. Counsel were unable to come to an agreement concerning what records should be produced.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.

By:


Joseph A. Hudock, Jr.,
Counsel for Defendant

FILED *no cc*
m/12:32 PM
OCT 13 2009
William A. Shaw
Prothonotary/Clerk of Courts

UP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

MOTION TO COMPEL

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

Counsel of Record for this Party:

Joseph A. Hudock, Jr.
PA I.D. #66064

SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, P.C.
Firm #911

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

16887

FILED
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OCT 13 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

MOTION TO COMPEL

AND NOW comes the Defendant, DMG Chicago, Inc., by and through its attorneys, Summers, McDonnell, Hudock, Guthrie & Skeel, and sets forth the following Motion to Compel and in support thereof avers as follows:

1. The above-captioned case is a commercial dispute involving an alleged breach of contract.

2. The plaintiff's Complaint alleges that the defendant breached a contract with the plaintiff for the sale of a certain piece of machinery intended to be used in plaintiff's business and that, as a result, the plaintiff suffered lost profits.

3. The plaintiff's founder, owner and manager, Dennis Raybuck, was deposed on June 24, 2009 and testified at that time that he did not know what the lost profits in the business were as a result of the breach of contract but that he was going to be hiring an expert to determine same. See Pages 23 and 24 of Mr. Raybuck's deposition attached hereto as Exhibit "A".

4. Defendant served discovery requests upon plaintiff seeking, among other things, documentation of the plaintiff's lost profits.

5. The plaintiff objected to the discovery requests on numerous grounds. Attached hereto as Exhibit "B" is a true and correct copy of plaintiff's responses to defendant's interrogatories.

6. On July 16 and September 23, 2009, the undersigned has written to plaintiff's counsel and has requested documentation of the plaintiff's alleged lost profits.

7. To date, no response has been forthcoming.

8. It is necessary for a proper defense of this lawsuit that the plaintiff provide documentation of the alleged lost profits.

9. Defendant will agree to keep any information concerning lost profits confidential and share it only with defendant's economic expert should one be retained.

10. The relief requested by the instant Motion is authorized by Pa.R.C.P. 4019.

WHEREFORE, defendant respectfully requests that this Honorable Court enter an Order directing the plaintiff to provide full and complete documentation of plaintiff's alleged lost profits within thirty (30) days of the date of this order.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.

By: _____

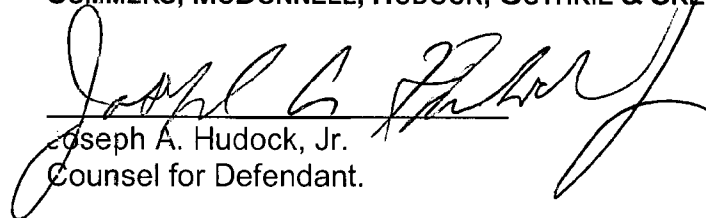
Joseph A. Hudock, Jr.
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion was served upon counsel of record by mailing the same via first class mail, postage pre-paid, this 8th day of October, 2009, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.



Joseph A. Hudock, Jr.
Counsel for Defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

CIVIL DIVISION

No.: 07-754-CD

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

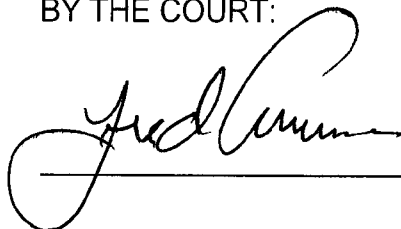
5 **FILED** 2CC
9/30/09
OCT 16 2009 Atty
Hudock
William A. Shaw
Prothonotary/Clerk of Courts (21)

ORDER OF COURT

AND NOW, to wit this 15 day of October, 2009, upon consideration of the foregoing Motion, it is hereby ORDERED that:

- (1) A Rule is issued upon the Respondent to show why the moving party is not entitled to the relief requested;
- (2) The Respondent shall file an Answer to the Motion within ____ days of this date;
- (3) The Motion shall be decided under Pa.R.C.P. 206.7;
- (4) Depositions and all other discovery shall be completed within ____ days of this date;
- (5) An evidentiary hearing on disputed issues of material fact shall be held on _____ in the Clearfield County Courthouse, Clearfield, Pennsylvania, in Courtroom No. _____;
- (6) Argument shall be held on November 13, 2009 in Courtroom No. 1 of the Clearfield County Courthouse; and 2:00 p.m.
- (7) Notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:


_____ J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

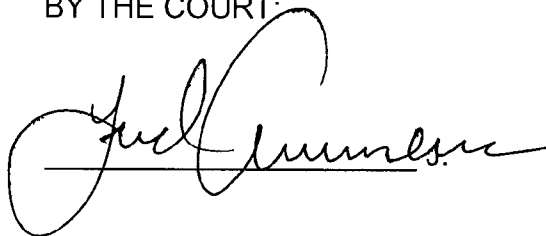
CIVIL DIVISION

No.: 07-754-CD

ORDER OF COURT

AND NOW, to wit this 13th day of November, 2009, it is hereby ORDERED, ADJUDGED and DECREED that the plaintiff shall provide defense counsel with documentation of plaintiff's alleged lost profits within thirty (30) days from the date of this Order.

BY THE COURT:



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5
William A. Shaw
Prothonotary/Clerk of Courts

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff, No. 07-754-CD

v.

**PLAINTIFF'S MOTION TO VACATE
ORDER**

DMG CHICAGO, INC.,

Defendant. Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohny, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

5 **FILED** ICC
DEC 21 2009 Amy Teufel
William A. Shaw
Prothonotary/Clerk of Courts

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

GORTECH GLOBAL FABRICATION,
LLC

CIVIL DIVISION

No. 07-754-CD

Plaintiff,

v.

DMG CHICAGO, INC.,

Defendant.

MOTION TO VACATE ORDER

NOW COMES Plaintiff Gortech Global Fabrication, LLC ("Gortech"), by and through its undersigned attorneys, and files the following Motion to Vacate Order:

1. Defendant, DMG Chicago, Inc. ("DMG") filed a motion to compel ("the Motion") in this matter on or about October 8, 2009, seeking documentation of Gortech's alleged lost profits.
2. Presumably, this Court issued a scheduling order with respect to the Motion.
3. However, DMG failed to serve a copy of the scheduling order upon Gortech.
4. As a result, Gortech received no notice of any deadline for a response to the Motion or of any date set for a hearing on the Motion.
5. To date, Gortech still has not received a copy of the scheduling order, so it does not know when the deadline for a response to the Motion was scheduled and did not file a response to the Motion until after receiving the Order granting the Motion.
6. The date set for the hearing on the Motion was November 13, 2009.

7. Due to total lack of notice of the hearing, Gortech's counsel did not attend.

8. Despite the unexplained absence of Gortech's counsel at that hearing, DMG's counsel apparently made no attempt to confirm proper notice of the hearing had been given, either at the time of the hearing or afterward.

9. Based on the Motion and whatever counsel for DMG represented to the Court at the November 13, 2009 hearing, the Court granted the Motion by Order dated November 13, 2009 ("the Order").

9. For all the reasons stated in Gortech's response to the Motion ("the Response"), which has now been filed and is incorporated by reference as if fully set forth herein, the Motion was without merit and would not likely have been granted if Gortech had the opportunity to oppose it.

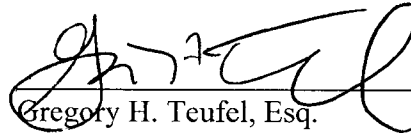
10. It was improper for DMG to present the Motion and obtain the Order *ex parte*.

11. Gortech requests that the Order be vacated and a new date for hearing on the Motion be scheduled.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter the attached proposed Order, vacating the November 13, 2009 Order, and scheduling a new argument date for the Motion, or grant such other or further relief as this Court may deem proper.

Respectfully submitted,

Dated: December 18, 2009

A handwritten signature in black ink, appearing to read 'G. Teufel', is written over a horizontal line.

Gregory H. Teufel, Esq.

Amy J. Roy, Esq.

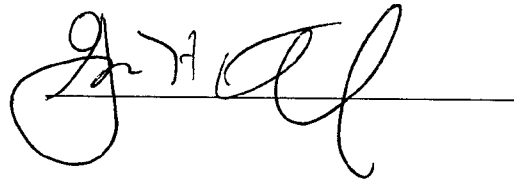
Christopher E. Mohnhey, Esq.

*Attorneys for Plaintiff,
Gortech Global Fabrication, LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Vacate Order was served upon the following by deposit in the United States mail, first class postage prepaid, this 18th day of December, 2009.

Joseph A. Hudock, Jr., Esq.
Summers, McDonnell, Hudock, Guthrie & Skeel, L.L.P.
Suite 2400, Gulf Tower
707 Grant Street
Pittsburgh, PA 15219

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

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

**PLAINTIFF'S RESPONSE TO MOTION
TO COMPEL**

DMG CHICAGO, INC.,

Defendant.

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohny, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

FILED

DEC 21 2009

William A. Shaw
Prothonotary/Clerk of Courts

McC
mt 10:42 AM
Amy Teufel

(60)

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

GORTECH GLOBAL FABRICATION,
LLC

CIVIL DIVISION

No. 07-754-CD

Plaintiff,

v.

DMG CHICAGO, INC.,

Defendant.

RESPONSE TO MOTION TO COMPEL

NOW COMES Plaintiff Gortech Global Fabrication, LLC ("Gortech"), by and through its undersigned attorneys, and files the following Response to Motion to Compel:

1. Admitted.
2. Admitted. By way of further response, lost profits are not the only damages alleged.
3. Denied. It is denied that Mr. Raybuck testified that he did not know what the lost profits in the business were as a result of the breach of contract but that he was going to be hiring an expert to determine same. On the contrary, Mr. Raybuck testified that he had not personally done the calculations regarding lost profits, and that an expert was being hired to do so, and that he did not yet know what that expert's calculations were going to be. The relevant questions and answers from that deposition were as follows:

Q. Let me talk now about the business and the lost profits that you're claiming. Have you done any calculations to try to determine what you've lost as a result of the alleged breach of contract?

A. We've actually -- we're bringing in an expert to calculate that for us.

Q. All right. Do you have any idea what those figures might be?

A. Not at this time.

4. Admitted.

5. Denied. There was only one request, not multiple requests seeking documentation related to lost profits, specifically, request number 21, to which Gortech responded as follows:

21. With respect to Paragraph 51 of the plaintiffs Complaint, please attach any documentation in the plaintiffs position [sic possession] which supports its assertion that it lost profits as a result of defendant's failure to deliver the CTX420V6.

RESPONSE: See General Objections 1, 3, 4, and 7. Without waiving said objections, Gortech refers DMG to the documents being produced.

General Objections 1, 3, 4, and 7 were as follows:

1. Plaintiff objects to any interrogatory that asks for work product or privileged information and has specifically limited its responses accordingly. Plaintiff objects to any request that asks it to produce documents that are privileged or otherwise protected from discovery. Any inadvertent production of any such documents is not intended as a waiver of any privilege or any ground for objecting to the admissibility of such document or any of the information contained therein.

3. Plaintiff objects to any interrogatory or request that is vague and ambiguous. Plaintiff further objects to any request that does not describe each

item or category to be produced with reasonable particularity, as required by Pa..R.Civ.P. 4009.11(b).

4. Plaintiff objects to any interrogatory or request which seeks information or documents that are already in the possession, custody or control of Defendant, or its parent, subsidiaries, affiliates, officers, directors, employees, consultants, representatives and agents, or any other persons within its control or acting on its behalf.

7. Plaintiff objects to the production of confidential documents or information until the entry of an appropriate protective order. Statements that responsive documents will be produced shall not be read as an indication that confidential documents will be produced unless and until an appropriate protective order has been entered. Because an appropriate protective order has not yet been entered, confidential documents are presently being withheld from production. A proposed stipulated protective order is being prepared and will be provided.

So Gortech merely objected to producing privileged documents and documents that DMG already has, and objected to producing any confidential documents until after a protective order is entered. In addition, Gortech objected to DMG's failure to describe what documents this request is seeking with reasonable particularity. Gortech did not refuse to produce any documents on the basis of these objections, but rather did produce many documents, some of which relate to lost profits, as has been explained to counsel for DMG. For example, Gortech produced numerous documents related to the specific

parts that Gortech was quoting to produce with the machines at issue for a specific customer.

Counsel for DMG has been unable to articulate what else DMG wants in terms of documents related to the lost profits at issue, other than to ask for tax returns that do not exist. Because Gortech is a limited liability company with pass through tax status (taxed as a partnership), it does not file its own returns. The tax returns of the individual members of Gortech have no relevance to the lost profits claims, are confidential, and could not lead to the discovery of relevant evidence. This has been explained to counsel for DMG multiple times, both before and after he sent the letters on July 16 and September 23.

6. Admitted.

7. Denied. While Gortech did not respond in writing to the July 16, and September 23 letters, counsel for Gortech spoke with counsel for DMG regarding those letters and has explained how Gortech is proceeding to obtain a calculation of lost profits from an expert. DMG counsel has been unable to identify any specific documentation that DMG wants related to lost profits other than tax returns which are irrelevant.

8. Denied. DMG has been unable to identify any specific documentation it believes it wants or needs on this issue, other than tax returns, which are irrelevant.

9. Admitted.

10. Denied. Gortech has produced documents in response to the request at issue. If DMG for some reason believes the response is inadequate, then DMG needs to identify what else it wants with reasonable particularity. Meanwhile, Gortech will

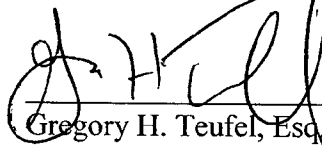
continue to try to work with DMG's counsel to figure out exactly what other documentation it wants or needs relating to lost profits.

There is no need for an Order from the Court compelling production of anything because the only thing that Gortech has refused to produce are the personal tax returns of the members of Gortech, which are irrelevant. Otherwise, Gortech has been more than cooperative and responsive in discovery in this matter.

WHEREFORE, Defendant respectfully requests that this Honorable Court deny Defendant's Motion to Compel, or grant such other or further relief as this Court may deem proper.

Dated: December 18, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. H. Teufel", written over a horizontal line.

Gregory H. Teufel, Esq.

Amy J. Roy, Esq.

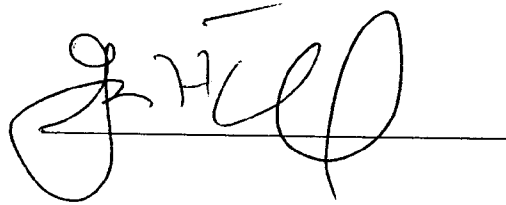
Christopher E. Mohny, Esq.

*Attorneys for Plaintiff,
Gortech Global Fabrication, LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
Response to Motion to Compel was served upon the following by deposit in the United
States mail, first class postage prepaid, this 18th day of December, 2009.

Joseph A. Hudock, Jr., Esq.
Summers, McDonnell, Hudock, Guthrie & Skeel, L.L.P.
Suite 2400, Gulf Tower
707 Grant Street
Pittsburgh, PA 15219

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

LA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION,
LLC

CIVIL DIVISION

No. 07-754-CD

Plaintiff,

v.

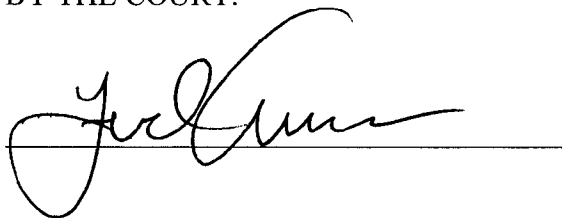
DMG CHICAGO, INC.,

Defendant.

ORDER

AND NOW, this 22 day of December, 2009 upon
consideration of Plaintiff's Motion to Vacate Order, and any response thereto, it is hereby
ORDERED that said Motion is hereby GRANTED. This Court's Order of November 13,
2009 granting Defendant's Motion to Compel is hereby vacated. The hearing on
Defendant's Motion to Compel is scheduled to occur on January 26, 2010, at
1:30 pm.

BY THE COURT:



FILED

014:00/37
DEC 23 2009

William A. Shaw
Prothonotary/Clerk of Courts

ICC 4th Level

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GORTECH GLOBAL }
FABRICATIONS } NO. 07-754-CD
VS }
DMG CHICAGO, INC. }

O R D E R

NOW, this 26th day of January, 2010, this being the date set for Hearing on Defendant's Motion to Compel, the Court noting that the procedural history is as follows:

1. The Defendant's Motion to Compel was filed on October 13, 2009;

2. This Court's Order of October 15, 2009 scheduled argument on the same for November 13, 2009 at 2:00 p.m.;

3. On November 13, 2009 Plaintiff failed to appear and the Court granted the Defendant's Motion to Compel and ordered that the Plaintiff provide the Defense with documentation of alleged lost profits within thirty (30) days from the date of the Order;

4. Plaintiff filed on December 21, 2009 a Motion to Vacated Order claiming it had not been served with notice of the hearing before the Court on November

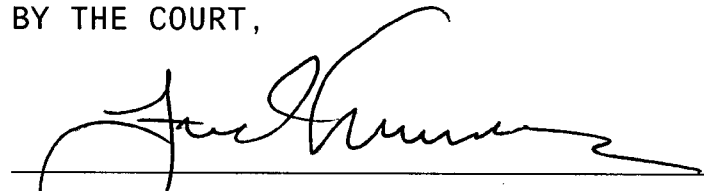
01/14/2010
JAN 27 2010
William A. Shaw
Prothonotary/Clerk of Court
2 CC Atty's:
Teasel
Summers/Haddock

13, 2009 and that this is the reason no representative of the Plaintiff attended;

5. At the request of the Plaintiff, this Court's Order of December 22, 2009 granted the Motion to Vacate Order of November 13, 2009. Hearing on the Defendant's original Motion to Compel was scheduled for January 26, 2010;

6. Neither party having appeared before the Court this date for hearing, it is the ORDER of this Court that the Defendant's Motion to Compel be and is hereby DISMISSED.

BY THE COURT,



President Judge

9

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

GORTECH GLOBAL FABRICATION, LLC

Plaintiff,

v.

DMG CHICAGO, INC.,

Defendant.

: **CIVIL DIVISION**
:
: No. 07-754-CD
:
: **PLAINTIFF'S MOTION TO**
: **COMPEL DISCOVERY RESPONSES**
:
: Filed on behalf of Plaintiff
:
: Counsel of Record for this Party:
:
: Gregory H. Teufel, Esq.
: Pa. Id. No. 73062
: Amy J. Roy, Esq.
: Pa. Id. No. 86584
: Jeremy L.S. Samek, Esq.
: Pa. Id. No. 205060
: Eckert Seamans Cherin & Mellott, LLC
: U.S. Steel Tower
: 600 Grant Street, 44th Floor
: Pittsburgh, PA 15219
: 412.566.6000 telephone
: 412.566.6099 fax
:
: Christopher E. Mohney, Esq.
: PA I.D. 63494
: 25 East Park Avenue, Suite 6
: DuBois, PA 15801
: 814.375.1044 telephone
: 814.375.1088 fax

5 **FILED** No CC.
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSES

Plaintiff, Gortech Global Fabrication, LLC ("Gortech" or "Plaintiff"), by its undersigned attorneys, hereby moves this Honorable Court to enter an Order, pursuant to Pa.R.Civ.P. 4019 compelling Defendant to respond to discovery propounded to Defendant by Plaintiff in this matter. In support of this motion, Plaintiff avers as follows:

Factual Background

1. In this action, Gortech seeks to recover damages from Defendant DMG Chicago, Inc. ("DMG" or "Defendant") for breach of a contract to supply a machine as a trade-in for another machine.
2. Predator Performance, LLC ("Predator"), a company related to Gortech, originally purchased a CTX 320 Linear CNC from DMG for \$199,500 and conveyed it to Gortech.
3. DMG sold the CTX 320 Linear CNC that Gortech had to another DMG customer and gave Gortech a used 2003 CTX 420 V4, which Gortech presently possesses, in trade for the CTX 320 Linear CNC.
4. Little did Gortech know that the CTX 420 V4 had numerous serious undisclosed problems.

5. For months, DMG kept promising Gortech that it would send someone to fix the CTX 420 V4 and provide training, but DMG repeatedly failed to send someone when promised and rescheduled numerous times.

6. Repeatedly, when a DMG person finally came to provide training for the CTX 420 V4, more problems surfaced with the CTX 420 V4 and time that was supposed to be spent training was instead spent dealing with those problems.

7. In light of the year of lost production and the problems experienced with the CTX 420 V4 and the prior machine and the delays in receiving training, to its credit, in an apparent effort to make things right, DMG entered into a contract ("the Contract") on June 8, 2006, promising to provide a new 2006 CTX 420 V6 "with all options and accessories" and "T.C. Services Tooling," along with machine installation and training and a new machine warranty, in trade for the CTX 420 V4.

8. This was a highly favorable trade-in, in that the new 2006 CTX 420 V6 that was promised was substantially more valuable and had a substantially higher market price than the used 2003 CTX 420 V4 that Gortech had.

9. DMG did not deliver the 2006 CTX 420 V6 as required by the Contract and Gortech filed this action seeking damages for breach of contract.

DMG's failure to adequately respond to discovery.

10. Through Interrogatories and Requests for Production, and subsequently through depositions, Gortech sought to obtain from DMG relevant pricing information relating to both the base machines (CTX 420 V4 and CTX 420 V6) as well as the options and accessories for those machines, in order to calculate certain damages, in terms of the difference in value between the new CTX 420 V6 that agreed to provide in exchange for Gortech's used CTX 420 V4.

11. A true and correct copy of DMG's responses to Gortech's written discovery requests is attached hereto as Exhibit A.

12. DMG provided some pricing information but no documentation supporting that pricing information.

13. In response to Interrogatory 10, DMG stated that in 2006, the base machine list price of a new CTX 420 V6 was \$232,900.

14. In response to Interrogatory 12, DMG stated that in 2006, the base machine list price of a new CTX 420 V4 was \$193,900.

15. Gortech's Request for Production 11 sought all documents relating to the price paid in sales of new CTX 420 V6 machines by DMG in 2006 and DMG responded "See attached" but attached no such documents.

16. Gortech's Request for Production 12 sought all documents relating to the price paid in sales of new CTX 420 V4 machines by DMG in 2006 and DMG responded "See attached" but attached no such documents.

17. The pricing information provided by DMG in response to Interrogatories 10 and 12 had to come from some documents or data somewhere in DMG's possession, but DMG chose not to produce it.

18. Gortech's Request for Production 14 sought all documents relating to the performance features of the CTX 420 V6 and of the CTX 420 V4, and any and all differences in those machines or in such performance features and DMG responded "See attached" but attached no such documents.

19. DMG likely has product brochures and sales materials responsive to Request for Production 14, but chose to produce nothing.

20. Gortech's Interrogatory 23 asked DMG to identify all documents related to any fact alleged in the Complaint, the Answer, New Matter, Reply to New Matter, or any other pleading in this action, related to the Contract, related to the negotiation, performance, and/or breach and/or alleged breach of the Contract, or related to any other alleged oral or written agreement(s) or amendment(s) to agreements between DMG and Gortech and DMG objected that the interrogatory was "overbroad, burdensome, and vexatious," but also referenced attached documents.

21. Similarly, Gortech's Request for Production 9 asked DMG to produce all documents related to any fact alleged in the Complaint, the Answer, New Matter, Reply to New Matter, or any other pleading in this action and DMG simply responded "see attached."

22. The documents attached to DMG's discovery response consisted of a small hodgepodge of pleadings previously filed in this case and some emails and correspondence between the parties, representing no serious effort to assemble any of the relevant documents for this case or any sincere effort to be responsive to the document requests.

23. In contrast, Gortech produced thousands of pages of documents to DMG in discovery in this matter.

24. Through letters and phone conversations, Gortech attempted to persuade DMG to supplement its discovery responses, to no avail.

25. Gortech further attempted to get the needed information and documents through depositions and through further correspondence and telephone conversations with counsel for DMG before filing this Motion to Compel, also to no avail.

26. Gortech served a notice of deposition *duces tecum* upon DMG, which is attached hereto as Exhibit B.

27. That notice of deposition asked DMG to designate one or more persons to testify on subjects including the pricing of all options, accessories, and tooling packages for the CTX 420 V6 and CTX 420 V4 and the performance features of both machines, and to produce documents related to those subjects and related to any fact alleged in the Complaint, the Answer, New Matter, or Reply to New Matter.

28. DMG designated only Gerald Fitzpatrick, DMG's Controller to testify, and he brought with him to the deposition only two additional documents; a list that shows the spare parts that had been submitted on the CTX 420 V4 machine that were from 2006 and a service document that was prepared and signed by a Gortech representative after the machine was serviced in February of 2006. See Fitzgerald Deposition Transcript, p. 10 (excerpts of that transcript are attached as Exhibit C).

29. DMG made no search of its computer records to produce documents, even though Mr. Fitzgerald admitted that there must be emails on DMG's computer system related to this case. See Fitzgerald Deposition Transcript, p. 11.

30. Mr. Fitzpatrick also admitted that he would assume that price lists related to the machines at issue would also be available from DMG, but DMG has never produced any price lists, though they have been requested repeatedly, both through formal discovery requests, requests made during Fitzpatrick's deposition, and other informal requests. See id.

31. Mr. Fitzpatrick testified that DMG likely has documents listing the options and accessories on the CTX 420 V6 that it had agreed to give to Gortech in trade for the CTX 420 V4, as well as the sales documents for the sale of the CTX 420 V6 that was promised to Gortech to a different DMG customer, as well as a database with records related to that machine. See Fitzpatrick Deposition, pp. 18-21.

32. Mr. Fitzpatrick was not familiar with the features of the CTX 420 V4 compared to the V6 at all, and DMG did not produce any witness with knowledge on that subject, despite the request to do so in the notice of deposition. See Fitzpatrick Deposition, p. 27.

33. Mr. Fitzpatrick admitted that DMG probably has electronic copies of product brochures related to the 2003 CTX 420 V4 and the 2006 CTX 420 V6, but DMG has failed to produce them, despite promising to do so. See Fitzpatrick Deposition, pp. 40-41.

34. Mr. Fitzpatrick testified that pricing the information provided by DMG in response to interrogatories came from DMG's quoting system, which is capable of generating printouts of pricing information, but DMG has failed to produce any such printouts or to otherwise produce that data in any form. See Fitzpatrick Deposition at pp. 41-42.

35. DMG made no efforts to put a litigation hold in place or to preserve any documents related to this case, other than to set aside a small binder of documents. For example, no effort was made to gather and suspend destruction of any relevant emails. See Fitzpatrick Deposition at p. 45.

36. Presumably, a customer seeking to purchase the machines at issue from DMG would not have this much trouble getting information from DMG regarding these machines. But DMG has stonewalled Gortech's discovery efforts, making no serious efforts to either search for or produce relevant documents and information in this matter.

37. IT seems clear that DMG will not take its discovery obligations seriously in this case without Court intervention, unfortunately.

Relief sought.

38. Gortech requests that this Court enter an Order requiring DMG to produce:

(1) all emails related to the averments in the pleadings in this matter;

(2) all documents and information in its possession, custody and control, whether in electronic or paper form, relating to the 2003 CTX 420 V4 or the 2006 CTX 420 V6 at issue in this matter, and all options and accessories and pricing and performance features of same, including any related product brochures, price lists, and data from DMG's quoting system; and

(3) any and all sales documents related to the CTX 420 V6 with serial number 022600003961.

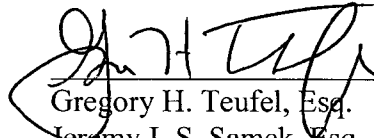
39. Finally, Gortech requests that the Court award Gortech its costs in preparing and presenting this Motion.

40. Gortech has incurred attorney fees in excess of \$1,000 in preparing and presenting this Motion to Compel.

WHEREFORE, Plaintiff Gortech requests that this Court enter the attached proposed Order or grant such other and further relief as this Court may deem proper.

Respectfully submitted,

Dated: May 9, 2011



Gregory H. Teufel, Esq.
Jeremy L.S. Samek, Esq.
Christopher E. Mohnhey, Esq.
Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this ____ day of _____, 2011, upon consideration of the Motion to Compel Discovery Responses filed by Plaintiff Gortech Global Fabrication, LLC, and any responses thereto, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is Granted. It is hereby ORDERED that, within thirty days of the date of this Order, Defendant shall produce to Plaintiff:

1. all emails related to the averments in the pleadings in this matter;
2. all documents and information in its possession, custody and control, whether in electronic or paper form, relating to the 2003 CTX 420 V4 or the 2006 CTX 420 V6 at issue in this matter, and all options and accessories and pricing and performance features of same, including any related product brochures, price lists, and data from DMG's quoting system; and
3. any and all sales documents related to the CTX 420 V6 with serial number 022600003961.

It is further ORDERED that Defendant DMG shall pay Gortech's costs in preparing and presenting the Motion to Compel in the amount of \$1,000.

J.

EXHIBIT A

**SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, P.C.**
ATTORNEYS AT LAW

STEPHEN J. SUMMERS
THOMAS A. McDONNELL
JOSEPH A. HUDOCK, JR.
GREGG A. GUTHRIE
PETER B. SKEEL
PATRICK M. CONNELLY*
JEFFREY C. CATANZARITE

PITTSBURGH OFFICE:
GULF TOWER, SUITE 2400
707 GRANT STREET
PITTSBURGH, PA 15219
PHONE 412-261-3232
FAX 412-261-3239

JASON A. HINES
KEVIN D. RAUCH
ERIN M. BRAUN
GUY E. BLASS
MARK J. GOLEN
ROBERT J. FISHER, JR.
KIMBERLY L. GALLUCCI**
JESSICA M. JURASKO
ERICK V. VIOLAGO
JOHN A. LUCY
SETH T. BLACK***
ETHAN K. STONE
MATTHEW RIDLEY
CANDACE N. EDGAR
DANA F. BUTIA
JULIA A. PHILLIPS
GARTH A. GARTIN

*ALSO ADMITTED IN WV

March 10, 2010

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
44TH Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

**ALSO ADMITTED IN OH
***ALSO ADMITTED IN NJ

In Re: Gortech Global Fabrication, LLC vs. DMG Chicago, Inc.
Docket Number : 07-754-CD (Clearfield Co.)
Our File : 16887

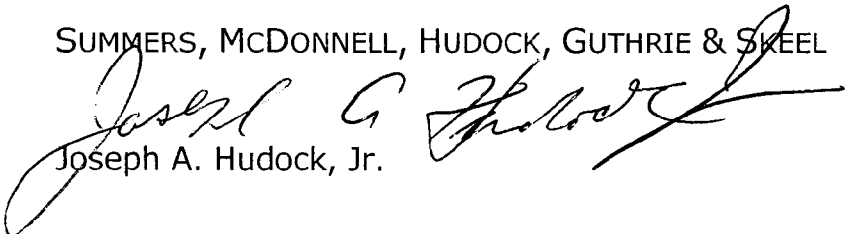
Dear Mr. Teufel:

Enclosed please find defendant's Answers to Interrogatories, Response to Request for Production of Documents and Response to Request for Admissions in the above-captioned case.

Should you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL


Joseph A. Hudock, Jr.

JAH/lab
Enclosure

HARRISBURG OFFICE: 100 STERLING PARKWAY, SUITE 306, MECHANICSBURG, PA 17050
PHONE: 717-901-5916
FAX: 717-920-9129

EXHIBIT

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

**ANSWERS TO INTERROGATORIES,
RESPONSE TO REQUEST FOR
PRODUCTION OF DOCUMENTS AND
RESPONSE TO REQUEST FOR
ADMISSIONS**

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

Counsel of Record for this Party:

Joseph A. Hudock, Jr.
PA I.D. #66064

SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, P.C.
Firm #911

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES, REQUESTS FOR
PRODUCTION, AND REQUESTS FOR
ADMISSIONS**

Defendant.

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohnhey, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

**PLAINTIFF'S FIRST SET OF INTERROGATORIES
REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSIONS**

Plaintiff Gortech Global Fabrication, LLC ("Gortech" or "Plaintiff"), by and through its undersigned counsel, hereby requests that Defendant, DMG Chicago, Inc. ("DMG" or "Defendant"), serve full and complete responses to the following Interrogatories, Requests for Production, and Requests for Admissions, under oath, within thirty (30) days from the date of service hereof on Defendant, in accordance with Rules 4006, 4009.12, and 4014 of the Pennsylvania Rules of Civil Procedure:

I. DEFINITIONS

1. The terms "concerning," "relating to," "related to," "relevant to," "pertaining to," or any form thereof shall mean constituting, reflecting, regarding, pertaining to, representing, supporting, contradicting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating, relevant to, relating to, referring to, evidencing, or constituting. As indicated, the terms necessarily include information that is in opposition to as well as in support of the position(s) or claim(s) of the parties in this action.

2. The term "communication" means the transmittal of information by any means,

which includes, without limitation, letters and written communications of every kind and description, emails, faxes, and any oral statements, conversations, discussions and conferences. "Communication" or "communications" as used herein includes, without limitation, letters and written communications of every kind and description, emails, faxes, and any oral statements, conversations, discussions, and conferences.

3. The terms "document" and "documents" are defined to be synonymous in meaning and equal in scope to the usage of the term "documents" in Pa.R.Civ.P. 4009.1 and include, without limitation, electronically stored information, writings, drawings, graphs, charts, photographs, records, recordings, electronically created data and other data compilations from which information can be obtained, translated, if necessary, through detection or recovery devices into reasonably usable form. The terms "writings," "recordings," and "photographs" are defined to be synonymous in meaning and equal in scope to the usage of those terms in Pa.R.Evid. 1001. A draft or non-identical copy is a separate document within the meaning of the term "document."

4. Identify or Identity (with respect to persons): When referring to a person, "identity" or to "identify" means to state the person's full name, present or last known address, and, when referring to a natural person, additionally, the present or last known place of employment. If the business and home telephone numbers are known to the answering party, and if the person is not a party or present employee of a party, said telephone numbers shall be provided. Once a person has been identified in accordance with this subparagraph, only the name of the person need be listed in response to subsequent discovery requesting the identification of that person.

5. Identify (with respect to documents): When referring to documents, to "identify"

means to state the: (i) type of document; (ii) general subject matter; (iii) date of the document; and, (iv) author(s), addressee(s), and recipient(s) or, alternatively, to produce the document.

6. The terms "Plaintiff," "Defendant," and "Defendants," as well as a party's full or abbreviated name or a pronoun referring to a party, mean that party or those parties in this action and, where applicable, its or their predecessors, successors, subsidiaries, past or present officers, directors, employees, agents, representatives, and attorneys, or any person who has acted or is acting or purporting to act on its or their behalf for any purpose whatsoever. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation or to limit the Court's jurisdiction to enter any appropriate order.

8. The term "person" is defined as any natural person or any business, legal or governmental association, firm, partnership, corporation, trustee, or other entity and also, where relevant, the persons representing or acting for such "person."

9. The terms "Defendant," "you," "your," "this party," or "DMG" include Defendant DMG Chicago, Inc., and all of its agents, representatives and attorneys, or any person who has acted or is acting or purporting to act on its behalf for any purpose whatsoever.

10. "All" means "any and all"; "any" means "any and all." "Including" means "including but not limited to."

11. "Plaintiff" or "Gortech" refers to the Plaintiff, Gortech Global Fabrication, LLC, its representatives, or attorneys, and any person who has acted or is acting or purporting to act on its behalf for any purpose whatsoever.

12. "This action" or "this matter" means the above-captioned action, Gortech Global Fabrication, LLC v. DMG Chicago, Inc., in the Court of Common Pleas of Clearfield County, Pennsylvania, at Civil Division No. 07-754-CD.

13. "The Complaint" means and refers to the Complaint filed by the Plaintiff in this action.

13. The "CTX 420 V4" is the machine referenced as such in paragraph 15 of the Complaint.

14. "The Contract" has the same meaning herein as given it in paragraph 33 of the Complaint.

15. The "CTX 420 V6" is the machine referenced as such in paragraph 33 of the Complaint and in the Contract.

II. INSTRUCTIONS

1. Where facts set forth in any response or any portion thereof are supplied upon information and belief rather than actual knowledge, the response should so state and specifically describe or identify the source of such information and belief. If Defendant cannot answer an Interrogatory or Request in full after exercising due diligence to secure the information and/or documents requested, so state and answer such Interrogatory or Request to the fullest extent possible, specifying the exact reason for Defendant's inability to answer the remainder and stating whatever information or knowledge Defendant has concerning the unanswered portion.

2. If you are withholding any documents for any reason other than an objection that it is beyond the scope of discovery or that a request is unduly burdensome, identify each such document and, in addition to the information requested in ¶8, below, please state the reason for withholding the document.

3. When a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a

document, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted document.

4. In addition to paper copies, you are requested to serve responses in an electronic format capable of having text selected and copied into a Word document, in order to reduce the clerical effort required to later cut and paste from such responses. The same courtesy was extended in serving these discovery requests in such a format, to reduce the clerical effort required to prepare responses.

5. These instructions and definitions should be construed to require answers based upon the knowledge of, and information available to, the responding party as well as its agents, representatives, and, unless privileged, attorneys. It is intended that the following discovery requests will not solicit any material protected either by the attorney/client privilege or work product doctrine which was created by, or developed by, counsel for the responding party after the date on which this litigation was commenced.

6. These Interrogatories and Requests for Production are continuing in character, so as to require that supplemental answers be filed seasonably if further or different information or additional documents are obtained with respect to any request or interrogatory. These Interrogatories and Requests for Production shall further be deemed continuing, to the extent required by Pa.R.Civ.P. 4007.4, so as to require amended responses if Defendant learns that any response is in some material respect is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Plaintiff during the discovery process or in

writing, and so as to require supplementation as to the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called as an expert witness, along with the subject matter on which each expert is expected to testify and the substance of each expert's opinion.

7. No part of an interrogatory or request should be left unanswered merely because an objection is interposed to another part of the interrogatory or request. If a partial or incomplete answer is provided, the responding party shall state that the answer is partial or incomplete.

8. In accordance with Pa.R.Civ.P. 4009(b)(2), where a claim of privilege or other protection from discovery is asserted in objecting to any interrogatory or request or part thereof, and information or documents are withheld on the basis of such assertion:

a. In asserting the privilege or protection, the responding party shall, in the objection to the interrogatory or request, or part thereof, identify with specificity the nature of the privilege (including work product) that is being claimed;

b. The following information should be provided in the objection, if known or reasonably available, unless divulging such information would cause disclosure of the allegedly privileged information,

(i) For oral communications:

- (a) the name of the person making the communication and the names of persons present while the communication was made or who otherwise heard the communication, and, where not apparent, the relationship of such persons present to the person making the communication;
- (b) the date, place(s), and manner of the communication; and
- (c) the general subject matter of the communication.

(ii) For documents, the responding party shall provide the following information:

- (a) the type of document,
- (b) the general subject matter of the document,
- (c) the date of the document,
- (d) such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other, in a manner that, without revealing the information claimed to be protected, will enable this party to assess the applicability of the privilege or protection claimed by you, and
- (e) the identity of all persons who have seen or been provided a copy of the document.

9. If the responding party elects to specify and produce business records in answer to any interrogatory, the specification shall be in sufficient detail to permit the interrogating party to locate and identify, as readily as the responding party can, the business records from which the answer may be ascertained.

10. If, in answering these interrogatories or requests, the responding party encounters any ambiguities when construing a question, instruction, or definition, the responding party's answer shall set forth the matter deemed ambiguous and the construction used in answering.

11. If production of any requested document(s) or information is objected to on the grounds that production is unduly burdensome or expensive, describe the burden or expense of the proposed discovery.

12. If the requested documents are maintained in a file, file drawer, and/or box, the file folder and the box or drawer label are included in the request for production of those documents.

13. The documents and information that you must produce in response to the Requests and Interrogatories are those documents and that information that are within your possession, custody, or control.

III. INTERROGATORIES

INTERROGATORY NO. 1. Identify all persons who are likely to have personal knowledge of any fact alleged in the Complaint, the Answer, New Matter, Reply to New Matter, or any other pleading in this action, related to the Contract, related to the negotiation, performance, and/or breach and/or alleged breach of the Contract, or related to any other alleged oral or written agreement(s) or amendment(s) to agreements between DMG and Gortech, and state the subject matter of the personal knowledge possessed by each such person.

Answer: Mark Henne, York Franke, Jerry Fitzpatrick.

INTERROGATORY NO. 2. Identify each witness you may use at trial to present evidence under Pa.R.Evid. 702, 703, or 705, or who you have retained or specially employed to provide expert testimony in this case, or employed by you whose duties regularly involve giving expert testimony and whom you expect to testify at trial, and for each such witness, provide a complete statement of the opinions to be expressed and basis and reasons therefor.

Answer: Undetermined at this time. Any experts will be listed in defendant's pre-trial statement.

INTERROGATORY NO. 3. With reference to paragraph 26 of the Complaint and your Answer, if you contend that DMG did not fail to send people to fix the CTX 420 V4 and provide training when promised and DMG fulfilled its promises,

- a. set forth the facts upon which you rely for this contention, including:
 - (1) the date and time of each scheduled repair and/or training related to the CTX 420 V4;
 - (2) the dates and time each such repair and/or training actually occurred; and

- (3) the particular individuals involved in performing each such repair and/or training;
- b. identify specifically the documents relating to this contention; and
- c. for each such repair and/or training, identify every person who has specific personal knowledge supporting your contentions related thereto.

Answer: DMG attempted to send someone to fix the machine in question but was rebuffed by plaintiff.

INTERROGATORY NO. 4. Identify all written communications and describe in detail all oral communications related to any fact alleged in the Complaint, the Answer, New Matter, Reply to New Matter, or any other pleading in this action, related to the Contract, related to the negotiation, performance, and/or breach and/or alleged breach of the Contract, or related to any other alleged oral or written agreement(s) or amendment(s) to agreements between DMG and Gortech and, as to each such alleged oral agreement or amendment:

- a. state the date or dates on which the oral agreement or amendment was offered and accepted;
- b. identify the persons who communicated and/or accepted the terms of such oral agreement or amendment;
- c. describe such terms, including the consideration for the oral agreement or amendment and state when such consideration was promised and when such consideration was performed or exchanged; and
- d. identify any documents related to such oral agreement or amendment.

Answer: Objected to as over broad, vexatious and burdensome. Without waiving said objection, see documents attached in response to Request for Production.

INTERROGATORY NO. 5. Identify all persons with whom you, your attorneys, employees, or agents have discussed this action or its subject matter, or from whom a statement, declaration, or affidavit has been taken related to this action or its subject matter and, for each such person, identify the subject discussed and/or each statement, declaration, or affidavit taken and the date of such discussion, statement, declaration, and/or affidavit.

Answer: Objected to as over broad, burdensome and vexatious. Without waiving the objection, defendant does not have any statements.

INTERROGATORY NO. 6. If you contend, as in the paragraph 30 of your Answer, that Gortech received the necessary training in a timely manner, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and please explain in detail the basis for this contention, including the date(s) on which such training was provided, the number of hours of training provided on such dates, the nature of the training provided on such dates, the persons trained, and the persons providing the training.

Answer: See answer to Interrogatory No. 3.

INTERROGATORY NO. 7. If you contend, as in paragraph 38 of your Answer, that DMG complied with the Contract at all times relevant hereto, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and please explain how DMG complied with the Contract, including what promises contained in the Contract were performed by whom and when.

Answer: Objected to as over broad, burdensome and vexatious. Without waiving the objection, DMG attempted in good faith to provide the machine provided for in the contract but was rebuffed by the plaintiff. By way of further response, see documents produced in response to Request for Production.

INTERROGATORY NO. 8. Explain all of the reasons why DMG did not deliver a new

CTX 420 V6 to Gortech.

Answer: It was never ordered.

INTERROGATORY NO. 9. If you contend that the Contract is not a valid and binding contract, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and explain why the Contract is not valid and binding.

Answer: Objected to as over broad, burdensome and vexatious. Without waiving the objection, see response to Request for Production of Documents.

INTERROGATORY NO. 10. State the prices, as of June 8, 2006 and in 2006 generally, at which DMG was offering for sale and/or selling new CTX 420 V6 machines, including the prices of all related options and accessories, tooling packages, installation, training, and new machine warranty, and identify all documents related to such pricing and all persons with knowledge of such pricing.

Answer: In 2006, the list price of a new CTX 420 V6 was \$232,900. This list price is for the base machine, which includes installation, one week of training and a 12-month warranty. There are almost 100 options and accessories available on a factory-ordered machine.

INTERROGATORY NO. 11. State the trade-in value, as of June 8, 2006 and in 2006 generally, of Gortech's used CTX 420 V4, along with its associated options, accessories, and tooling, identify all documents related to such trade-in value and all persons with knowledge of facts related to such trade-in value.

Answer: Normally CNC machinery will lose 30% of its value in the first year. The value assigned on the trade-in on the CTX320 of \$140,000 is consistent with this formula, as the purchase price was about \$200,000. \$140,000 was the exchange price of the CTX320 for the CTX 420 V4, so a trade-in

INTERROGATORY NO. 12. State the prices, as of June 8, 2006 and in 2006 generally, value would be at most \$140,000, and would be based on length of usage & condition.

at which DMG was offering for sale and/or selling new and used CTX 420 V4 machines, including the prices of all related options and accessories, tooling packages, installation, training, and warranties, and identify all documents related to such pricing and all persons with knowledge of such pricing.

Answer: In 2006, the list price of a new CTX 420 V4 was \$193,900. This list price is for the base machine, which includes installatoin, one week of training and a 12-month warranty. There are almost 100 options and accessories available on a factory-ordered machine.

INTERROGATORY NO. 13. State the trade-in values assigned or given by DMG for all used CTX 420 V4 machines that DMG ever received in trade, and identify all documents related to trade-in values and all persons with knowledge of such trade-in values.

Answer: Defendant is not aware of any used CTX 420 V4 machines received in on a trade.

INTERROGATORY NO. 14. If you contend, as in paragraph 52 of your New Matter, that Gortech's claims against DMG are barred in whole or in part by the doctrine of accord and satisfaction, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and describe specifically when and in what manner DMG tendered something in settlement of a claim or claims of Gortech, what was so tendered, what statements accompanied any such alleged tender, and when and in what manner Gortech accepted that tender.

Answer: Defendant delivered a second-hand CTX 420 machine to the plaintiff.

INTERROGATORY NO. 15. If you contend, as in paragraph 53 of your New Matter, that Gortech's claims against DMG are barred in whole or in part by impossibility of performance, identify all facts and documents related to this contention and all persons with

knowledge of facts related to this contention, and describe specifically what performance was impossible and why such performance was impossible.

Answer: Defendant did not have a new CTX 420 machine.

INTERROGATORY NO. 16. If you contend, as in paragraph 54 of your New Matter, that Gortech's claims against DMG are barred in whole or in part by impracticability of performance, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and describe specifically what performance was impracticable and why such performance was impracticable.

Answer: See answer to preceding interrogatory.

INTERROGATORY NO. 17. If you contend, as in paragraph 55 of your New Matter, that Gortech's claims against DMG are barred in whole or in part by some release, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and describe specifically when and in what manner a claim or claims of Gortech were released, what claim or claims were released, what communications occurred in connection with any such alleged release, and when any such communications occurred, and who was involved in any such communications.

Answer: Plaintiff would have signed a release form upon acceptance of the machine in question.

INTERROGATORY NO. 18. If you contend, as in paragraph 56 of your New Matter, that Gortech's damages were caused by some intervening or superseding causes, over which DMG had no control, identify all facts and documents related to this contention and all persons

with knowledge of facts related to this contention, and describe specifically when and in what manner such intervening cause(s) caused Gortech's damages.

Answer: Objected to as over broad, burdensome and vexatious. Without waiving the objection, discovery is ongoing.

INTERROGATORY NO. 19. If you responded to any of the requests for admissions herein with anything but an unqualified admission, please state the following with respect to each such request:

- a. describe any and all facts that support your failure to unqualifiedly admit such request; and
- b. identify any documents that support your failure to unqualifiedly admit such request.

Answer: See documents produced in response to Request for Production of Documents.

INTERROGATORY NO. 20. Describe Mark Henne's job title, duties and responsibilities and employer as of June 8, 2006, and state whether Mr. Henne had actual authority to enter into the Contract on DMG's behalf on June 8, 2006.

Answer: Mr. Henne was an area sales manager who had no authority to enter into the contract in question.

INTERROGATORY NO. 21. If you contend that Mark Henne did not have proper authority to enter into the Contract on DMG's behalf on June 8, 2006:

- a. identify all contracts which Mark Henne signed on behalf of DMG, with or without proper authority, and for each such contract, state whether Mark Henne had proper authority to sign it on behalf of DMG; and

b. identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention.

Answer: Objected to as over broad, burdensome and vexatious. Without waiving the objection, see contract attached to response to Request for Production of Documents.

INTERROGATORY NO. 22. Describe the performance features of the CTX 420 V6 and of the CTX 420 V4, explain how the machines and their performance features differed, and identify all documents related to such performance features and differences.

Answer: This interrogatory is objected to as calling for a narrative which is more properly the subject of a deposition.

INTERROGATORY NO. 23. Identify all documents related to any fact alleged in the Complaint, the Answer, New Matter, Reply to New Matter, or any other pleading in this action, related to the Contract, related to the negotiation, performance, and/or breach and/or alleged breach of the Contract, or related to any other alleged oral or written agreement(s) or amendment(s) to agreements between DMG and Gortech:

Answer: Objected to as overbroad, burdensome and vexatious. Without waiving the objection, see documents attached to response to Request for Production of Documents.

IV. REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all statements (as that term is used in Pa. R. Civ. P. 4003.4) which were previously made by DMG or any of its present or former directors, officers, or employees, concerning this action or its subject matter.

RESPONSE: None.

2. Produce all documents (including, but not limited to, fee agreements, reports, and

correspondence) provided to, received from, or prepared by each person in your Answer to Interrogatory No. 2, including a copy of the current C.V. or resume for each such witness.

RESPONSE: N/A

3. Produce all contracts or agreements entered into between DMG and Gortech or any other document evidencing or relating to any such agreements, or to the negotiation, performance, and/or breach and/or alleged breach of any such agreements.

RESPONSE: See attached.

4. Produce all documents or things identified, reviewed, or relied upon by you in answering the interrogatories, requests for production, and requests for admissions directed to you in this matter.

RESPONSE: See attached.

5. Produce all documents or things identified, reviewed, or relied upon by you in support of the factual allegations contained in your Answer and New Matter and any other pleadings filed on your behalf in this action.

RESPONSE: See attached.

6. Produce each and every document, item, or other exhibit you intend to introduce into evidence or use at trial and each and every document relating to the documents, items, or other exhibits you intend to introduce into evidence or use at trial.

RESPONSE: Undetermined at ths time. Any exhibits will be identified in defendant's pre-trial statement.

7. Produce all documents relating to or consisting of communications or agreements between Gortech and DMG.

RESPONSE: See attached.

8. Produce all documents provided to, received from, or prepared by each person identified by you in the process of answering the interrogatories, requests for production, and requests for admissions directed to you in this matter.

RESPONSE: See attached.

9. Produce all documents related to any fact alleged in the Complaint, the Answer, New Matter, Reply to New Matter, or any other pleading in this action.

RESPONSE: See attached.

10. Produce all documents relating to or about Gortech.

RESPONSE: See attached.

11. Produce all documents relating to the price paid in sales of new CTX 420 V6 machines by DMG in 2006.

RESPONSE: See attached.

12. Produce all documents relating to the price paid in sales of new or used CTX 420 V4 machines by DMG in 2006.

RESPONSE: See attached.

13. Produce all documents relating to the trade-in value given for used CTX 420 V4 machines by DMG.

RESPONSE: See attached.

14. Produce all documents relating to the performance features of the CTX 420 V6 and of the CTX 420 V4, and any and all differences in those machines or in such performance features.

RESPONSE: See attached.

V. REQUESTS FOR ADMISSIONS

1. Admit that a true and correct copy of the Contract is attached to the Complaint as Exhibit B.

RESPONSE: Admitted.

2. Admit that Mark Henne, by email on June 8, 2006, represented that he was authorized to enter into the Contract on behalf of DMG.

RESPONSE: Admitted.

3. Admit that Mark Henne was in fact authorized to enter into the Contract on behalf of DMG.

RESPONSE: Denied.

4. Admit that Exhibit C to the Complaint is a true and correct copy of a June 8, 2006 email from Mark Henne to Todd Gordon.

RESPONSE: Admitted.

5. Admit that DMG never delivered a CTX 420 V6 to Gortech.

RESPONSE: Admitted.

6. Admit that the Contract is a valid and binding agreement.

RESPONSE: Denied.

7. Admit that the CTX 420 V6 had an automatic feeder.

RESPONSE:
Denied.

8. Admit that the CTX 420 V4 lacked an automatic feeder.

RESPONSE: Admitted.

9. Admit that on or before June 8, 2006, DMG was aware of how Gortech intended to use the CTX 420 V6.

RESPONSE: Denied.

10. Admit that on or before June 8, 2006, DMG was aware that the CTX 420 V6 would have expanded and improved Gortech's capabilities.

RESPONSE:

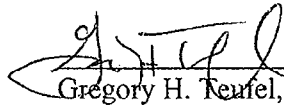
Denied.

11. Admit that on or before June 8, 2006, DMG knew that Gortech would suffer lost profits if DMG failed to deliver the CTX 420 V6 to Gortech.

RESPONSE:

Denied.

Dated: December 17 2009

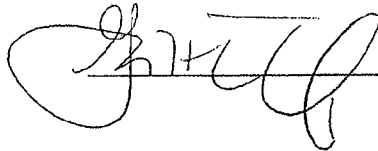


Gregory H. Tenfel, Esq.
Amy J. Roy, Esq.
Christopher E. Mohny, Esq.
Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Plaintiff's First Set of Interrogatories, Requests for Production, and Requests for Admissions was served upon the following by deposit in the United States mail, first class postage prepaid, this 17th day of December, 2009.

Joseph A. Hudock, Jr., Esq.
Summers, McDonnell, Hudock, Guthrie & Skeel, L.L.P.
Suite 2400, Gulf Tower
707 Grant Street
Pittsburgh, PA 15219

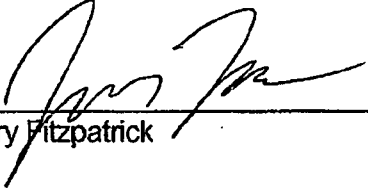


VERIFICATION

I, Jerry Fitzpatrick, a duly authorized representative of DMG Chicago, Inc., verify that the averments of fact set forth in the foregoing **Answers to Interrogatories** are true and correct to the best of my knowledge, information and belief.

I understand that the averments of fact made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Dated: _____

3/5/2010

Jerry Fitzpatrick

Assignment and safekeeping contract

between

DMG America
(Supplier)

and

ICP / Gortech
2572 Oklahoma-Salem Road
DuBois PA 15801

- hereafter referred to as (Buyer) -

One (1) GMX 400 machine no. 07500000331
One (1) DMU80P machine no. 11440000783
- hereafter referred to as object of the contract -

- 1) It was agreed between the supplier and the buyer on December, 30th 2005, that the machines specified in the contract will remain at the supplier's custody until the middle of January, 2006.
- 2) In signing this contract the supplier assigns the machine to the buyer and assures that the buyer is sole proprietor and has the right of disposal provided that full payment has been made.
- 3) Handing over is replaced by the agreement that the supplier commits the machine is property of the buyer and to safe-keep it without charge with due care as a business partner.
- 4) The machine in the contract has a value of US\$ 1,203,000.00 net. At the moment of signing this contract the machine is in the supplier's custody.
- 5) The supplier commits himself to insure the object of the contract on his own expense against loss or damage for the period of stock-keeping.
- 6) If the object of the contract cannot be handed over owing to the fault of the supplier, in case of deterioration or total loss, the supplier will be obliged to reimburse direct damage costs.
- 7) All other items of the contract remain unchanged.

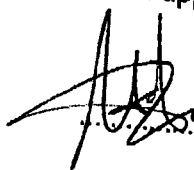
US, December, 30th 2005

For Buyer


GORTECH GLOBAL

US, December, 30th 2005

For Supplier


AREA SALES MANAGER, DMG

DMG America
Summary of Key Events with Gortech

1. Gortech purchased CTX320 Lathe in 2005 and paid in full.
2. Gortech ordered two additional machines (GMX400 and DMU80P) in November 2005. Gortech and DMG signed safekeeping agreement in December 2005 for these machines. The deposit was to be cash and a trade in of the CTX320. No cash or trade in was ever received by DMG.
3. In February, 2006, Gortech agreed with DMG Used Machines to evenly exchange CTX320 for a Used CTX420V4 machine.
4. The exchange was made, and initial technical issues were resolved by DMG.
5. Gortech was not satisfied with the CTX420V4.
6. On June 8, 2006, DMG salesman Mark Henne signed a document agreeing to and exchange for a CTX420V6 model. Mr. Henne was not authorized by DMG to make such an offer. This offer was accepted by Gortech.
7. On September 6, 2006, Gortech gives DMG two weeks to resolve the problems.
8. Advised on May 21, 2007 through CSC (via Robert Willson) that a civil action was filed by Gortech against DMG.
9. Various correspondence over the past nine months involving Gortech and various DMG personnel with no solution.

ECKERT SEAMANS

Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

TEL 412 566 6000
FAX 412 566 6099
www.eckertseamans.com

Gregory H. Teufel
412.566.5977
gteufel@eckertseamans.com
Admitted in PA and WV

January 26, 2009

Via First Class U.S. Mail

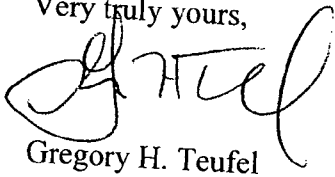
Prothonotary
Court of Common Pleas of Clearfield County, PA
P.O. Box 549
Clearfield, PA 16830

RE: Gortech Global Fabrication, LLC v. DMG Chicago, Inc.
No. 07-754-CD

To Whom It May Concern:

Enclosed for filing are an original and one copy of a Complaint in the above-captioned case. After filing, would you please time/date stamp the copy and return it to me in the enclosed self-addressed, stamped envelope. Thank you for your courtesy.

Very truly yours,



Gregory H. Teufel

GHT/jar

Enclosures

Cc w/encl. James Gondeck
Dr. Christoph Reinkemeier ✓
Christopher E. Mohny, Esq.

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

COMPLAINT

DMG CHICAGO, INC.,

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Defendant.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohny, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

NOTICE TO DEFEND

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 50-51

() ()

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

COMPLAINT IN CIVIL ACTION

Plaintiff, Gortech Global Fabrication, LLC ("Gortech"), by its undersigned attorneys, hereby files the following Complaint in Civil Action against Defendant DMG Chicago, Inc., the grounds of which the following are statements:

Introduction

1. This action seeks to recover damages from Defendant for breach of a contract to supply a machine as a trade-in for another machine.

Parties

2. Plaintiff Gortech is a Limited Liability Company organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business at 215 Beaver Dr. DuBois, PA 15801.

3. Upon information and belief, Defendant DMG Chicago, Inc. t/d/b/a "DMG, INC." and "DMG Used Machine Division" (hereafter "DMG") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 265 Spring Lake Drive, Itasca, IL 60143.

4. At the time of the commencement of this lawsuit via praecipe for writ of summons, DMG's principal place of business was at 1665 Penny Lane, Schaumburg, IL 60173.

Jurisdiction and Venue

5. This Court has original jurisdiction over this action pursuant to 42 Pa.Cons.Stat. § 931.

6. Venue is proper in this Court under Pa.R.Civ.P. 2179 because transactions and occurrences out of which the causes of action set forth herein arose took place in Clearfield County and DMG regularly conducts business in Clearfield County.

Factual Background

7. Predator Performance, LLC ("Predator"), a company related to Gortech, originally purchased two machines from DMG; a DMU 100T 5 for \$325,500, and a CTX 320 Linear CNC for \$199,500.

8. Predator gave a 10% down payment totaling \$52,500 toward both machines, via check dated February 9, 2005.

9. The DMU 100T 5 was returned because it would not perform the functions promised (breach of written warranties).

10. DMG wanted Predator to take a credit toward future purchases, but Predator insisted on applying the monies toward the CTX 320 Linear CNC.

11. In addition, DMG agreed to reimburse Predator for the expenses associated with the DMU 100T 5, which consisted of \$3,750 in shipping, \$7,903.85 in scaffolding, and \$3,000 in rigging, totaling \$14,653.85.

12. After subtracting the \$52,500 down payment and the \$14,653.85 reimbursement from the \$199,500 purchase price for the CTX 320 Linear CNC, the amount remaining that Predator owed toward that purchase price was \$132,346.15.

13. Predator sent DMG a check for that balance, \$132,346.15, on October 12, 2005, leaving a balance owed to DMG for the CTX 320 Linear CNC of zero dollars.

14. Predator conveyed the CTX 320 Linear CNC to Gortech, and Gortech had discussions with DMG regarding trading in the CTX 320 Linear CNC.

15. DMG sold the CTX 320 Linear CNC that Gortech had to another DMG customer and gave Gortech a used CTX 420 V4, which Gortech presently possesses, in trade for the CTX 320 Linear CNC ("the first trade-in Agreement"). A true and correct copy of the first trade-in Agreement is attached hereto as Exhibit A, along with the fax cover sheet by which York Franke of DMG sent the first trade-in Agreement to Todd Gordon of Gortech.

16. Gortech honored all terms and conditions of the first trade-in Agreement.

17. After discussing it but before agreement was reached on trading it in, DMG had already sold the CTX 320 Linear CNC to another customer.

18. Gortech had decided against doing a trade-in of the CTX 320 Linear CNC by that point, but accepted the first trade-in Agreement as an accommodation to DMG in light of the fact that DMG had made a commitment to another customer in the interim.

19. York Franke referenced that accommodation in the fax cover sheet included in Exhibit A hereto where he stated "THANK YOU AGAIN FOR HELPING ME OUT OF THIS BIND!"

20. As part of that first trade-in Agreement, DMG agreed to provide training on the CTX 420 V4.

21. The CTX 420 V4 had been crashed; possibly more than one collision.
22. DMG expressed disbelief when this was discovered, asserting that the CTX 420 V4 had been used in a laboratory and had a total of 200 hours of use.
23. Gortech requested to know the name of the facility and a contact from where the CTX 420 V4 originated, but this information was not provided.
24. DMG sent Gortech replacement parts for those parts on the CTX 420 V4 that needed to be replaced due to the prior collision(s).
25. Despite Gortech replacing those parts, there were significant vibration problems with the CTX 420 V4.
26. For months, DMG kept promising Gortech that it would send someone to fix the CTX 420 V4 and provide training, but DMG repeatedly failed to send someone when promised and rescheduled numerous times.
27. A DMG technician finally came to Gortech to align the CTX 420 V4 and stop the vibration problems.
28. However, when a subsequent DMG person came to Gortech to provide training for the CTX 420 V4, software problems surfaced with the CTX 420 V4.
29. Thus, time that was supposed to be spent training was instead spent dealing with those software problems.
30. The CTX 420 V4 was delivered in February 2006, and, by May 2006, Gortech still had not received the training necessary to use it.
31. A DMG person came to Gortech and installed new software, to correct the software problems.

32. At that point DMG again promised to send someone to provide training for the CTX 420 V4, but again DMG failed to send anyone.

33. In light of the year of lost production and the problems experienced with the CTX 420 V4 and the prior machine and the delays in receiving training, to its credit, in an apparent effort to make things right, DMG entered into a contract ("the Contract") on June 8, 2006, promising to provide a new CTX 420 V6, along with a new machine warranty, in trade for the CTX 420 V4. A true and correct copy of the Contract is attached hereto as Exhibit B.

34. Mark Henne, Area Sales Manager for DMG, sent the Contract to Todd Gordon of Gortech via fax, and signed it on behalf of DMG.

35. Mark Henne, by email on June 8, 2006, represented that he was authorized to enter into the Contract on behalf of DMG. A true and correct copy of said June 8, 2006 email is attached hereto as Exhibit C.

36. Todd Gordon signed the Contract on behalf of Gortech and hand delivered the fully executed Contract to Mark Henne on June 8, 2006.

37. This was a highly favorable trade-in, in that the new CTX 420 V6 that was promised was substantially more valuable and had a substantially higher market price than the used CTX 420 V4 that Gortech had.

38. DMG did not deliver the CTX 420 V6 as required by the Contract.

39. Instead, DMG reverted back to offering to provide training on the CTX 420 V4.

40. By September 6, 2006, Gortech was fed up waiting for either delivery of the CTX 420 V6 or training on the CTX 420 V4 and Gortech issued an ultimatum, demanding performance as promised within two weeks and threatening legal action.

41. Rather than actually sending someone to provide training within those two weeks, DMG responded by merely offering to send someone to provide training on September 25, 2006, more than two weeks after the date of the ultimatum.

42. Gortech was no longer interested in promise after broken promise of training and responded by insisting that DMG honor the Contract or refund money.

43. Thereafter, DMG has consistently failed and refused to refund money or to honor the Contract.

Count I – Breach of Contract

44. Gortech hereby incorporates the averments contained in the preceding paragraphs 1 through 43 by reference as if fully set forth herein.

45. The Contract was a valid and binding agreement.

46. DMG breached the Contract by failing to deliver the CTX 420 V6.

47. DMG's breach of contract caused damages to Gortech in excess of \$20,000, including but not limited to the difference in value between the used CTX 420 V4 and the new CTX 420 V6 and the loss of profits due to the loss of use of the CTX 420 V6.

48. Gortech intended to use the CTX 420 V6 to produce parts for Gortech's customers.

49. The CTX 420 V6 would have allowed Gortech to perform a greater volume of work without having to do multiple setups to produce one part, and to take on additional customers. In addition, the CTX 420 V6 had an automatic feeder, which helped to speed up the process. The CTX 420 V4 lacked an automatic feeder.

50. Because Gortech did not have the CTX 420 V6, Gortech was unable to obtain certain work from customers that it would have been able to obtain if it had the CTX 420 V6.

51. DMG was aware of how Gortech intended to use the CTX 420 V6, was aware that the CTX 420 V6 would have expanded and improved Gortech's capabilities, and had reason to know and knew that Gortech would suffer lost profits as a result of DMG's failure to deliver the CTX 420 V6.

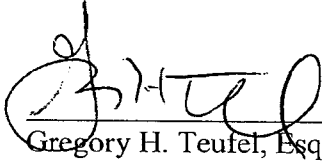
WHEREFORE, Plaintiff Gortech Global Fabrication, LLC respectfully requests that this Court enter judgment in its favor against Defendant DMG Chicago, Inc. in an amount in excess of \$20,000, plus interest, costs, and such other and further relief as this Court deems just and proper.

A JURY TRIAL IS DEMANDED

Plaintiff demands trial by jury on all issues so triable.

Respectfully submitted,

1/26/09



Gregory H. Teufel, Esq.

Amy J. Roy, Esq.

Christopher E. Mohny, Esq.

*Attorneys for Plaintiff,
Gortech Global Fabrication, LLC*

DATE: 02/02/2006

TO: GORTECH GLOBAL FABRICATION
215 BEAVER DRIVE
DUBOIS, PA 15801

PHONE: 1(814)372-5456

FAX: 1(814)375-5455

ATTN: TODD GORDON

FROM: YORK FRANKIE

TODD, ATTACHED IS THE SIGNED INVOICE FOR YOUR RECORDS. I WILL ALSO SCAN
AND EMAIL TO YOU.

THANK YOU AGAIN FOR HELPING ME OUT OF THIS BIND!

I LOOK FORWARD TO MEETING YOU IN PERSON IN PA.

02/02/2006 11:55

B477815053

DMG USED MACHINE DIV

PAGE 09/10

DMG

Used Machine Division

INVOICE #2006-5

Thursday February 2, 2006

Sold To:
 Mr. Todd Gordon, General Manager
 Gortech Global Fabrication
 215 Beaver Dr.
 Dubois, PA 15801

A member of the
GILDEMEISTER
 group

DMG Chicago Inc.
 1603 Perry Lane
 Schaumburg, IL 60173
 Phone (847) 281-0777
 Fax (847) 781-5033
 E-mail info@dmgamerica.com
 Internet www.dmgamericas.com

2003 Gildemeister CTX420V4 S/N 02260002581 as equipped per proposal number 164355-056148 dated February 2, 2006.

\$140,000.00 USD 2003 Gildemeister CTX420V4 S/N 02260002581

\$26,717.30 USD WTO tooling package per WTO quote# 06M026Q-03 (see attachment A)

(**\$140,000.00 USD**) Trade in value for 2005 Gildemeister CTX320V4 S/N 8039937279C
 Gortech Global Fabrication guarantees free and clear title to machine and will pay open AR to DMG Chicago, Inc. if applicable

(**\$26,717.30 USD**) Trade in value for tooling package for CTX320V4 consisting of:

-5 live tool holders

- 1/5: 90 degree long driven unit for drilling/milling
- 2/5: 0 degree driven unit, short, for drilling/milling
- 3/5: 0 degree driven unit, long, for drilling/milling
- 4/5: Special 0 degree driven unit, max turning speed 8000 RPM-8 Nm-for drilling/milling
- 5/5: 90 degree driven unit, universal H=100, Max turning speed 8000 RPM for drill/milling

-1 set of seven (7) collets

-All items listed on Gortech Global Fabrication purchase order number 11979 dated 01/26/06 issued to ITI Tooling Company, Inc. (see attachment B): total of eighteen (18) items

-In House tooling (see attachment C) already at Gortech Global Fabrication consisting of:

- 1 Sauter straight drill/milling unit
- 1 Sauter right angle drill/mill units
- 3 LH turning tool holders-metric
- 3 RH turning tool holders-metric
- 6 32 mm boring bar holders
- 6 32 mm various ID boring bar adaptors
- 6 Boring bars to match adaptors
- 1 32 mm collet chuck for ER25 collet
- 3 Iscar metric LH turning tools
- 1 Sauter straight (2:1) mill unit
- 1 Sauter right angle (2:1) mill unit

John R. White
 President
 2-2-06

If any of the above listed tooling is not received, Gortech Global Fabrication will pay for the actual cost to replace missing items

DMG Used Machine Division

DECKEL MAHO GILDEMEISTER

EXHIBIT

tabbles

A

02/02/2006 11:55 8477815053

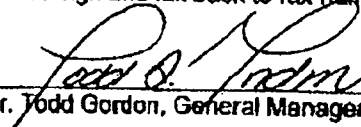
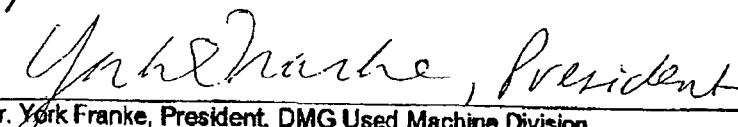
DMG USED MACHINE DIV

PAGE 10/10

DMG
Used Machine DivisionA member of the
GILDEMEISTER
groupDMG Chicago Inc.
1663 Perry Lane
Addicksburg, 162173
Phone (847) 781-0277
Fax (847) 781-5053
E-mail info@dmgamerica.com
Internet www.dmgamerica.com**INVOICE #2006-5 continued****TERMS:**

1. 2005 Gildemeister CTX320V4 S/N 8039937278C to be released for pickup immediately upon acceptance of this invoice. Machine to be loaded out onto truck that delivers the CTX420. Date to disconnect CTX320V4 Monday February 6. Removal date CTX320/Delivery date CTX420 Tuesday February 7, 2006.
2. DMG Used Machine Division to pay for engineer to disconnect and prep for shipment CTX320.

Upon acceptance of this invoice ownership of the machine is conveyed, before machine shipment.

Please sign and fax back to fax number 847-781-5053. **AGREED/ACCEPTED:**
Mr. Todd Gordon, General Manager, Gortech Global Fabrication2-2-06
Date
Mr. York Franke, President, DMG Used Machine Division2-2-06
Date

Thank you for your order. We sincerely appreciate your business.

Office:
☒ Chicago ☐ Charlotte ☐ Los Angeles

Customer	GORTCH 610BA1 FABRICATING		Phone	814.375.0829		Fax	814.372-5455	
Address	PO BOX 347		City	DUBOIS	State	PA	Zip	15801
Ship To	215 BEAVER DRIVE		Ship to City	DUBOIS	Ship to State	PA	Ship to Zip	15801
Ship Via	BEST WAY		Customer Shipping Contact		TODD GORDON			

Specify for this machine	Volts	Cycles	Phase		Total
Who will arrange Freight?	☒ DMG	☐ Customer	☐ Other	Sales / Use Tax or Tax Exempt #	\$199,500.00
Who will pay for Freight?	☒ DMG	☐ Customer/Collect	☐ Other	TRADE-IN Sub-Total	\$199,500.00
Who will arrange Rigging?	☒ DMG	☐ Customer	☐ Other	☐ Less Deposit ☐ Attached ☐ Need to be Invoiced	< ~~2~~ >
Who will pay for Rigging?	☒ DMG	☐ Customer/Collect	☐ Other	Total Due	
Any Special Delivery Instructions: (i.e., ship to showroom first)					
Acceptance Criteria: (CPK, Cycle Times, Part Programmed)					

Contract: The terms and conditions set forth herein and on the reverse side hereof shall govern all sales of materials or equipment (the "Product") described on the front side hereof by DMG, Inc.

Signature	<i>Pat D. Trismv</i>	
Print Name		
Title		
Accepted by an officer of DMG this _____ Day of _____ 20____		
By	<i>Pat D. Trismv</i>	
Title	<i>AREA SALES MANAGER.</i>	

EXHIBIT

tabbles®

B

Teufel, Gregory

From: Mark.Henne@dmgamerica.com
Sent: Thursday, June 08, 2006 8:50 AM
To: Todd Gordon
Cc: mhenne8420@aol.com
Subject: Machine switchout
Importance: High

Todd,

I have the OK to move ahead and switch out your machine and replace it with the subspindle machine. Again, you will pay NO ADDITIONAL MONEY. We will rig the old machine out and the new machine in, pay the freight for both machines in both directions, include the new tooling package, chucks and accessories. I do however need to get your signatures asap before someone else sells this new machine.

I can be at your place later this afternoon,,,,,and yes I'm buying for whoever wants to go.

Please let me know if I should head up or not....

Regards,
Mark A. Henne, CMTSE
Area Sales Manager
DMG-Chicago
(847) 781-0277 (office)
(412) 480-5227 (cell)
(412) 821-2983 (home office/fax)
Mark.Henne@DMGAmerica.com
<http://www.gildemeister.com>

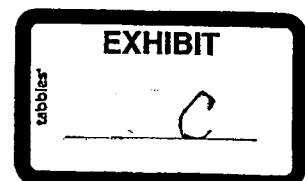
E-Mail Disclaimer

Der Inhalt dieser E-Mail ist ausschliesslich fuer den/die bezeichneten
Empfaenger bestimmt. Wenn Sie nicht der vorgesehene Adressat dieser
E-Mail oder dessen Vertreter sein sollten, so beachten Sie bitte, dass
jede Form der Kenntnisnahme, Veroeffentlichung, Vervielfaeltigung oder
Weitergabe des Inhalts dieser E-Mail unzuessaessig ist. Wir bitten Sie,
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E-Mail ueber das Internet unsicher ist, da fuer unberechtigte Dritte
grundsaeztlich die Moeglichkeit der Kenntnisnahme und Manipulation
besteht.

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internet is insecure because third parties may have the possibility
to access and manipulate emails.

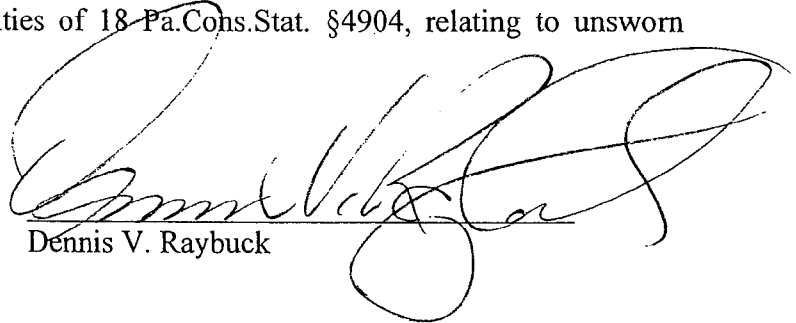
3/21/2007



VERIFICATION

Dennis V. Raybuck, the undersigned individual, as President of Gortech Global Fabrication, LLC, deposes and says that he is authorized to execute this Verification on behalf of Gortech Global Fabrication, LLC, that the averments in the foregoing Complaint in Civil Action are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Dated: January 23, 2009



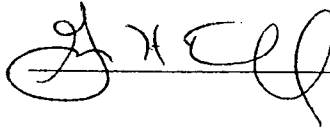
Dennis V. Raybuck

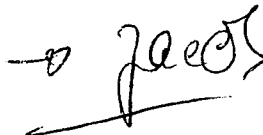
CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing Complaint were served upon the following by deposit in the United States mail, first class postage prepaid, this 26th day of January, 2009.

James Gondeck, President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173

Dr. Christoph Reinkemeier (CEO)
DMG Chicago Inc.
265 Spring Lake Drive
Itasca, IL 60143

A handwritten signature in black ink, appearing to read 'J. Gondeck', is written over a horizontal line.

Gregory H. Teufel
412.566.5977
gteufel@eckertseamans.com
Admitted in PA and WV

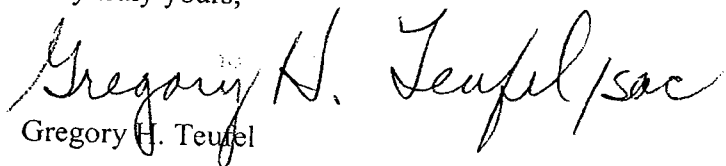
February 20, 2009

Prothonotary
Court of Common Pleas of Clearfield County, PA
P.O. Box 549
Clearfield, PA 16830**RE: Gortech Global Fabrication, LLC v. DMG Chicago, Inc.**
No. 07-754-CD

To Whom It May Concern:

Enclosed for filing are an original and one copy of a Notice of Intent to File Praecipe For Entry of Judgment by Default For Failure to Plead in the above-captioned case. After filing, would you please time/date stamp the copy and return it to me in the enclosed self-addressed, stamped envelope. Thank you for your courtesy.

Very truly yours,


Gregory H. Teufel

GHT/sac

*Enclosures**Cc w/encl. James Gondeck
Dr. Christoph Reinkemeier
Christopher E. Mohny, Esq.*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

**NOTICE OF INTENT TO FILE
PRAECIPE FOR ENTRY OF JUDGMENT
BY DEFAULT FOR FAILURE TO PLEAD**

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohny, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

IMPORTANT NOTICE

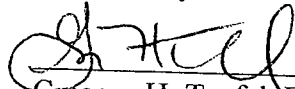
To: DMG Chicago, Inc.

Date: Feb. 20, 2009

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY AN ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTION TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 50-51

Respectfully submitted,



Gregory H. Teufel, Esq.

Amy J. Roy, Esq.

Christopher E. Mohnhey, Esq.

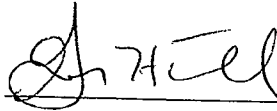
*Attorneys for Plaintiff,
Gortech Global Fabrication, LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing **NOTICE OF INTENT TO FILE PRAECIPE FOR ENTRY OF JUDGMENT BY DEFAULT FOR FAILURE TO PLEAD** were served upon the following by deposit in the United States mail, first class postage prepaid, this 20th day of February, 2009.

James Gondeck, President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173

Dr. Christoph Reinkemeier (CEO)
DMG Chicago Inc.
265 Spring Lake Drive
Itasca, IL 60143





Eckert Seamans Cherin & Mellott,
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

TEL 412 566 6000
FAX 412 566 6099
www.eckertseamans.com

Gregory H. Teufel
412.566.5977
gteufel@eckertseamans.com
Admitted in PA and WV

August 18, 2008

Via First Class U.S. Mail

Prothonotary
Court of Common Pleas of Clearfield County, PA
P.O. Box 549
Clearfield, PA 16830

RE: *Gortech Global Fabrication, LLC v. DMG Chicago, Inc.*
No. 07-754-CD

To Whom It May Concern:

Enclosed for filing are an original and one copy of an Affidavit of Service in the above-captioned action. After filing, would you please time/date stamp the copy and return it to me in the enclosed self-addressed, stamped envelope. Thank you for your courtesy.

Very truly yours,

Gregory H. Teufel

GHT/sac

Enclosures

Cc: *Mr. James Gondeck, w/encl.*
Christopher E. Mohny, Esq., w/encl.

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

GORTECH GLOBAL FABRICATION,
LLC

PLAINTIFF

VS.

DMG CHICAGO, INC.,

DEFENDANT

NO. 2007-00754- C.D.

TYPE OF CASE: CIVIL

TYPE OF PLEADING:
AFFIDAVIT OF SERVICE

FILED ON BEHALF OF:
PLAINTIFF

COUNSEL OF RECORD:
CHRISTOPHER E. MOHNEY,
ESQUIRE
SUPREME COURT NO.: 63494

25 EAST PARK AVENUE,
SUITE 6
DUBOIS, PA 15801
(814) 375-1044

GREGORY H. TEUFEL, ESQUIRE
SUPREME COURT NO.: 73062

ECKERT SEAMANS CHERIN &
MELLOT, LLC
U. S. STEEL TOWER
600 GRANT STREET, 44TH FLOOR
PITTSBURGH, PA 15219
(412) 566-6000

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

GORTECH GLOBAL FABRICATION,
LLC

PLAINTIFF

VS.

DMG CHICAGO, INC.

DEFENDANT

NO. 2007 - 00754 - C.D.

TYPE OF CASE: CIVIL

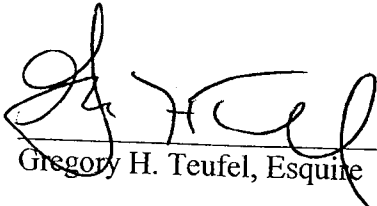
AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA :

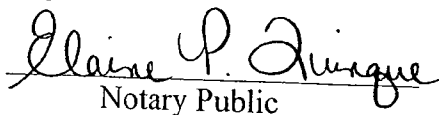
COUNTY OF ALLEGHENY :

SS.

I, **GREGORY H. TEUFEL, ESQUIRE**, being duly sworn according to law, deposes and says that as attorney for Plaintiff **GORTECH GLOBAL FABRICATION, LLC**, in the above captioned action, he did serve a true and correct copies of Praecipe for Writ of Summons and Summons in the above-captioned case on the Defendant, **DMG CHICAGO, INC.**, by certified mail, return receipt requested, at ILLINOIS CORPORATION SERVICE, 801 Adlai Stevenson Dr., Springfield, IL 62703 and to James Gondeck, President, DMG CHICAGO, INC., 1665 Penny Lane, Schaumburg, IL 60173, both mailings with the return address of Plaintiff's counsel appearing thereon, on May 21, 2007 as to DMG Chicago, Inc. and May 18, 2007 as to James Gondeck, President, DMG Chicago, Inc., as evidenced by the return receipts attached hereto.


Gregory H. Teufel, Esquire

SWORN TO and SUBSCRIBED
before me this 18 day of
August, 2008.


Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Elaine P. Quinque, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires May 17, 2012
Member, Pennsylvania Association of Notaries

May 16, 2007

Gregory H. Teufel
Direct Dial 412-577-5289
Direct Fax 412-765-3858
E-mail: gteufel@schnader.com

VIA CERTIFIED MAIL
VIA FIRST CLASS MAIL

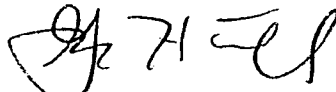
DMG Chicago, Inc.
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, IL 62703

RE: Notice of Civil Action Against DMG Chicago, Inc.

Dear DMG Chicago, Inc. Service Agent:

This is a notice of civil action against DMG Chicago, Inc. in the Court of Common Pleas of Clearfield County, Pennsylvania. Enclosed you will find a Praecipe for Writ of Summons and the Summons.

Sincerely,



Gregory H. Teufel

GHT
Enclosures

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DMG CHICAGO, INC.
ILLINOIS CORPORATION SERVICE C
801 Adlai Stevenson Dr.
Springfield, IL 62703

2. Article Number
(Transfer from serial)

7007 0220 0004 0971 3239

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.72

5-16-07

Postmark
Here

Sent To
DMG Chicago Inc. Illinois Corporation Service C
Street, Apt. No.,
or PO Box No. 801 Adlai Stevenson Drive
City, State, ZIP+4 Springfield Illinois 62703

PS Form 3800, August 2006

See Reverse for Instructions

UNITED STATES POSTAL SERVICE



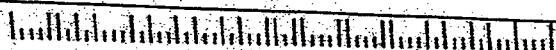
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Gregory H. Teufel, Esquire
SCHNADER HARRISON SEGAL & LEWIS LLP
Suite 2700, 120 Fifth Avenue
Fifth Avenue Place
Pittsburgh, PA 15222

3007645.0003

0007



May 16, 2007

Gregory H. Teufel
Direct Dial 412-577-5289
Direct Fax 412-765-3858
E-mail: gteufel@schnader.com

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED
VIA FIRST CLASS MAIL

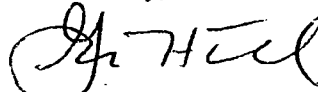
James Gondeck
President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173

RE: Notice of Civil Action

Dear Mr. Gondeck:

This is a notice of civil action against DMG Chicago, Inc. in the Court of Common Pleas of Clearfield County, Pennsylvania. Enclosed you will find a Praecipe for Writ of Summons and the Summons.

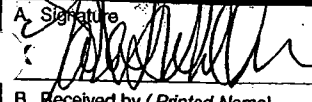
Sincerely,



Gregory H. Teufel

GHT
Enclosures

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature  ☐ Agent
☐ Address
 B. Received by (Printed Name)
 C. Date of Delivery **5-18**

1. Article Addressed to:

James Gondeck, President
 DMG CHIACAGO INC.
 1665 Penny Lane
 Schaumburg, IL 60173

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7007 0220 0004 0971 3222

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15

U.S. Postal Service ^{TM, ®}

CERTIFIED MAIL ^{TM, ®} RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$

Certified Fee

Return Receipt Fee
(Endorsement Required)

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees \$

5.72

5-16-07

Postmark
Here

Sent To

James Gondeck, President DMG Chicago, Inc.

Street, Apt. No.,
or PO Box No.

1665 Penny Lane

City, State, ZIP+4

Schaumburg, IL 60173

PS Form 3800, August 2006

See Reverse for Instructions

UNITED STATES POSTAL SERVICE

19 MAY 2007 PM 1

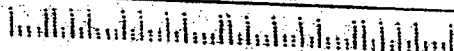
March 15
 First-Class Mail
 Registered Mail
 USPS
 Permit No. 1000

• Sender: Please print your name, address, and ZIP+4 in this box •

Gregory H. Teufel, Esquire
 SCHNADER HARRISON SEGAL & LEWIS LLP
 Suite 2700, 120 Fifth Avenue
 Fifth Avenue Place
 Pittsburgh, PA 15222

3007645.0003

13 C034



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION,
LLC,
215 Beaver Drive
Dubois, Pennsylvania 15801

Plaintiff,

vs.

DMG CHICAGO, INC.,
James Gondeck, President
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, Illinois 62703

Defendant.

CIVIL DIVISION

GD No. 07-

Code:

PRACIPE FOR WRIT OF SUMMONS

Filed on Behalf of Plaintiff, Gortech Global
Fabrication, Inc.

Counsel of Record for this Party:

Gregory Teufel, Esquire
Pa. I.D. #73062

Schnader Harrison Segal & Lewis LLP
Pa. Firm I.D. #061
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001
Telephone: (412) 577-5200
Facsimile: (412) 765-3858

Christopher E. Mohny, Esquire
Pa. I.D. #63494

25 East Park Avenue, Suite 6
DuBois, PA 15801
Telephone: (814) 375-1044
Facsimile: (814) 375-1088

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, :
LLC, :

Plaintiff, :

vs. :

DMG CHICAGO, INC. :

Defendant. :

CIVIL DIVISION

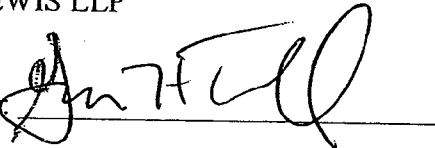
GD No. 07-

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in Civil Action against the within named Defendant.

SCHNADER HARRISON SEGAL &
LEWIS LLP

By 

Gregory H. Teufel
Pa. I.D. #73062

Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001

Christopher E. Mohny
Pa. I.D. # 63494

25 East Park Avenue, Suite 6
DuBois, PA 15801

Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

Dated: May 11, 2007

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

SUMMONS

Gortech Global Fabrication, LLC

Vs.

NO.: 2007-00754-CD

DMG Chicago, Inc.

TO: DMG CHICAGO, INC.

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 5/14/2007



William A. Shaw
Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

Issuing Attorney:

Gregory H. Teufel, Esq.
Schnader harrison Segal & Lewis LLC
Fifth Ave Place, Suite 2700
Pittsburgh, PA 15222-3010
412-577-5200

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

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Schnader harrison Segal & Lewis LLC
Fifth Ave Place, Suite 2700
Pittsburgh, PA 15222-3010
412-577-5200

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC,
215 Beaver Drive
Dubois, Pennsylvania 15801

Plaintiff,

vs.

DMG CHICAGO, INC.,
James Gondeck, President
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, Illinois 62703

Defendant.

CIVIL DIVISION

GD No. 07- 754-CV

Code:

PRACIPE FOR WRIT OF SUMMONS

Filed on Behalf of Plaintiff, Gortech Global
Fabrication, Inc.

Counsel of Record for this Party:

Gregory Teufel, Esquire
Pa. I.D. #73062

Schnader Harrison Segal & Lewis LLP
Pa. Firm I.D. #061
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001
Telephone: (412) 577-5200
Facsimile: (412) 765-3858

Christopher E. Mohny, Esquire
Pa. I.D. #63494

25 East Park Avenue, Suite 6
DuBois, PA 15801
Telephone: (814) 375-1044
Facsimile: (814) 375-1088

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

MAY 14 2007

Attest.

William A. Brown
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, :
LLC, :

Plaintiff, :

vs. :

DMG CHICAGO, INC. :

Defendant. :

CIVIL DIVISION

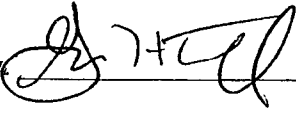
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SCHNADER HARRISON SEGAL &
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Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001

Christopher E. Mohnhey
Pa. I.D. # 63494

25 East Park Avenue, Suite 6
DuBois, PA 15801

Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

Dated: May 11, 2007



1665 Penny Lane · Schaumburg, Illinois 60194
Phone: 847-781-0277
Fax: 847-781-0388

08-OCT-06

To: Jens Hardenacke

Predator Performance Case History

DMG received an order for two machines from Predator in February 2005. After delivery of the mill, it was determined that the machine could not do the range of parts as originally determined. A change in fixturing techniques was not acceptable by the operator and it was decided that a machine exchange be taken. DMG removed the machine and offered two alternative machines to do the scope of work presented by Predator. The DMF 250 was demonstrated in Detroit for personnel from Predator. The design of this machine was not acceptable by Predator. Personnel from Predator indicated they preferred a HMC. We again showed them a machine in Chicago to do this work. At this point they agreed to this design of machine....a DMC 125H. It was agreed that this machine could do the range of engine blocks and the additional scope of parts Predator was investigating. During this time the CTX 320V4 was delivered, installed AND trained on at the Predator facility. The machine was not run after installation and training was performed and was transferred to the Gortech division of Predator. Although smaller than originally intended, the machine was acceptable to Gortech. It was the desire of Gortech to have a larger multi-axis lathe for their scope of parts. During the conversations for the larger mill DMG presented a stock GMX 400 to Gortech for consideration. This machine was acceptable to Gortech and was verbally committed to in November of 2005 during an open house at DMG.

The value of this order was 1.2MM. The downpayment agreed to was \$200,000.00. Gortech was to lease the balance. Contact was made with DMG's leasing partner National City. Papers exchanged hands and approval was made in December 2005. A formal purchase order was never received from the customer. It was also agreed to that Gortech would trade in the CTX 320V4 and pay the balance from the receivable of the mill along with the difference to reach \$200,000.00.

During this time the used division of DMG sold the CTX 320 V4 to one of their customers. With conversations between Gortech and DMG Used it was agreed to exchange the CTX 320V4 for a larger version CTX 420 used machine with more capabilities.

Several issues arose with the exchanged machine and training was not performed to the promised standards of the used division. The new division intervened and provided additional training to the customer at their expense. The used division also repaired the machine and provided additional training. None of this was acceptable to Gortech and no additional machines were ordered as promised in December.

In early summer of 2006 DMG new attempted to exchange the machine for a demo CTX 420V6 stock machine. A signed document was received from Gortech and submitted to DMG Senior Management for approval. However, no formal paperwork from Gortech was received. When asked for this paperwork Gortech's response was we do not normally issue paper purchase orders but instead issued a verbal number of 12860 for tracking purposes.

Mark Henne still attempted to have the order placed and the exchange made. After much discussion, it was decided by DMG Senior Management to decline the exchange. This was relayed to Gortech. It

was also explained that DMG new would still take the used machine in on trade and continue with the two machine deal agreed to in December. Several phone calls to Gortech went unanswered to try and resolve this issue. Signed documents from Gortech show acceptance of the used machine as well as a commitment to pay the outstanding receivable.

There have been some instances when DMG could have responded quicker to Gortech's requests for sure. Overall both divisions of DMG performed and offered to perform services when prompted by Gortech. Gortech/Predator have failed to honor verbal commitments to additional machines. The machine in place is in good operation condition and DMG offered additional training when e-mails from Predator threatened return of equipment and possible legal action. Predator/Gortech has refused this service although no additional costs would be incurred by them.

It is my opinion that the outstanding receivable is valid, and that DMG should refuse return of the machine.

Regards,

Mark A. Henne

York
Franke/SV/DMGCC/GILDEM
EISTER

06/05/2007 04:21 PM

To Phil Rugari/MG/DMGCC/GILDEMEISTER@GILDEMEISTER

cc Christoph
Reinkemeier/MG/DMGCC/GILDEMEISTER@GILDEMEISTER,
Gerald

bcc

Subject Re: Fw: Gortech Global Fabrication 

Phil, DMG did not misrepresent the machine for the following reasons:

1. We explained the history of the machine-on quote. Came out of Magna R&D Lab in Canada.
2. Exact hour count was given.
3. Photo of hour meter was emailed to Todd Gordon (attached).
4. Machine was used/non current. Year and SN were on quote. It was sold in 2006 and machine is/was a



2003. QUOTE AND INVOICE.pdf

Attached is the original quote and invoice. Let me know if I can provide further info.



APPROX 248 HOURS !.jpg

York Franke
President
DMG Used Machine Division
1665 Penny Lane
Schaumburg, IL 60173
USA

Phone: +847-781-0277 x 262
Cell Phone: +224-622-5376
Fax: +847-781-5053
Email: york.franke@dmgamerica.com
Website: www.dmgamerica.com

DMG

Used Machine Division

PROPOSAL

A member of the
GILDEMEISTER
group

PROPOSAL NO: 164363-056150

FEB 2 06

STOCK # ----- 064154

CUSTOMER PHONE --- (814) 375-5660

CUSTOMER FAX ----- (814) 372-5455

DMG Chicago Inc.

1665 Penny Lane

Schaumburg, IL 60173

Phone (847) 781-0277

Fax (847) 781-5053

E-mail info@dmgamerica.com

Internet www.dmgamerica.com

MR TODD GORDON
GORTech GLOBAL FABRICATION
215 BEAVER DR
DUBOIS, PA 15801

DEAR MR GORDON:

RE: YOUR RECENT INQUIRY

SUBJECT TO AVAILABILITY, PRIOR SALE, AND TERMS AND CONDITIONS BELOW,
WE OFFER FOR YOUR CONSIDERATION:

2003 GILDEMEISTER CTX 420 V4 TURN MILL CENTER W/Y & C-AXIS & TOOL DRIVE:

SERIAL NUMBER ---- 02260002561

>>MACHINE CAME OUT OF A RESEARCH & DEVELOPMENT LABORATORY AND HAS ONLY
248 ACTUAL HOURS USE!<<

HEIDENHAIN IT DINPLUS CONTROL

MACHINE HAS Y-AXIS, C-AXIS, TOOL DRIVE, AND CHIP CONVEYOR

-WORKING AREA

MAX SWING DIAMETER	26.8"
SWING DIAMETER OVER X-GUIDEWAY	22.2"
TRANSVERSE TRAVEL (X)	7.3"
LONGITUDINAL TRAVEL (Z)	25"
VERTICAL TRAVEL (Y-AXIS)	+/- 1.6"

-INTEGRATED SPINDLE MOTOR

FLAT FLANGE SPINDLE NOSE	170 h5
BAR CAPACITY	2.6"
SPINDLE DIAMETER IN FRONT BEARING	4.7"

(CONTINUED NEXT PAGE)



Used Machine Division

A member of the
GILDEMEISTER
group

(PROPOSAL NO. 164363-056150 CONTINUED)

GORTECH GLOBAL FABRICATION

Page 2

DMG Chicago Inc.

1665 Penny Lane

Schaumburg, IL 60193

Phone (847) 781-0277

Fax (847) 781-5053

E-mail info@dmgameica.com

Internet www.dmgamerica.com

CHUCK SMW AUTOBLOK BHD 250-66 10" 3-JAW POWER CHUCK
DRIVE POWER 40% DC 46.9 HP
DRIVE POWER CONTINUOUS DUTY 33.5 HP
MAX TORQUE 40% DC 270.1 FT/LBS
MAX TORQUE CONTINUOUS DUTY 197.1 FT/LBS
SPINDLE SPEED RANGE 20-5,000 RPM
RAPID TRAVERSE X/Z 2,362 IPM/1,771 IPM

-TOOL TURRET

NUMBER OF TOOL STATIONS 12
SHANK DIAMETER TO DIN 69880 1.6" VDI 40
NUMBER OF DRIVEN TOOL STATIONS 12
DRIVE POWER (40% DC) 17.7 HP
MAX TORQUE 20.4 FT/LBS
MAX SPEED 4,500 RPM
MAX CLAMP DIAMETER OF DRIVEN TOOLS 0.8"

-CHIP CONVEYOR

-TAILSTOCK

AUTOMATIC TAILSTOCK STROKE 22.8"
QUILL RECEPTION 5 MK
MAX TAILSTOCK FORCE 800 daN

-BAR MACHINING PACKAGE CONSISTING OF

HOLLOW CLAMPING ATTACHMENT, 68 MM DIAMETER (2.677")

PARTS CATCHER, PNEUMATIC OPERATED, WITH CONVEYOR BELT FOR FINISHED PARTS
UP TO 65 MM DIAMETER X 200 MM LENGTH (2.56" DIAMETER X 7.87" LENGTH)

INTERFACE FOR BAR FEEDER OR BAR LOADING MAGAZINE

(CONTINUED NEXT PAGE)



Used Machine Division

A member of the
GILDEMEISTER
group

(PROPOSAL NO. 164363-056150 CONTINUED)

GORTECH GLOBAL FABRICATION

Page 3

DMG Chicago Inc.

1665 Penny Lane

Schaumburg, IL 60173

Phone (847) 781-0277

Fax (847) 781-5053

E-mail info@dmgamerica.com

Internet www.dmgamerica.com

INDICATOR LAMP

MACHINE ELECTRICS 60 CYCLE, 400 VOLT INPUT, COMES WITH TRANSFORMER

PRICE QUOTED IS IN UNITED STATES DOLLARS

TERMS:

1. PAYMENT IN FULL VIA WIRE TRANSFER PRIOR TO REMOVAL.
2. PRICE INCLUDES DELIVERY TO PREDATOR PERFORMANCE, RIGGING INTO BUILDING, ONE DAY INSTALL TO ANCHOR, LEVEL, AND CALIBRATE MACHINE.
3. MACHINE IS COVERED BY FULL FACTORY WARRANTY PARTS AND LABOR UNTIL DECEMBER 2, 2006.
4. DMG USED MACHINE DIVISION TO SELL WTO TOOLING TO GORTECH GLOBAL FAB. AT COST FOR A PERIOD OF ONE YEAR FROM DATE OF INVOICE.

APPROXIMATE WEIGHT 13200#

PRICE: \$140,000.00

PLUS STATE & LOCAL TAXES, IF APPLICABLE

PREPARED BY: YORK FRANKE

Y. Franke
President DMG Used
Machine Division

02/02/2006 11:55 8477815053

DMG USED MACHINE DIV

PAGE 09/18

DMG
Used Machine Division

INVOICE #2006-5

Thursday February 2, 2006

A member of the
GILDEMEISTER
group

Sold To:
Mr. Todd Gordon, General Manager
Gortech Global Fabrication
215 Beaver Dr.
Dubois, PA 15801

DMG Chicago Inc.
1605 Perry Lane
Schmaling, IL 60173
Phone (847) 781-0777
Fax (847) 781-5033
E-mail info@dmgamerica.com
Internet www.dmgamerica.com

2003 Gildemeister CTX420V4 S/N 02260002581 as equipped per proposal number 164355-056148 dated February 2, 2006.

\$140,000.00 USD 2003 Gildemeister CTX420V4 S/N 02260002561
\$26,717.30 USD WTO tooling package per WTO quote# 06M026Q-03 (see attachment A)

(\$140,000.00 USD) Trade In value for 2005 Gildemeister CTX320V4 S/N 8039937279C
Gortech Global Fabrication guarantees free and clear title to machine and will pay open AR to DMG Chicago, Inc. if applicable

(\$26,717.30 USD) Trade in value for tooling package for CTX320V4 consisting of:

-5 live tool holders

- 1/5: 90 degree long driven unit for drilling/milling
- 2/5: 0 degree driven unit, short, for drilling/milling
- 3/5: 0 degree driven unit, long, for drilling/milling
- 4/5: Special 0 degree driven unit, max turning speed 8000 RPM-8 Nm-for drilling/milling
- 5/5: 90 degree driven unit, universal H=100, Max turning speed 8000 RPM for drill/milling

-1 set of seven (7) collets

-All items listed on Gortech Global Fabrication purchase order number 11979 dated 01/26/06 issued to ITI Tooling Company, Inc. (see attachment B): total of eighteen (18) items

-In House tooling (see attachment C) already at Gortech Global Fabrication consisting of:

- 1 Sauter straight drill/milling unit
- 1 Sauter right angle drill/mill units
- 3 LH turning tool holders-metric
- 3 RH turning tool holders-metric
- 6 32 mm boring bar holders
- 6 32 mm various ID boring bar adaptors
- 6 Boring bars to match adaptors
- 1 32 mm collet chuck for ER25 collet
- 3 Iscar metric LH turning tools
- 1 Sauter straight (2:1) mill unit
- 1 Sauter right angle (2:1) mill unit

John L. White
President
2-2-06

If any of the above listed tooling is not received, Gortech Global Fabrication will pay for the actual cost to replace missing items

DMG Used Machine Division

P. A. Padm 2-8-06
DECKEL MAHO GILDEMEISTER

02/02/2006 11:55 8477815053

DMG USED MACHINE DIV

PAGE 10/10



A member of the
GILDEMEISTER
group

DMG Chicago Inc.
1665 Perry Lane
Schmaling, IL 60173
Phone (847) 701-0277
Fax (847) 781-5053
E-mail info@dmgamerica.com
Internet www.dmgamerica.com

INVOICE #2006-5 continued

TERMS:

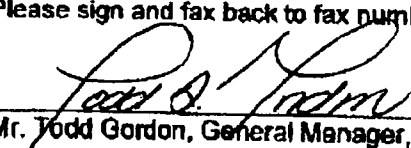
1. 2005 Gildemeister CTX320V4 S/N 8039937279C to be released for pickup immediately upon acceptance of this invoice. Machine to be loaded out onto truck that delivers the CTX420. Date to disconnect CTX320V4 Monday February 6. Removal date CTX320/Delivery date CTX420 Tuesday February 7, 2006.

2. DMG Used Machine Division to pay for engineer to disconnect and prep for shipment CTX320.

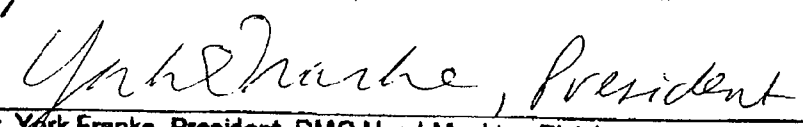
Upon acceptance of this invoice ownership of the machine is conveyed, before machine shipment.

Please sign and fax back to fax number 847-781-5053.

AGREED/ACCEPTED:


Mr. Todd Gordon, General Manager, Gortech Global Fabrication

2-2-06
Date


Mr. York Franke, President, DMG Used Machine Division

2-2-06
Date

Thank you for your order. We sincerely appreciate your business.

October 13, 2006

Mr. Todd Gordon
Gortech Global Fabricating
215 Beaver Drive
Du Bois, PA 15801

RE: Offer of Settlement

Dear Mr. Gordon,

In 2005, Gortech purchased a CTX320 lathe from DMG at a price of \$199,500.00. This was part of a two-machine order. Subsequently, this machine was traded for a CTX420 with the DMG Used Machines Division using a trade value of \$140,000.00.

DMG would like to resolve this issue, and make the following offer of settlement:

Option 1: Gortech pays the balance due of \$47,203.85 and keeps the CTX420 lathe. We will keep the \$32,550.00 deposit made on the milling machine for you to use toward the purchase of your next machine.

Option 2: DMG will buy back the CTX420 lathe for \$140,000.00, less the balance owing of \$47,203.85. We will keep the \$32,550.00 deposit made on the milling machine for you to use toward the purchase of your next machine.

Please call me to discuss this offer of settlement.

Best regards,

Dr. Jens Hardenacke

DMG America
Summary of Amount Due from Predator Performance

Purchase Price of CTX 320	199,500.00
Less 10% Deposit	(19,950.00)
Less Check #245 dated 10/12/05	<u>(132,346.15)</u>
Balance Due	<u>47,203.85</u>



CORPORATION SERVICE COMPANY*

Notice of Service of Process

LMH / ALL
Transmittal Number: 5156396
Date Processed: 05/22/2007

Primary Contact: Mr. Robert J Willson Jr.
Baker & McKenzie
One Prudential Plaza
Suite 3500 130 E Randolph Drive
Chicago, IL 60601

Entity:	DMG Chicago Inc. Entity ID Number 1959737
Entity Served:	DMG Chicago Inc.
Title of Action:	Gortech Global Fabrication, LLC vs. DMG Chicago, Inc.
Document(s) Type:	Summons
Nature of Action:	Other
Court:	Clearfield Common Pleas Court, Pennsylvania
Case Number:	07-754-CD
Jurisdiction Served:	Illinois
Date Served on CSC:	05/21/2007
Answer or Appearance Due:	Other/NA
Originally Served On:	CSC
How Served:	Certified Mail
Plaintiff's Attorney:	Gregory H. Teufel 412-577-5200

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

Schnader
ATTORNEYS AT LAW

FIFTH AVENUE PLACE
120 FIFTH AVENUE SUITE 2700 PITTSBURGH, PA 15222-3001
412.577.5200 FAX 412.765.3858 schnader.com

May 16, 2007

Gregory H. Teufel
Direct Dial 412-577-5289
Direct Fax 412-765-3858
E-mail: gteufel@schnader.com

VIA CERTIFIED MAIL
VIA FIRST CLASS MAIL

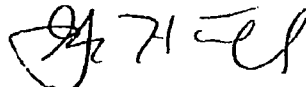
DMG Chicago, Inc.
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, IL 62703

RE: Notice of Civil Action Against DMG Chicago, Inc.

Dear DMG Chicago, Inc. Service Agent:

This is a notice of civil action against DMG Chicago, Inc. in the Court of
Common Pleas of Clearfield County, Pennsylvania. Enclosed you will find a Praecipe for Writ
of Summons and the Summons.

Sincerely,



Gregory H. Teufel

GHT
Enclosures

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

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Vs.

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TO: DMG CHICAGO, INC.

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Date: 5/14/2007



William A. Shaw
Prothonotary

WILLIAM A. SHAW*
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

Issuing Attorney:

Gregory H. Teufel, Esq.
Schnader harrison Segal & Lewis LLC
Fifth Ave Place, Suite 2700
Pittsburgh, PA 15222-3010
412-577-5200

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GORTECH GLOBAL FABRICATION,
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215 Beaver Drive
Dubois, Pennsylvania 15801

Plaintiff,

vs.

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James Gondeck, President
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801 Adlai Stevenson Drive
Springfield, Illinois 62703

Defendant.

CIVIL DIVISION

GD No. 07- 754-C0

Code:

PRACIPE FOR WRIT OF SUMMONS

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Fabrication, Inc.

Counsel of Record for this Party:

Gregory Teufel, Esquire
Pa. I.D. #73062

Schnader Harrison Segal & Lewis LLP
Pa. Firm I.D. #061
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001
Telephone: (412) 577-5200
Facsimile: (412) 765-3858

Christopher E. Mohny, Esquire
Pa. I.D. #63494

25 East Park Avenue, Suite 6
DuBois, PA 15801
Telephone: (814) 375-1044
Facsimile: (814) 375-1088

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

MAY 14 2007

Attest.

William A. [Signature]
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, :
LLC, :

Plaintiff, :

vs. :

DMG CHICAGO, INC. :

Defendant. :

CIVIL DIVISION

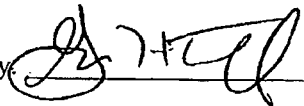
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By: 

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Pa. I.D. #73062

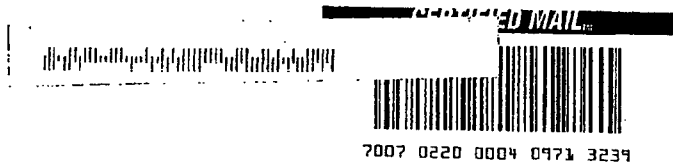
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001

Christopher E. Mohnney
Pa. I.D. # 63494

25 East Park Avenue, Suite 6
DuBois, PA 15801

Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

Dated: May 11, 2007



Schnader
ATTORNEYS AT LAW

Schnader Harrison Segal & Lewis LLP
FIFTH AVENUE PLACE
120 FIFTH AVENUE SUITE 2700
PITTSBURGH, PA 15222-3001

VIA CERTIFIED MAIL/
RETURN RECEIPT REQUESTED
DMG CHICAGO INC.
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, IL 62703



3007645.0003/30342/GHT

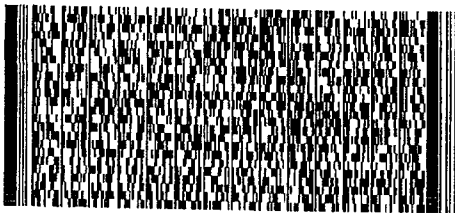
PLEASE FOLD THIS SHIPPING DOCUMENT IN HALF AND PLACE IT IN A WAYBILL POUCH AFFIXED TO YOUR SHIPMENT SO THAT THE BAR-CODE PORTION OF THE LABEL CAN BE READ AND SCANNED. ***WARNING: USE ONLY THE PRINTED ORIGINAL LABEL FOR SHIPPING. USING A PHOTOCOPY OF THIS LABEL FOR SHIPPING PURPOSES IS FRAUDULENT AND COULD RESULT IN ADDITIONAL BILLING CHARGES, ALONG WITH THE CANCELLATION OF YOUR FEDEX ACCOUNT NUMBER.

From: Origin ID: ARGA (888) 690 2882
Mary Drummond
Corporation Service Company
2711 Centerville Road
Suite 400
Wilmington, DE 19808



CL806130509/15

SHIP TO: (312) 861 6585 BILL THIRD PARTY
Baker & McKenzie
Mr. Robert J Willson Jr.
One Prudential Plaza
Suite 3500 130 E Randolph Drive
Chicago, IL 60601



Ship Date: 22MAY07
Actual Wgt: 1 LB
System#: 108202/FXRS0766
Account#: S 322544685

REF:



Delivery Address Bar Code

STANDARD OVERNIGHT

WED

TRK# 9447 6186 7213

FORM
0201

Deliver By:
23MAY07

ORD A1

60601 -IL-US

XH JLHA



LMS Packing Slip

Package ID: 771816

Tracking Number: 944761867213
Package Recipient: Mr. Robert Willson Jr.
Receipient Company: Baker & McKenzie
Receipient Address: One Prudential Plaza Suite 3500 130 E
Randolph Drive Chicago IL 60601 USA
Phone Number: 3128616585

Package Contents:

Transmittal Number	Case Number	Title of Action
5156396	07-754-CD	Gortech Global Fabrication, LLC vs. DMG Chicago, Inc.

Phil
Rugari/MG/DMGCC/GILDEM
EISTER

05/18/2007 04:00 PM

To "Gerald Fitzpatrick" <gerald.fitzpatrick@gildemeister.com>

cc

bcc

Subject Fw: Gortech Global Fabrication

----- Original Message -----

From: "Teufel, Gregory" [GTeufel@Schnader.com]

Sent: 18.05.2007 16:20 AST

To: Phil Rugari

Subject: RE: Gortech Global Fabrication

Phil:

Thanks again for the below and for following up with sending the standard terms and conditions you referenced. First, I want to let you know that we filed on Gortech's behalf a praecipe for writ of summons against DMG Chicago, Inc. ("DMG"). A copy of what we filed is attached for your reference. I do not want you to think it means we have given up on hopefully resolving the matter without litigation. As you can confirm with your counsel, a writ of summons simply commences an action to stop the running of any statutes of limitations. I do not want Gortech's rights waived or prejudiced by any delay during settlement negotiations. I will discuss each of your points below in the same order you presented them. I appreciate your fresh perspective and it gives us hope of getting this thing resolved without too much difficulty.

1. The signed invoice you sent indicates "Gortech Global Fabrication guarantees free and clear title to machine and will pay open AR to DMG Chicago, Inc. if applicable." For the reasons outlined in my March 27 letter to you, there was no open AR applicable on February 2, 2006. Gortech had free and clear title to the CTX 320 and obtained free and clear title to the CTX 420 V4 by honoring all terms and conditions of the first trade-in agreement.

Notice, incidentally, York Franke's note on the fax cover sheet "THANK YOU FOR HELPING ME OUT OF THIS BIND!" As indicated in my March 27 letter in the first full paragraph on page 2, the bind referenced was that DMG had sold the CTX 320 to another company before even reaching agreement with Gortech regarding trading it in.

Any dispute over whether there was any applicable open AR owed to DMG would not have affected whether Gortech had free and clear title to the CTX 420 V4. At worst, any such dispute could have given rise to rights to sue for breach of contract or to file a lien, but no such action was taken and there were no clouds on Gortech's title to the CTX 420 V4 at the time it entered into the June 8, 2006 agreement at issue. Moreover, any dispute over whether Gortech continued to owe DMG any money related to the CTX 420 V4 would not have invalidated the June 8, 2006 agreement. DMG entered into a valid and binding agreement to provide a CTX 420 V6 in even trade for the CTX 420 V4.

2. The terms and conditions you provided with your April 18 letter to me were never previously provided to Gortech and were not made part of the June 8, 2006 agreement at issue. The June 8, 2006 contract came via fax, already signed by Mark Henne on behalf of DMG. Because it was faxed, there was nothing on the reverse side. Todd Gordon was asked to sign the agreement and give it to Mark Henne, which he did. The June 8, 2006 contract references at the bottom left "Contract: The terms and conditions set forth herein and on the reverse side hereof shall govern all sales of materials or equipment (the "Product")

described on the front side hereof by DMG, Inc. **See other side for complete terms and conditions.**" Because there were no terms and conditions provided on the reverse side or ever provided, they simply never became part of the agreement.

Moreover, I do not know what terms or conditions on the reverse side you are referring to that would render the June 8, 2006 contract invalid absent some further written acceptance of the contract from DMG. Mark Henne had already signed the contract on behalf of DMG.

3. I have attached the original contract documents regarding the DMU 100T/5 (see the December 17, 2004 quote (offer) and the December 31, 2004 purchase order (acceptance). It does not appear these documents have been previously provided to you. I am hopeful they will resolve the confusion. The relevant drawings (also attached hereto) were provide to DMG in advance of the proposal and purchase order. There was also a more detailed proposal document (dated January 2, 2005) that DMG provided to Predator after the purchase order was faxed to DMG.

Mr. Henne expressly warranted, in writing (in the December 17, 2004 quote), that "our DMU100T 5 axis milling machine will meet the manufacturing requirements that you have stated including completing an approximate 2 3/8" crankshaft bore in a 33" 12 cylinder aluminum engine block." There also arose implied warranties of fitness for particular purpose, in addition to the express written warranties. The DMU100T/5 would not perform as warranted, which was readily conceded by DMG at the time. Predator properly rejected the DMU 100T/5 and was entitled to a full refund of the purchase price.

I hope these documents clear up that DMG had no right to insist on applying the purchase monies from the DMU 100T/5 to a future purchase. Do you have any documentation or other information indicating that DMG even attempted to condition its acceptance of the return of the DMU 100T/5 upon application of its purchase price toward future purchases rather than a refund or application of those monies to amounts owed on the CTX 320 Linear CNC? The issue of whether Predator was entitled to a refund or only a credit against future purchases would not affect the enforceability of the June 8, 2006 agreement in any event. That was a valid agreement regardless of whether DMG was or was not owed any money as of that date by Predator or Gortech.

4. I appreciate your bringing the attached invoice to my attention, but for the reasons stated above I do not believe it has any impact on the enforceability of the June 8, 2006 agreement.

I certainly ask that you confirm and discuss all of this with DMG's own attorneys and do not take my word on it for any of this legal analysis. We both want to avoid the expense of litigation, but I do not mean to suggest you should avoid the expense of advice. Here I think it could be of some value in getting the issues resolved. I hope their advice will confirm the situation for you. There are always things creative lawyers can come up with to argue about, but I hope with respect to any such issues you will ask them to tell you the probability that a court would accept such arguments and the probability of a verdict in DMG's favor if this were forced to litigate through trial. We do not wish to see either DMG or Gortech waste money debating legal arguments that would in all likelihood only wind up being rejected by a court. Moreover, we are hopeful that DMG will simply do the right thing here and treat its customer as well as my clients treat their customers.

I am sorry we won't be able to agree to a settlement with Gortech paying additional monies, to be applied to a future equipment purchase. Gortech has lost confidence in DMG's service and support. The perception is that DMG gives its attention to its larger customers to the virtual exclusion of all others. Standing behind the June 8, 2006 agreement would go a long way toward repairing Gortech's perception of DMG however.

I do not know for sure which option is preferable to DMG, but my clients remain willing to settle along the lines of either option outlined in paragraph 2 of my March 17, 2007 letter. At this point, my clients have paid roughly \$185,000 to DMG in 2005 and have yet to see any actual benefit out of it. They either want

the CTX 420 V6 that was promised to be delivered or they want all their money back and expenses reimbursed. They are not being greedy or unreasonable. They are not looking to profit from the situation. They are not even asking for interest on their money for all the time they have been deprived of it (though interest would be an item of damages if it were forced to litigate). They are just asking for DMG to live up to its promises and treat them fairly. We are hopeful we can continue to make progress toward getting this resolved without litigation. I look forward to discussing this further with you or with DMG's counsel at your earliest convenience.

Best regards,
Greg

Schnader Harrison Segal & Lewis LLP
Suite 2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010
(412)577-5289 (work)
(412)596-6316 (cell)
(412)421-7123 (home)
(412)765-3858 (fax)
<mailto:gteufel@schnader.com>

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From: phil.rugari@dmgamerica.com [mailto:phil.rugari@dmgamerica.com]
Sent: Wednesday, April 04, 2007 10:50 AM
To: Teufel, Gregory
Subject: Gortech Global Fabrication

Mr. Teufel,

We are in receipt of your correspondence dated March 27, 2007 explaining the circumstances as understood by your client and yourself. Coming into this situation late I may see things a little more objectively than some in the past. First let me respond to a couple of points made in your letter:

1. It is the contention of DMG that the "Contract" you refer to in your letter and further copied, is not valid. Gortech Global never had free title to the machine since it failed to pay for it in full and never actually fulfilled its "Trade in" responsibility in the contract, thus rendering this contract unfulfilled and invalid.
2. DMG never sent a written acceptance of this contract / order thus rendering this agreement invalid per the terms and conditions on the reverse side.

3. Your clients unilateral decision to apply monies to transactions without the consent of DMG may be at the core of the problems. Regarding the statement concerning the return of the DMU 100T/5, where is it written that DMG "Warranted" the machine's applicability for a particular use? The DMU 100T obviously performed to all stated specification. I can find nothing stating in the original order paperwork where DMG warranted this machine for an intended use beyond obvious implied standard usage warranties. With no endorsement from DMG for the machine's use for the machining of a particular component, Gortech has no justification for its return, hence, no cause to unilaterally decide on money disbursements without DMG's agreement. In the interest of furthering our business relationship with your client, we agreed to allow them to apply money to a future purchase. Without acceptance of this application of funds to a future purchase, DMG would never had authorized the return.

4. Your client appears to have failed to inform you of its written agreement to pay DMG Chicago of this debt. This was noted on the original order form for the Used CTX 420 V4, signed by Mr. Todd Gordon on 2/8/06 (Attached). Here it includes an agreement by Gortech to pay all outstanding invoices owed to DMG Chicago. Obviously an agreed acceptance that the money was owed.

Mr. Teufel, we are legally represented by the Baker & McKenzie Law Group in Chicago. They would like nothing better than to get a hold of this problem and resolve it for us, at great expense I might add. I agree with your client however, let's try to resolve it otherwise. Ask your client to fulfill its responsibilities regarding the misapplication of DMG funds and we can then discuss the trade in of the used CTX 420 for a new CTX. I am willing to discuss some of the added expenses incurred by Gortech regarding the DMU 100T but first must have their assurance they will accept the original deposit to remain with DMG as a credit towards a future purchase. It is in our mutual best interest to resolve this matter. Lets work together to achieve same.

Regards,

Phil Rugari
President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, Illinois 60173
Tel: (847) 781-0277
Cell: (847) 312-3013

<http://www.gildemeister.com>

E-Mail Disclaimer

Der Inhalt dieser E-Mail ist ausschliesslich fuer den/die bezeichneten
Empfänger bestimmt. Wenn Sie nicht der vorgesehene Adressat dieser
E-Mail oder dessen Vertreter sein sollten, so beachten Sie bitte, dass
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Weitergabe des Inhalts dieser E-Mail unzulässig ist. Wir bitten Sie,
sich in diesem Fall mit dem Absender der E-Mail in Verbindung zu
setzen.
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grundsaeztlich die Moeglichkeit der Kenntnisnahme und Manipulation
besteht.

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distribution or any action taken or refrained from in reliance on it,
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We also like to inform you that communication via email over the
internet is insecure because third parties may have the possibility



to access and manipulate emails. SIGNED INVOICE.pdf Praecepte for Writ of Summons and Writ of Summons.pdf



DMU100T 5 Agreement-.pdf

DATE: 02/02/2006

TO: GORTECH GLOBAL FABRICATION
215 BEAVER DRIVE
DUBOIS, PA 15801

PHONE: 1(814)372-5456

FAX: 1(814)375-5455

ATTN: TODD GORDON

FROM: YORK FRANKE

TODD, ATTACHED IS THE SIGNED INVOICE FOR YOUR RECORDS. I WILL ALSO SCAN
AND EMAIL TO YOU.

THANK YOU AGAIN FOR HELPING ME OUT OF THIS BIND!

I LOOK FORWARD TO MEETING YOU IN PERSON IN PA.

02/02/2006 11:55

B477815053

DMG USED MACHINE DIV

PAGE 09/10

DMG

Used Machine Division

INVOICE #2006-5

Thursday February 2, 2006

A member of the
GILDEMEISTER
group

Sold To:
Mr. Todd Gordon, General Manager
Gortech Global Fabrication
215 Beaver Dr.
Dubois, PA 15801

DMG Chicago Inc.
1603 Penny Lane
Schmading, IL 60123
Phone (847) 781-0777
Fax (847) 781-3033
E-mail info@dmgamerica.com
Internet www.dmgamerica.com

2003 Gildemeister CTX420V4 S/N 02260002561 as equipped per proposal number 164355-056148 dated February 2, 2006.

\$140,000.00 USD 2003 Gildemeister CTX420V4 S/N 02260002561

\$26,717.30 USD WTO tooling package per WTO quote# 06M026Q-03 (see attachment A)

(\$140,000.00 USD) Trade in value for 2005 Gildemeister CTX320V4 S/N 8039937279C
Gortech Global Fabrication guarantees free and clear title to machine and will pay open AR to DMG Chicago, Inc. if applicable

(\$26,717.30 USD) Trade in value for tooling package for CTX320V4 consisting of:

-5 live tool holders

1/5: 90 degree long driven unit for drilling/milling

2/5: 0 degree driven unit, short, for drilling/milling

3/5: 0 degree driven unit, long, for drilling/milling

4/5: Special 0 degree driven unit, max turning speed 8000 RPM-8 Nm-for drilling/milling

5/5: 90 degree driven unit, universal H=100, Max turning speed 8000 RPM for drill/milling

-1 set of seven (7) collets

-All items listed on Gortech Global Fabrication purchase order number 11979 dated 01/26/06 issued to ITI Tooling Company, Inc. (see attachment B): total of eighteen (18) items

-In House tooling (see attachment C) already at Gortech Global Fabrication consisting of:

1 Sauter straight drill/milling unit

1 Sauter right angle drill/mill units

3 LH turning tool holders-metric

3 RH turning tool holders-metric

6 32 mm boring bar holders

6 32 mm various ID boring bar adaptors

6 Boring bars to match adaptors

1 32 mm collet chuck for ER25 collet

3 Iscar metric LH turning tools

1 Sauter straight (2:1) mill unit

1 Sauter right angle (2:1) mill unit

Y. J. J. J.
President
2-2-06

If any of the above listed tooling is not received, Gortech Global Fabrication will pay for the actual cost to replace missing items

DMG Used Machine Division

DECKEL MAHO GILDEMEISTER

02/02/2006 11:55 8477815053

DMG USED MACHINE DIV

PAGE 10/10



A member of the
GILDEMEISTER
group

DMG Chicago Inc.
1665 Perry Lane
Schmaling, IL 60173
Phone (847) 701-0277
Fax (847) 701-5053
E-mail info@dmgamerica.com
Internet www.dmgamerica.com

INVOICE #2006-5 continued

TERMS:

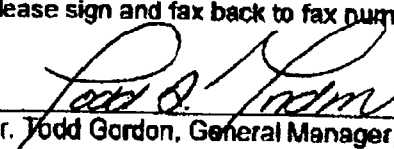
1. 2005 Gildemeister CTX320V4 S/N 8039937279C to be released for pickup immediately upon acceptance of this invoice. Machine to be loaded out onto truck that delivers the CTX420. Date to disconnect CTX320V4 Monday February 6. Removal date CTX320/Delivery date CTX420 Tuesday February 7, 2006.

2. DMG Used Machine Division to pay for engineer to disconnect and prep for shipment CTX320.

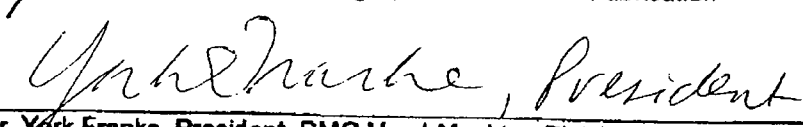
Upon acceptance of this invoice ownership of the machine is conveyed, before machine shipment.

Please sign and fax back to fax number 847-781-5053.

AGREED/ACCEPTED:


Mr. Todd Gordon, General Manager, Gortech Global Fabrication

2-2-06
Date


Mr. York Franke, President, DMG Used Machine Division

2-2-06
Date

Thank you for your order. We sincerely appreciate your business.

DMG

Chicago

A member of the
GILDEMEISTER
group

December 17, 2004

DMG Chicago Inc.

1665 Penny Lane
Schaumburg, IL 60173

Phone (847) 781-0277

Fax (847) 781-0388

E-mail info@gildemeister.com

Internet www.gildemeister.com

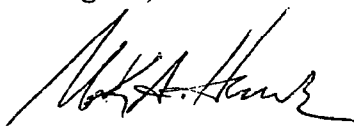
Dennis Raybuck
Predator Performance
2572 Oklahoma-Salem Road
DuBois, PA. 15801

Dear Mr. Raybuck,

Thank you for the opportunity to quote your machining requirements at Predator Performance. We are confident that our DMU100T 5 axis milling machine will meet the manufacturing requirements that you have stated including completing an approximate 2 3/8" crankshaft bore in a 33" 12 cylinder aluminum engine block. We are also confident that our CTX 320 V4 CNC lathe will meet your turning requirements.

I have attached a summary for the machines and our offer for your approval. Please feel free to contact me if you have any questions.

Regards,



Mark A. Henne, CMTSE
Area Sales Manager
DMG-Chicago
(412) 480-5227

DMG

Chicago

A member of the
GILDEMEISTER
group

December 17th 2004

DMG Chicago Inc.

1665 Penny Lane

Schaumburg, IL 60173

Phone (847) 781-0277

Fax (847) 781-0388

E-mail info@gildemeister.com

Internet www.gildemeister.com

Summary for proposal 1-613-132522-1 dated December 13th 2004 regarding our DMG Model DMU 100T 5 axis universal milling machine with/Heidenhain iTNC 530 3D contouring control and 3D contouring control MillPlus IT and the following options as specified in proposal.

- (1) P-C0100 NC rotary table
- (1) P-W0190 NC swivel milling head
- (1) P-W0076 b-axis cooling
- (1) P-M0043 CAT 40 taper
- (1) P-M0042 tool clamping
- (1) P-K0145 SK 40 probe
- (1) P-K0114 blum laser probe
- (1) P-K0157 production package
- (1) additional subplate for table

SUBTOTAL: machine and options \$370,000.00

Summary for proposal 8-688-132733-1 dated December 13th 2004 regarding our DMG Model CTX 320 linear CNC turning center Version 4 with Heidenhain iT Plus control and software version V7 and the following options as specified in proposal.

- (1) T-B2028 cylinder group
- (1) T-Z2250 footswitch
- (1) T-H2671 tool pre-setting probe
- (1) T-S2003 autoblok chuck
- (1) T-M2702 toolholders
- (1) T-N2700 driven tool
- (1) T-N2704 driven tool
- (1) T-N2705 driven tool
- (1) T-N2720 driven tool
- (1) T-N2722 driven tool
- (1) T-N2003 driven tool
- (1) T-Z2301 LED lamp

DMG

Chicago

SUBTOTAL: machine and options \$222,480.00

TOTAL: (2) machines \$592,480.00

Discount: (\$ 67,480.00)

Net price (2) machines \$525,000.00

Net price includes an 18month warranty for each machine as stated in corresponding proposals.

FOB: port of entry (New York, NY).

One (1) of the following downpayment options is required with your purchase order.

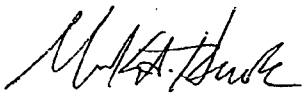
10% of purchase price:	\$ 52,500.00
20% of purchase price:	\$ 105,000.00
30% of purchase price:	\$ 157,500.00

Delivery of machines: Six to eight weeks ARO (after receipt of order).

All other terms and conditions remain the same as stated in corresponding proposals.

Thank you for your continued interest.

Regards,



Mark A. Henne, CMTSE
Area Sales Manager
DMG Chicago, Inc.



VENDOR

DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173
(847)781-0277
(847)781-0388 Fax

PAGE NO.	P.O. NO.	ORDER DATE	VEND NO.
1	EQ-0058B	12/31/2004	

PURCHASE ORDER

SHIP TO

Predator Performance, LLC
2574 Oklahoma-Salem Road
DuBois, PA 15801
(814)375-5660

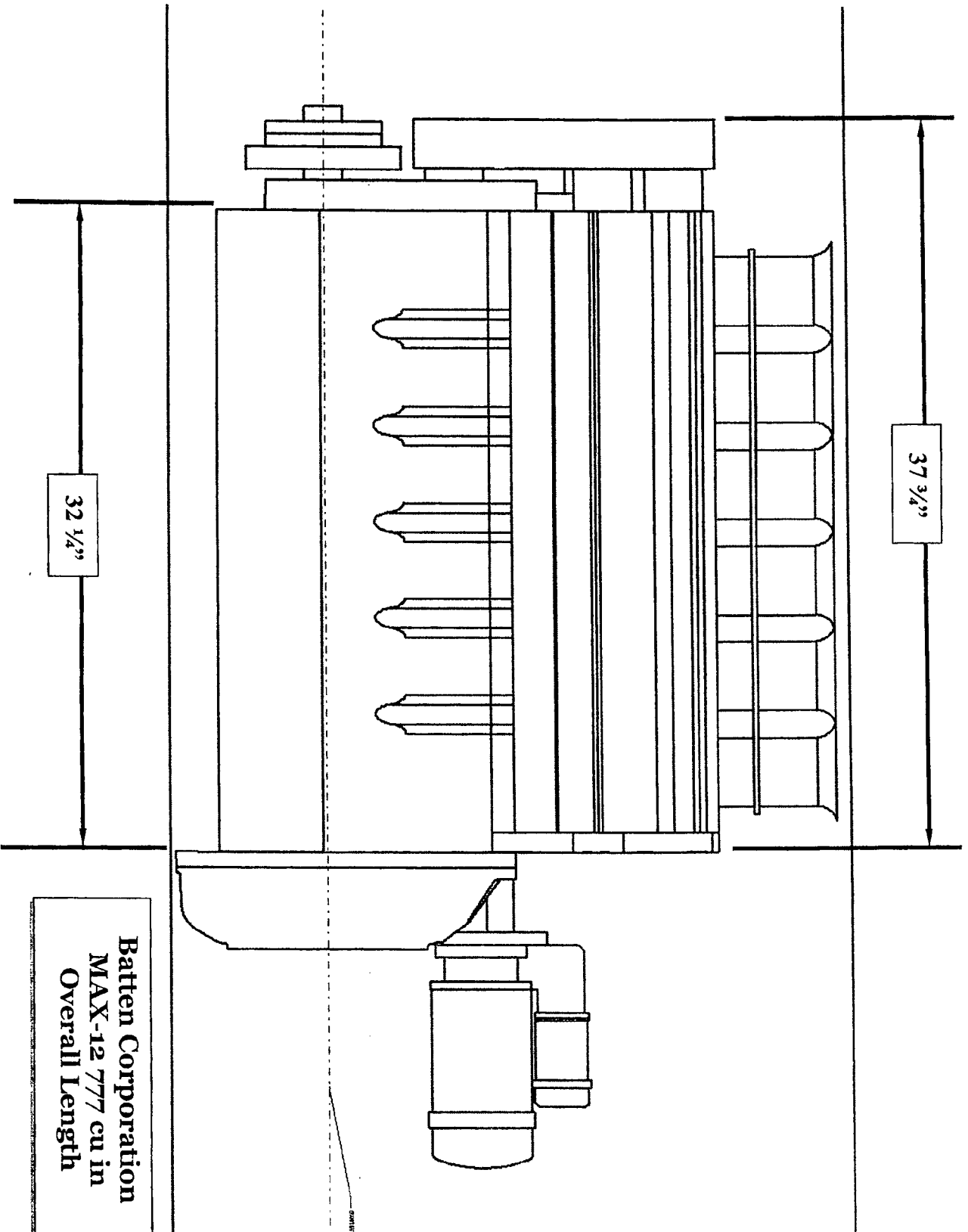
ORDER DATE 12/31/2004	CANCELLATION DATE	SHIP VIA	F.O.B. New York, NY	TERMS 10%Down;Balance on Install.			
RESALE NO.		RESPONSIBILITY Dennis Raybuck			BRANCH PREDATOR		
ITEM NO. MFG NO.	DESCRIPTION	REQ. DATE LOCATION	QUANTITY ORDERED	QUANTITY BACK ORD	QTY REC	UNIT PRICE	EXTENSION
	DMG Model DMU 100T 5 w/ Heidenhain iTNC 530 3D contouring control (Proposal 1-613-132522)		1			370000	\$370,000.00
	DMG Model CTX 320 Linear CNC turning Ctr Version 4 w/Heidenhain iT Plus control and Software version V7 (Proposal 8-688-132733)		1			222480	\$222,480.00
	Discount		1			-67480	-\$67,480.00
	*Down payment check to be sent by 2/10/05						
	*Delivery Date 6 weeks from 2/11/05						
						SUBTOTAL	\$525,000.00
						TAX	
						SHIPPING	
						TOTAL	\$525,000.00

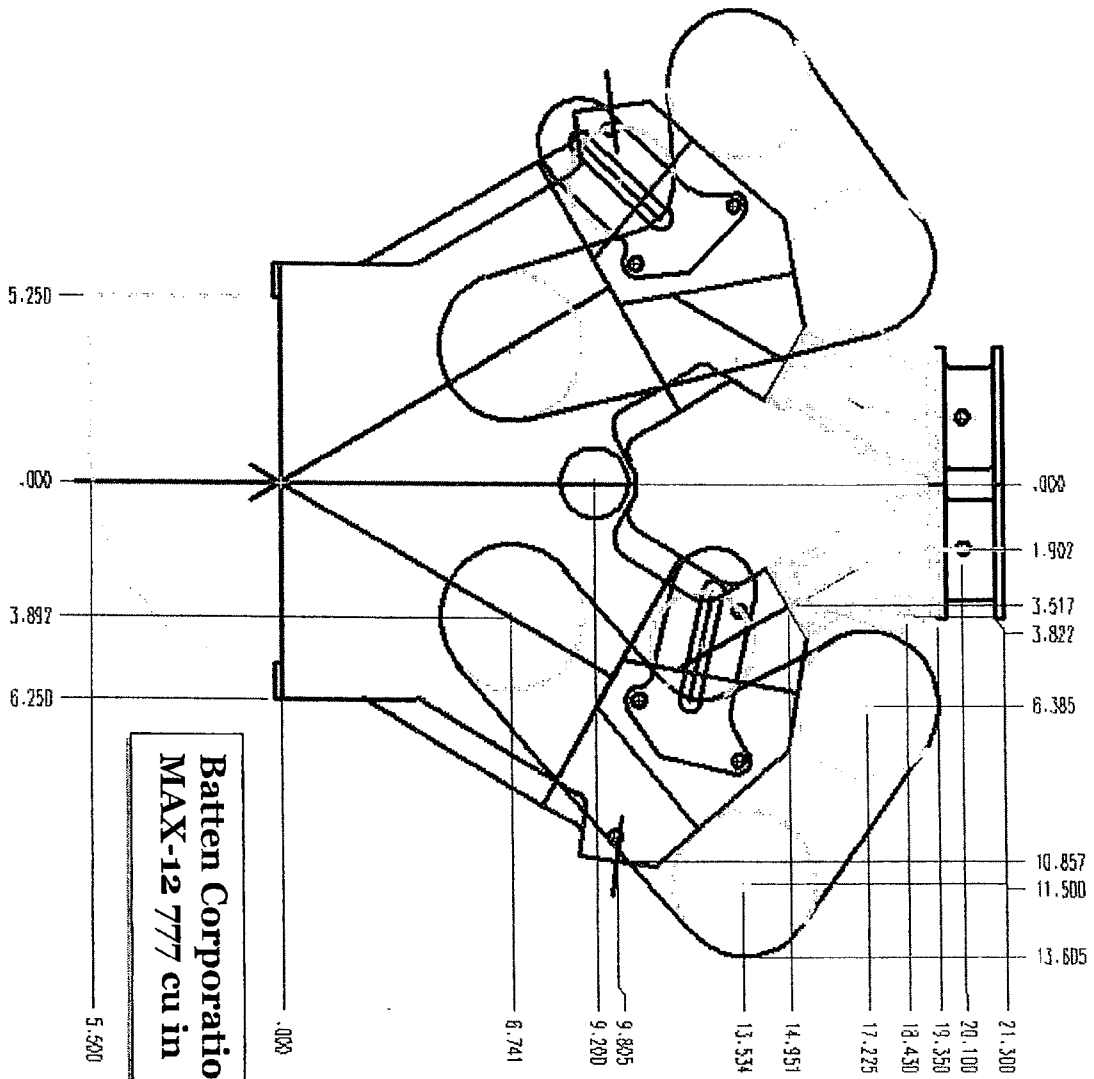
AUTHORIZED SIGNATURE

ORDER TERMS AND CONDITIONS

1. INVOICES must bear exact same prices and terms or authorization for changes must be received from our company in writing prior to shipping
2. Goods not in accordance with specifications will be rejected and held at vendor's risk awaiting disposal. Vendor must pay freight on all rejected material.
3. The right is reserved, to cancel all or part of this order if not delivered within the time specified.
4. Packing slips must accompany all shipments.
5. By acceptance of this order, vendor warrants that all merchandise shipped under this order does comply with all laws and regulations of Federal and State governments.
6. Back orders must be prepaid when less than a minimum freight shipment.
7. In the event of interruption of our business in whole or in part by reason of fire, flood, windstorm, earthquake, war, strike, embargo, acts of God, government action, or any cause beyond our control, we shall have the option of canceling undelivered orders in whole or part.
8. Acceptance of this purchase order, or shipment of any part of it will constitute an agreement to all of its specifications as to terms, delivery and price.

*Down
Pmt 500.00
\$ 52, made 2/10/05
Asset mgt.
#1680*





Batten Corporation
MAX-12 777 cu in - Widths

May 16, 2007

Gregory H. Teufel
Direct Dial 412-577-5289
Direct Fax 412-765-3858
E-mail: gteufel@schnader.com

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED
VIA FIRST CLASS MAIL

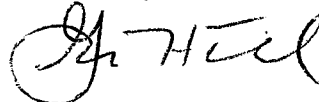
James Gondeck
President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173

RE: Notice of Civil Action

Dear Mr. Gondeck:

This is a notice of civil action against DMG Chicago, Inc. in the Court of Common Pleas of Clearfield County, Pennsylvania. Enclosed you will find a Praecipe for Writ of Summons and the Summons.

Sincerely,



Gregory H. Teufel

GHT
Enclosures

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

SUMMONS

Gortech Global Fabrication, LLC

Vs.

NO.: 2007-00754-CD

DMG Chicago, Inc.

TO: DMG CHICAGO, INC.

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 5/14/2007



William A. Shaw

Prothonotary

Issuing Attorney:

Gregory H. Teufel, Esq.
Schnader harrison Segal & Lewis LLC
Fifth Ave Place, Suite 2700
Pittsburgh, PA 15222-3010
412-577-5200

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, :
LLC, :
215 Beaver Drive :
Dubois, Pennsylvania 15801 :

Plaintiff, :

vs. :

DMG CHICAGO, INC., :
James Gondeck, President :
Illinois Corporation Service C :
801 Adlai Stevenson Drive :
Springfield, Illinois 62703 :

Defendant. :

CIVIL DIVISION

GD No. 07- 754- C9

Code:

PRACIPE FOR WRIT OF SUMMONS

Filed on Behalf of Plaintiff, Gortech Global
Fabrication, Inc.

Counsel of Record for this Party:

Gregory Teufel, Esquire
Pa. I.D. #73062

Schnader Harrison Segal & Lewis LLP
Pa. Firm I.D. #061
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001
Telephone: (412) 577-5200
Facsimile: (412) 765-3858

Christopher E. Mohny, Esquire
Pa. I.D. #63494

25 East Park Avenue, Suite 6
DuBois, PA 15801
Telephone: (814) 375-1044
Facsimile: (814) 375-1088

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

MAY 14 2007

Attest.

William A. Blum
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, :
LLC, :

Plaintiff, :

vs. :

DMG CHICAGO, INC. :

Defendant. :

CIVIL DIVISION

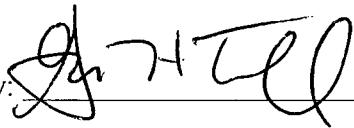
GD No. 07-

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in Civil Action against the within named Defendant.

SCHNADER HARRISON SEGAL &
LEWIS LLP

By: 

Gregory H. Teufel
Pa. I.D. #73062

Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001

Christopher E. Mohny
Pa. I.D. # 63494

25 East Park Avenue, Suite 6
DuBois, PA 15801

Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

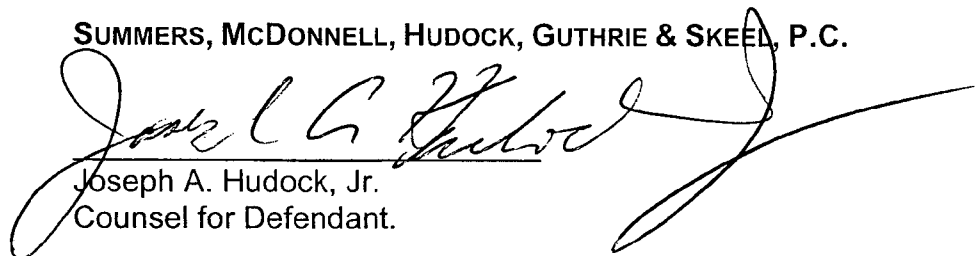
Dated: May 11, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Answers to Interrogatories, Response to Request for Production of Documents and Response to Request for Admissions was served upon counsel of record by mailing the same via first class mail, postage pre-paid, this 10th day of March, 2010, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.



Joseph A. Hudock, Jr.
Counsel for Defendant.

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION,
LLC

Plaintiff,

v.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No. 07-754-CD

**AMENDED NOTICE OF DEPOSITION
DUCES TECUM OF DMG CHICAGO,
INC.'S CORPORATE DESIGNEE
PURSUANT TO Pa. R.C.P. 4007.1(e)**

Filed on Behalf of Plaintiff:

Gortech Global Fabrication, LLC,

Counsel of Record for this Party:

Gregory H. Teufel, Esq.

PA I.D. No. 73062

Amy J. Roy, Esq.

PA I.D. No. 86584

Jeremy L.S. Samek, Esq.

PA I.D. No. 205060

Eckert Seamans Cherin & Mellott, LLC

Firm No. 075

44th Floor, U.S. Steel Tower

600 Grant Street

Pittsburgh, PA 15219

412-566-5977

412-566-6099 (facsimile)

gteufel@eckertseamans.com

Christopher E. Mohny, Esq.

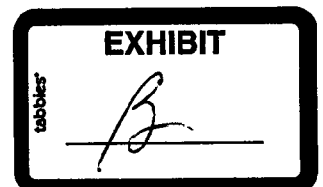
PA I.D. No. 63494

25 East Park Avenue, Suite 6

DuBois, PA 15801

814-375-1044

814-375-1088 (facsimile)



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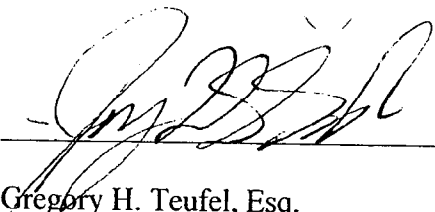
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**NOTICE OF DEPOSITION *DUCES TECUM* OF DMG CHICAGO, INC.'S
CORPORATE DESIGNEE PURSUANT TO Pa. R.C.P. 4007.1(e)**

TAKE NOTICE that Plaintiff Gortech Global Fabrication, LLC (“Gortech”), by and through its counsel, Eckert Seamans Cherin & Mellott, LLC, pursuant to Pennsylvania Rules of Civil Procedure 4007.1 (d)(1) and (e), will take the deposition of DMG Chicago, Inc. (“DMG”) on **November 11, 2010** at the offices of Eckert Seamans Cherin & Mellott, LLC, 44th Floor U.S. Steel Tower, 600 Grant Street, Pittsburgh, PA 15219, commencing at 9:30 a.m. and continuing from day to day until completed.

Prior to the time of the deposition, pursuant to Pa. R.Civ.P. 4007.1(e), DMG shall designate one or more persons to testify as to the subject matters contained in the documents described in Exhibit "A" attached hereto and at the time of the deposition DMG is required by Ra. R.Civ.P. 4007.1(d)(1) to produce all documents which are described in Exhibit "A" attached hereto.



Gregory H. Teufel, Esq.
Amy J. Roy, Esq.
Jeremy L.S. Samek, Esq.
Christopher E. Mohney, Esq.

*Attorneys for Plaintiff,
Gortech Global Fabrication, LLC*

Date: October 13, 2010

EXHIBIT A: Matters To Be Inquired Into and the Materials To Be Produced

- 1 Identify the last known contact information for both Mark Henne and York Franke, including home address, work address, all known phone numbers, e-mail addresses and fax numbers.
- 2 As previously requested in Interrogatory 3 ("IR3"), with reference to paragraph 26 of the Complaint and your Answer, if you contend that DMG did not fail to send people to fix the CTX 420 V4 and provide training when promised and DMG fulfilled its promises,
 - a. set forth the facts upon which you rely for this contention, including:
 - (1) the date and time of each scheduled repair and/or training related to the CTX 420 V4;
 - (2) the dates and time each such repair and/or training actually occurred; and
 - (3) the particular individuals involved in performing each such repair and/or training;
 - b. identify specifically the documents relating to this contention; and
 - c. for each such repair and/or training, identify every person who has specific personal knowledge supporting your contentions related thereto.
- 3 As previously requested in IR4, identify all written communications and describe in detail all oral communications related to any fact alleged in the Complaint, the Answer, New Matter, Reply to New Matter, or any other pleading in this action, related to the Contract, related to the negotiation, performance, and/or breach and/or alleged breach of the Contract, or related to any other alleged oral or written agreement(s) or amendment(s) to agreements between DMG and Gortech and, as to each such alleged oral agreement or amendment:
 - a. state the date or dates on which the oral agreement or amendment was offered and accepted;
 - b. identify the persons who communicated and/or accepted the terms of such oral agreement or amendment;
 - c. describe such terms, including the consideration for the oral agreement or amendment and state when such consideration was promised and when such consideration was performed or exchanged; and
 - d. identify any documents related to such oral agreement or amendment.
- 4 As previously requested in IR6, if you contend, as in the paragraph 30 of your Answer, that Gortech received the necessary training in a timely manner, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and please explain in detail the basis for this contention, including the date(s) on which such training was provided, the number of hours of training provided on such dates, the nature of the training provided on such dates, the persons trained, and the persons providing the training.
- 5 As previously requested in IR7, if you contend, as in paragraph 38 of your Answer, that DMG complied with the Contract at all times relevant hereto, identify all facts and documents related to this contention and all persons with knowledge of facts related to

this contention, and please explain how DMG complied with the Contract, including what promises contained in the Contract were performed by whom and when.

- 6 As previously requested in IR8, Explain all of the reasons why DMG did not deliver a new CTX 420 V6 to Gortech.
- 7 As previously requested in IR10, state the prices, as of June 8, 2006 and in 2006 generally, at which DMG was offering for sale and/or selling new CTX 420 V6 machines, including the prices of all related options and accessories, tooling packages, installation, training, and new machine warranty, and identify all documents related to such pricing and all persons with knowledge of such pricing.
- 8 As previously requested in IR11, state the trade-in value, as of June 8, 2006 and in 2006 generally, of Gortech's used CTX 420 V4, along with its associated options, accessories, and tooling, identify all documents related to such trade-in value and all persons with knowledge of facts related to such trade-in value.
- 9 As previously requested in IR12, state the prices, as of June 8, 2006 and in 2006 generally, at which DMG was offering for sale and/or selling new and used CTX 420 V4 machines, including the prices of all related options and accessories, tooling packages, installation, training, and warranties, and identify all documents related to such pricing and all persons with knowledge of such pricing.
- 10 As previously requested in IR13, state the trade-in values assigned or given by DMG for all used CTX 420 V4 machines that DMG ever received in trade, and identify all documents related to trade-in values and all persons with knowledge of such trade-in values.
11. As previously requested in IR17, if you contend, as in paragraph 55 of your New Matter, that Gortech's claims against DMG are barred in whole or in part by some release, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and describe specifically when and in what manner a claim or claims of Gortech were released, what claim or claims were released, what communications occurred in connection with any such alleged release, and when any such communications occurred, and who was involved in any such communications.
12. As previously requested in IR18, if you contend, as in paragraph 56 of your New Matter, that Gortech's damages were caused by some intervening or superseding causes, over which DMG had no control, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and describe specifically when and in what manner such intervening cause(s) caused Gortech's damages.
13. As previously requested in IR20, describe Mark Henne's job title, duties and responsibilities and employer as of June 8, 2006, and state whether Mr. Henne had actual authority to enter into the Contract on DMG's behalf on June 8, 2006.

14. As previously requested in IR21, if you contend that Mark Henne did not have proper authority to enter into the Contract on DMG's behalf on June 8, 2006:
 - a. identify all contracts which Mark Henne signed on behalf of DMG, with or without proper authority, and for each such contract, state whether Mark Henne had proper authority to sign it on behalf of DMG; and
 - b. identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention.
15. As previously requested in IR22, describe the performance features of the CTX 420 V6 and of the CTX 420 V4, explain how the machines and their performance features differed, and identify all documents related to such performance features and differences.
16. As previously requested in Request For Production ("RFP") 3, produce all contracts or agreements entered into between DMG and Gortech or any other document evidencing or relating to any such agreements, or to the negotiation, performance, and/or breach and/or alleged breach of any such agreements.
17. As previously requested in RFP4, produce all documents or things identified, reviewed, or relied upon by you in answering the interrogatories, requests for production, and requests for admissions directed to you in this matter.
18. As previously requested in RFP5, produce all documents or things identified, reviewed, or relied upon by you in support of the factual allegations contained in your Answer and New Matter and any other pleadings filed on your behalf in this action.
19. As previously requested in RFP7, produce all documents relating to or consisting of communications or agreements between Gortech and DMG.
20. As previously requested in RFP8, produce all documents provided to, received from, or prepared by each person identified by you in the process of answering the interrogatories, requests for production, and requests for admissions directed to you in this matter.
21. As previously requested in RFP9, produce all documents related to any fact alleged in the Complaint, the Answer, New Matter, Reply to New Matter, or any other pleading in this action.
22. As previously requested in RFP10, produce all documents relating to or about Gortech.
23. As previously requested in RFP11, produce all documents relating to the price paid in sales of new CTX 420 V6 machines by DMG in 2006.
24. As previously requested in RFP12, produce all documents relating to the price paid in sales of new or used CTX 420 V4 machines by DMG in 2006.

25. As previously requested in RFP14, produce all documents relating to the performance features of the CTX 420 V6 and of the CTX 420 V4, and any and all differences in those machines or in such performance features.
26. As previously requested in Request For Admission (“RFA”) 6, discuss whether the Contract is a valid and binding agreement.
27. As previously requested in RFA7, discuss whether the CTX 420 V6 had an automatic feeder.
28. As previously requested in RFA8, discuss whether the CTX 420 V4 lacked an automatic feeder.
29. As previously requested in RFA9, discuss whether on or before June 8, 2006, DMG was aware of how Gortech intended to use the CTX 420 V6.
30. As previously requested in RFA10, discuss whether on or before June 8, 2006, DMG was aware that the CTX 420 V6 would have expanded and improved Gortech’s capabilities.
31. As previously requested in RFA11, discuss whether on or before June 8, 2006, DMG knew that Gortech would suffer lost profits if DMG failed to deliver the CTX 420 V6 to Gortech.
32. Designee(s) must be prepared to discuss all other Interrogatories, Admissions, not specifically mentioned above and documents already produced to Gortech Global Fabrication, LLC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amended Notice of Deposition *Duces Tecum* of DMG CHICAGO, INC.'S Corporate Designee Pursuant to Pa. R.C.P. 4007.1 was served upon the following by First Class U.S. Mail on October 13, 2010 addressed as follows:

Joseph A. Hudock, Jr.
Summers, McDonnell, Hudock, Guthrie & Skeel, P.C.
707 Grant Street,
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

Attorney for DMG Chicago, Inc.

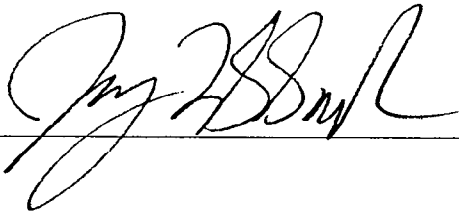


EXHIBIT C

1 IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

2 COMMONWEALTH OF PENNSYLVANIA

3 CIVIL DIVISION

4 - - -

5 GORTECH GLOBAL FABRICATION,)
 6 LLC,)

7 Plaintiff,)

8 vs.)

9 No. 07-754 CD

10 DMG CHICAGO, INC.,)

11 Defendants.)

12 - - -

13 THURSDAY, NOVEMBER 11, 2010

14 - - -

15 The deposition of GERALD FITZPATRICK, called as a
 16 witness by the Plaintiff, pursuant to notice and the
 17 Pennsylvania Rules of Civil Procedure pertaining to the
 18 taking of depositions, taken before me, the
 19 undersigned, Rebecca L. Schnur, Notary Public in and
 20 for the Commonwealth of Pennsylvania, at the offices of
 21 Eckert Seamans Cherin & Mellott, LLC, 44th Floor, U.S.
 22 Steel Tower, 600 Grant Street, Pittsburgh,
 23 Pennsylvania, 15219, commencing at 11:09 o'clock a.m.,
 24 the day and date above set forth.

25 - - -

26 NETWORK DEPOSITION SERVICES

27 1101 GULF TOWER

28 707 GRANT STREET

29 PITTSBURGH, PENNSYLVANIA 15219

30 - - -

31

32

33



1 Q So did you review, then, the list of topics,
2 Exhibit A, matters to be inquired into and materials to
3 be produced?

4 A I'll have to reread it again, but --

5 Q Is that familiar to you?

6 A Yeah, I mean, I read it. I read this
7 document before.

8 Q Okay. And so, then, did you gather materials
9 to be produced then at this deposition?

10 A I didn't gather documents. I made a search,
11 once again, in my office of documents that could be
12 related to this case.

13 Q You didn't find any?

14 A The only ones that I found were the ones that
15 were already provided. And I did find a list that
16 shows the spare parts that had been submitted on this
17 machine that were from 2006. And I found a service
18 document that was prepared and signed by the customer
19 after the machine was serviced in February of 2006.

20 When I say "machine," I mean the 420.

21 Q So did you bring with you today any new
22 documents to be produced as a part of this lawsuit?

23 A The only new documents would be those two.

24 Q Can I get those from you?

25 MR. HUDOCK: Yeah, if you want to produce

1 those.

2 A I think it was these two.

3 MR. HUDOCK: Yeah, if you want to make copies
4 of those, feel free.

5 MR. TEUFEL: Let me look at them real
6 quickly.

7 Q I appreciate you bringing those documents
8 with you. Did you search on the DMG computers at all
9 for the type of documents being requested in the notice
10 of deposition?

11 A No, I didn't.

12 Q Do you know if any e-mails exist related to
13 this case, related to Gortech, on DMG's computer
14 system?

15 A There must be e-mails on the computer system.

16 Q I don't know if you heard Mr. Henne reference
17 price lists for options for the V6, the CTX 420V6. Do
18 you believe that DMG would still have price lists that
19 would be accurate for 2006 pricing for the CTX 420V6?

20 A I don't know specifically, but I would have
21 to assume the documents would be available, but I don't
22 know that because it's not really my area.

23 MR. TEUFEL: Are we able to get both those
24 price lists?

25 MR. HUDOCK: I would have no idea. I mean,

1 that the customer should know or be aware of?

2 A From the customer's point of view, I cannot
3 assume that they would know that.

4 Q .Do you happen to know, in looking at
5 Exhibit 1, the values of the various listed -- For
6 example, the options and accessories for the CTX 420V6,
7 without looking at a price list, off the top of your
8 head, are you able to say what the value of all options
9 and accessories would be?

10 A When it's referred to "all options and
11 accessories" and referring to a serial number, that
12 means the options and accessories that that machine is
13 equipped with. It doesn't mean every single option
14 available --

15 Q Gotcha.

16 A -- because that would mean you could have a
17 machine in three different colors with three different
18 controls. It doesn't make sense to have --

19 Q Okay. A hundred options wouldn't make any
20 sense?

21 A Yeah, because they overlap. You can't
22 have --

23 Q What options did the machine with that serial
24 number have?

25 A I don't specifically know.

1 Q How would we determine that?

2 A We must have a document that lists the
3 options for that, for that specific serial number.

4 MR. TEUFEL: I just want to make a request
5 for that document, if it can be found, listing the
6 options.

7 MR. HUDOCK: Yeah. Do you know if that
8 document -- You say it must be there. How do you
9 know it must be there?

10 THE WITNESS: At one point DMG Chicago would
11 have bought this machine from the factory. If we
12 can locate the order and the invoice from the
13 factory, it will list all the options. This is
14 2005, so I'm not sure if it exists.

15 MR. HUDOCK: I'm sure Greg's going to have to
16 ask you: Who would have this? Where are they
17 normally kept?

18 MR. TEUFEL: I wouldn't have asked where is
19 it normally kept.

20 THE WITNESS: The documents relating to the
21 purchases of machines would be kept in the
22 purchasing office. And the documents are purged
23 after a number of years, and I'm not sure that
24 this would still be available.

25

1 BY MR. TEUFEL:

2 Q And who in the purchasing office would you
3 contact to receive that document?

4 A Unfortunately, the person that was there at
5 this time is no longer with the company.

6 Q So who would you -- How would you follow up
7 on this document?

8 A I would look to see if there are any old
9 boxes that have purchasing documents in them. We had
10 moved twice since this machine was purchased, so it's
11 more likely, if it is still available, that it's stored
12 off site. That might be a challenge to locate it.

13 Q Do we know what customer this CTX 420V6 with
14 that serial number that's listed in Exhibit 1 was sold
15 to?

16 A I don't know.

17 Q How would we determine that?

18 A I could also research that, but it's the same
19 situation where we would have to make a search and try
20 to find the documents.

21 Q Pretty unlikely, though, that DMG would lose
22 track of a customer from 2006 for a big machine like
23 that. Right?

24 A Yes. I would say that the other option
25 available to see where that machine is now is, there's

1 a central database that we could search by serial
2 number, and it would say where that machine is
3 installed today, if it's still installed.

4 Q Okay.

5 A But that's a little bit different from
6 finding the options because the options you have to
7 actually go back to a piece of paper, not actually
8 finding the location of the machine.

9 Q If you look at the machine, you can see what
10 a lot of options are?

11 A I couldn't because I'm an accounting guy.
12 But somebody would be able to. Yes.

13 Q Okay. The services tooling package, do you
14 have any idea what that would cost?

15 A I don't even know what that is.

16 Q What about machine installation and training;
17 what were the typical charges associated with that?

18 Was Mark Henne accurate in describing what
19 those charges were?

20 A He was accurate. Every machine has a
21 different number of days to install. And the numbers
22 that Mark referred to sounded reasonable to me.

23 Q Okay. Do you know what "T.C. Services
24 Tooling" -- what "T.C." would refer to?

25 A I've never heard that term, and I'm not sure

1 used for two or three years in a production
2 environment, I would say that that would be the case.

3 Q Okay. Do you know whether DMG provided a
4 CTX 420V6 to Gortech or not?

5 A They did not.

6 Q Okay. Why didn't they? Why didn't DMG
7 provide them a machine?

8 A The machine was not provided because the
9 transaction was not approved.

10 Q Not approved by who?

11 A Not approved by anyone other than Mark Henne.

12 Q Are you familiar with features of the
13 CTX 420V4 compared to the V6 at all?

14 A I didn't understand, really, what Mark was
15 saying when he was talking about spindles and
16 subspindles. I know that a V6 sounds like it has more
17 functions than a V4, but I don't know, really, how the
18 machines are functioning.

19 Q Okay. Fair enough.

20 Have you reviewed the complaint in this
21 lawsuit and the answer to the complaint?

22 A I've read it.

23 Q And you've read DMG's answer to the complaint
24 as well?

25 A (No verbal response.)

1 CTX 420V4?

2 A Like product brochures, you mean?

3 Q Yeah.

4 A We have product brochure for all machines, so
5 I would assume we have them also for --

6 Q Where do you have those? Where does DMG have
7 those product brochures?

8 A Normally, in each of the offices.

9 Q So even for a CTX 420V4 manufactured in 2003
10 you should still have a product brochure somewhere at
11 DMG?

12 A I really doubt that we would have one that is
13 on the magazine rack in the showroom that you can pull
14 off and look at.

15 Q You would have an archival copy somewhere?

16 A I don't have specific knowledge, but I would
17 think there's -- an electronic copy would be available,
18 would be my assumption. I don't know for sure.

19 Q We'll assume that same would be true, you
20 expect, for a CTX 420V6 manufactured in 2006?

21 A Yes.

22 MR. TEUFEL: I just want to request, to the
23 extent they can be found, the product brochures
24 for those products, the V6 and the V4.

25 MR. HUDOCK: Would you do me a favor; would

1 you write me a letter and tell me what it is,
2 specifically, because I'll forget and, you know,
3 he'll probably forget. But if you could just send
4 me a letter, you want product brochures and I know
5 you wanted a couple other things.

6 MR. TEUFEL: Yeah, we'll do a follow-up
7 letter, recapping the items that Mr. Fitzpatrick
8 indicated probably exist or must exist.

9 MR. HUDOCK: Or may exist.

10 MR. TEUFEL: Yeah. Right. Whatever his
11 statements were. But things that are a fair shot
12 they're there that I would ask you to follow up
13 and try to obtain for us.

14 MR. HUDOCK: I would be happy to do that.

15 MR. TEUFEL: I'm not asking for mountains of
16 stuff, just the specific stuff to price out the
17 various things listed on Exhibit 1, I understand
18 the capabilities of the two different machines,
19 the options and the accessories as well. So,
20 hopefully, that's not asking too much.

21 BY MR. TEUFEL:

22 Q But the pricing information that was provided
23 in the interrogatory responses with regard to -- Look,
24 for example, at answer to interrogatory number 10 and
25 interrogatory number 11. Where did DMG obtain the list

1 price of a new CTX 420V6?

2 A It would have been out of our pricing --

3 Every machine has a list price.

4 Q Okay. Where would have that been found by --

5 What did you reference to give that information?

6 A It would have been from our quoting system.

7 Q And is that quoting system something capable

8 of generating like a printout of that pricing

9 information that could be produced to us in this case?

10 A Yes. At that time we could do it. I don't

11 know what the archiving process is, but --

12 Q These answers were provided to us in March of

13 2010, so as of March 2010 you were able to access the

14 quoting system and print out the information. You

15 don't know if you could do it today?

16 A I would assume, if I could do it in February,

17 I could do it today.

18 MR. TEUFEL: I'll add that to the list that

19 I'll send to you in the letter.

20 Q And the information given in paragraph 12 as

21 to the list price of a new CTX 420V4, that also would

22 have been accessed in the same place, on the quoting

23 system?

24 A Yes.

25 Q We're going to turn to the deposition notice,

1 documents and so forth?

2 A We keep documents normally at least six
3 years.

4 Q Did DMG seek to preserve documents related to
5 this case?

6 A The binder for the original machine purchase,
7 which was a CTX 320 machine, I kept in my office when
8 this complaint was filed so that it wouldn't get
9 destroyed.

10 Q Do you know what a litigation hold is?

11 A No.

12 Q Okay. Did DMG make any kind of efforts to
13 suspend its document retention policy with respect to
14 documents related to this case so that, if there's any
15 documents related to this case that are six years or
16 older, they wouldn't get thrown away?

17 A The documents related to this case would all
18 be in that one binder, and that's the one I pulled out.

19 Q Except, for example, e-mails wouldn't be in
20 the binder; they would be on the computer. Right?

21 A Right.

22 Q Any efforts to try and preserve those?

23 A I don't know what the policy is for purging
24 e-mails, but I could find out.

25 Q Is there any document or policy that would

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Plaintiff's Motion to Compel Discovery Responses was served upon the following by deposit in the United States mail, first class postage prepaid, this 9th day of May, 2011.

Joseph A. Hudock, Jr.
Summers, McDonnell, Hudock, Guthrie & Skeel, P.C.
707 Grant Street,
Suite 2400, Gulf Tower
Pittsburgh, PA 15219



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

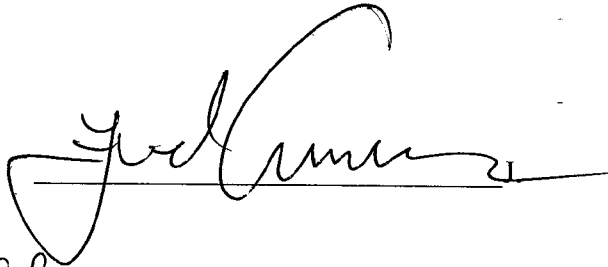
GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

SCHEDULING ORDER

AND NOW, this 12 day of May, 2011, upon consideration of the Motion to Compel Discovery Responses, filed by Plaintiff Gortech Global Fabrication, LLC, it is hereby Ordered that:

1. a rule is issued upon the respondent to show cause why the movant is not entitled to the relief requested;
2. the respondent shall file an answer to the motion within 15 days of the date of the this Order;
3. argument shall be held on June 22, 2011 at 2:30 pm in Courtroom No. 1 of the Clearfield County Courthouse;
4. notice of entry of this Order shall be provided to all parties by the moving party.

FILED ICC
0225674 Atty Tensel
MAY 12 2011
William A. Shaw
Notary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

**ANSWER TO PLAINTIFF'S
MOTION TO COMPEL**

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

Counsel of Record for this Party:

Joseph A. Hudock, Jr.
PA I.D. #66064

SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, P.C.
Firm #911

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

16887

5 **FILED** no cc
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MAY 26 2011
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

ANSWER TO PLAINTIFF'S MOTION TO COMPEL

AND NOW comes the Defendant, DMG Chicago, Inc., by and through its attorneys, Summers, McDonnell, Hudock, Guthrie & Skeel, and sets forth the following Answer to Plaintiff's Motion to Compel and in support thereof avers as follows:

By way of background, defendant, DMG Chicago, Inc., is a subsidiary of DMG America, Inc., which in turn is owned by the Gildemeister Gruppe, a German corporation. Since the time of the initiation of the instant case, DMG Chicago, Inc. has radically downsized its operations and has moved twice. There are today only 10 or 12 employees of DMG Chicago, whereas at the time of the events complained of in the plaintiff's Complaint there were upwards of 80.

Undersigned counsel's only contact person at DMG Chicago, Inc. is the controller, Gerald Fitzpatrick, who was responsible for responding to the plaintiff's document

requests.

Mr. Fitzpatrick also gave a deposition on November 11, 2010 in which he was asked about various categories of documents. A true and correct copy of Mr. Fitzpatrick's deposition transcript is attached hereto as Exhibit "A." Mr. Fitzpatrick did bring two additional documents with him to the deposition and they were made available to plaintiff's counsel. (See Exhibit "A", Pages 10-11.) In the deposition, Mr. Fitzpatrick did acknowledge that there must be e-mails in DMG's computer system which related to plaintiff, Gortech Global Fabrication, LLC (Gortech). (See Exhibit "A", Page 11.)

Counsel for Gortech also asked Mr. Fitzpatrick if he had any price lists for various products, and Mr. Fitzpatrick answered that he assumed that such documents would be available but did not know because that is outside of his department. (See Exhibit "A", Page 11.) Counsel for Gortech next asked Mr. Fitzpatrick whether he had documents listing options for the product in question, and Mr. Fitzpatrick initially indicated that the company must have a document listing the options but then later indicated that the order form and invoice for the product in question dated to 2005 so he was not sure if these items still existed. (See Exhibit "A", Page 19.) He further indicated that the person in the purchasing office who would have custody of that document was no longer with the company; that if the document was still available, it was likely to be stored off site; and that it would be a challenge to locate it. (See Exhibit "A", Page 20.)

Counsel for Gortech later requested product brochures for the products in question at which point the undersigned asked Gortech's counsel to send him a letter itemizing his request for additional documents. (See Exhibit "A", Pages 40-41.) Counsel for Gortech asked Mr. Fitzgerald about the efforts DMG took to preserve documents related to this

case. Mr. Fitzgerald indicated that he maintained a binder relating to one of the products at issue and he kept it in his office so it would not get destroyed. (See Exhibit "A", Page 45.) Mr. Fitzgerald also indicated that he did not know what the company policy was regarding purging e-mails.

Following the deposition, plaintiff's counsel sent a letter on March 11, 2011 requesting additional documents mentioned in the deposition. Attached hereto as Exhibit "B" is a true and correct copy of plaintiff's counsel's letter of March 11, 2011. Plaintiff's counsel dogmatically insists in his letter and in the Motion to Compel that DMG must have other documents available which are responsive to plaintiff's discovery requests. In point of fact, Mr. Fitzpatrick made clear at his deposition that documents may or may not be available. As stated *supra*, DMG has downsized its Chicago operations and has moved twice. Consequently, not every document requested by plaintiff's counsel may still be in existence, if it ever existed at all. Furthermore, Mr. Fitzpatrick is a controller and not a salesman and therefore does not deal with the requested documents on a daily basis. Nevertheless, after receiving the Motion to Compel, Mr. Fitzpatrick made further inquiries and has been able to locate e-mails, quotations for the products in question, invoices, price lists and two product brochures. All of these documents will be forwarded to plaintiff's counsel on May 26, 2011.

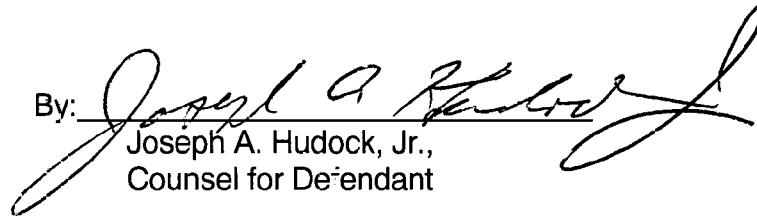
Mr. Fitzpatrick advises that he has been in contact with the IT department at DMG, and it has not yet finished its search of the e-mail database. One complication is that e-mail accounts of terminated employees are deleted. It is possible that the IT department will be able to find additional e-mails responsive to the request. If so, they will be provided to plaintiff's counsel.

It is therefore DMG's position that it has made every reasonable effort to respond to plaintiff's document requests under the circumstances outlined above. Consequently, the plaintiff's Motion to Compel should be denied.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.

By: _____


Joseph A. Hudock, Jr.,
Counsel for Defendant

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

1

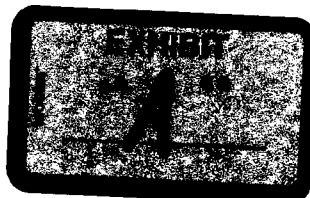
1 IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
2 COMMONWEALTH OF PENNSYLVANIA
3 CIVIL DIVISION

4 - - -
5 GORTECH GLOBAL FABRICATION,)
6 LLC,)
7)
8 Plaintiff,)
9)
10 vs.) No. 07-754 CD
11)
12 DMG CHICAGO, INC.,)
13)
14 Defendants.)
15 - - -

16 THURSDAY, NOVEMBER 11, 2010

17 - - -
18 The deposition of GERALD FITZPATRICK, called as a
19 witness by the Plaintiff, pursuant to notice and the
20 Pennsylvania Rules of Civil Procedure pertaining to the
21 taking of depositions, taken before me, the
22 undersigned, Rebecca L. Schnur, Notary Public in and
23 for the Commonwealth of Pennsylvania, at the offices of
24 Eckert Seamans Cherin & Mellott, LLC, 44th Floor, U.S.
25 Steel Tower, 600 Grant Street, Pittsburgh,
Pennsylvania, 15219, commencing at 11:09 o'clock a.m.,
the day and date above set forth.

18 - - -
19
20 NETWORK DEPOSITION SERVICES
21 1101 GULF TOWER
22 707 GRANT STREET
23 PITTSBURGH, PENNSYLVANIA 15219
24 - - -
25



NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

2

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Gregory H. Teufel, Esq.
4 Jeremy L. S. Samek, Esq.
5 Eckert Seamans Cherin & Mellott, LLC
6 44th Floor, U.S. Steel Tower
7 600 Grant Street
8 Pittsburgh, PA 15219

9 For the Defendant:

10 Joseph A. Hudock, Jr., Esq.
11 Summers McDonnell Hudock
12 Guthrie & Skeel, P.C.
13 707 Grant Street
14 Suite 2400, Gulf Tower
15 Pittsburgh, PA 15219

16 Also Present:

17 Dennis Raybuck

18 - - -

19 I-N-D-E-X

20 EXAMINATION BY:

PAGE:

21 Mr. Teufel

3

22 - - -

23 EXHIBIT INDEX

24 Deposition Exhibit

MARKED

25	1	CTX 420V6 Sales Order	6
	5	Amended Notice of Deposition	9
26	6	Complaint	28
	7	Answer and New Matter	28
27	8	Answers to Interrogatories	32
	9	10/8/06 Henne Letter	33

28

29 - - -

30

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

3

1 GERALD FITZPATRICK,
2 called as a witness by the Plaintiff, having been first
3 duly sworn, as hereinafter certified, was deposed and
4 said as follows:

5 EXAMINATION

6 BY MR. TEUFEL:

7 Q Good morning, Mr. Fitzpatrick. I'm Greg
8 Teufel. I'm representing the plaintiff in this lawsuit
9 against the defendant DMG Chicago, Inc. Throughout the
10 deposition, when I refer to "this lawsuit," I'll be
11 referring to that lawsuit. Okay?

12 How are you feeling today?

13 A I'm fine. Thank you.

14 Q Are you taking any medications that could
15 affect your testimony?

16 A No.

17 Q If at any point you feel yourself getting
18 tired, thirsty, distracted, et cetera, please just let
19 me know. We can take a break any time you want.

20 A Okay.

21 Q Have you ever been deposed before or
22 testified as a witness?

23 A Yes.

24 Q How many times?

25 A Once.

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

4

1 Q Can you give me just a general description of
2 that circumstance.

3 A It was a deposition for an employment-related
4 case.

5 Q Where DMG was being sued?

6 A Yes.

7 Q And just a deposition, not a trial?

8 A It was only a deposition.

9 Q So you may remember some of the ground rules
10 for deposition. You weren't here earlier when I
11 explained them to Mr. Henne. I'll go through them real
12 quickly.

13 Please make your answers audible, such as a
14 "yes" or "no," instead of nodding or shaking your head.
15 You can shake your head all you want but also say "yes"
16 or "no," whatever the answer is.

17 A Okay.

18 Q Try to remember to actually say "yes" or "no"
19 rather than "uh-huh" or "huh-uh."

20 We need to try very hard not to interrupt
21 each other because the court reporter can only take
22 down what one person is saying at a time. Please try
23 to let me finish a question before you answer. Try not
24 to interject any "uh-huhs" while you're listening to
25 the question.

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

5

1 If you aren't sure you fully heard a
2 question, please let me know, and I'll repeat it. If
3 you aren't sure you understand a question or a word I
4 use, please let me know. I'll be happy to try to
5 explain it.

6 If you're not sure about your answer to the
7 question, you're not sure what the answer is, it's okay
8 to still tell me what you think the answer is, but
9 please make sure that you also tell me that you're not
10 sure.

11 If at any time you realize an answer you gave
12 was incorrect, you can stop me; we can go back to an
13 earlier question, and you can correct any of your
14 answers. Even after the deposition is over your
15 counsel will provide you, hopefully, with a copy of the
16 transcript to look over. If you see anything that is
17 wrong, please let your counsel know, and he'll let us
18 know.

19 Throughout the deposition I'm going to be
20 referring to some things that I want to get clear up
21 front for you. When I refer to Gortech, I'm talking
22 about Gortech Global Fabrication, LLC. And, then, when
23 I refer to DMG -- I know there's a number of --
24 potentially a number DMG entities, but I'm talking
25 about DMG Chicago, Inc., the defendant in this lawsuit.

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

6

1 When I refer to the CTX 420V4, I'm talking
2 about the machine that Gortech, I guess, still has in
3 its possession that it had received from DMG, that
4 CTX 420V4. And when I refer to the CTX 420V6, I'm
5 going to be referring to what was Exhibit 1 to the
6 prior deposition and it's going to be Exhibit 1 to this
7 deposition as well.

8 MR. TEUFEL: Please show the witness --
9 There's Exhibit 1.

10 (Whereupon, Deposition Exhibit 1 was
11 presented for identification.)

12 Q When I refer to the CTX 420V6, I'm referring
13 to the machine that's referenced in Exhibit 1 there
14 that's in front of you. When I refer to the contract,
15 I'm going to be referring to Exhibit 1, the same
16 document you're seeing in front of you.

17 I expect this will be a fairly short
18 deposition. I want to address some basic background
19 information on you before we get rolling through the
20 more substantive questions.

21 Can you give me your full name and address
22 for the record.

23 A Yes. Gerald Fitzpatrick.

24 Q Can you spell that.

25 A G-e-r-a-l-d F-i-t-z-p-a-t-r-i-c-k.

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

7

1 The address is 3251 Oak Knoll Road in
2 Carpentersville, Illinois.

3 Q And can you give me your education history,
4 please.

5 A I have a Bachelor's degree in accounting.

6 Q From what college?

7 A Northern Illinois University.

8 Q When did you graduate?

9 A 1986.

10 Q Can you give me your employment history after
11 college.

12 A Yes. I worked for Arthur Anderson in Chicago
13 for two years. I worked for Arthur Anderson in
14 Los Angeles for a year. I worked for Merit Abrasive
15 Products in the Los Angeles area. And I worked for
16 U. S. Wood Corporation in Los Angeles for one year.
17 And then I joined DMG Los Angeles in 2001 and
18 transferred to DMG Chicago in 2004.

19 Q What jobs did you have with Merit Abrasive
20 Products?

21 A I was the corporate controller.

22 Q I assume you were an accountant with Arthur
23 Anderson?

24 A I was an auditor.

25 Q Auditor?

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

8

1 A Yeah.

2 Q With U.S. Wood Corp. what was your position?

3 A I was also corporate controller.

4 Q What was your position with DMG Los Angeles?

5 A Controller.

6 Q What was your position with DMG Chicago?

7 A Controller.

8 Q What is a controller? What are your basic
9 job duties?

10 A It's performing all of the accounting
11 functions, from preparing the monthly and year-end
12 financial statements, supervising the processing of the
13 payroll, paying the bills, collecting the accounts
14 receivable, all the financial functions.

15 Q You've been designated to testify on behalf
16 of DMG at this deposition. Is that correct?

17 A That's correct.

18 Q You understand that you've been designated to
19 testify as to the matters known or reasonably available
20 to DMG and to give binding answers on behalf of DMG.
21 Do you understand that?

22 A Yes. Yes.

23 Q Okay. Did you do anything to prepare for
24 today's deposition?

25 A I reviewed the notes that I had on this case,

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

9

1 which were mainly the items that had already been
2 submitted that you have and my attorney has.

3 Q Okay. Are you talking about handwritten
4 notes?

5 A No, not handwritten notes. The documents,
6 the documents that have been submitted.

7 Q Can you recall specifically what the
8 documents were kind of just off the top of your head
9 the best you can recall?

10 A The main document is the -- I think it was
11 request for information and the answers that were
12 provided, and behind that document were several
13 exhibits, and I believe that Exhibit 1 and Exhibit 2
14 and Exhibit 3 were in that set.

15 Q Okay. Now, I want to mark as Exhibit 5 a
16 document you already have there, which I'll hand to
17 you. Can you look at it. This is, actually, the
18 amended notice of deposition for today's deposition of
19 DMG Chicago, Inc.

20 (Whereupon, Deposition Exhibit 5 was marked
21 for identification.)

22 Q Did you review this amended notice of
23 deposition or the notice of deposition prior to coming
24 to today's deposition?

25 A Yes, I read it.

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

10

1 Q So did you review, then, the list of topics,
2 Exhibit A, matters to be inquired into and materials to
3 be produced?

4 A I'll have to reread it again, but --

5 Q Is that familiar to you?

6 A Yeah, I mean, I read it. I read this
7 document before.

8 Q Okay. And so, then, did you gather materials
9 to be produced then at this deposition?

10 A I didn't gather documents. I made a search,
11 once again, in my office of documents that could be
12 related to this case.

13 Q You didn't find any?

14 A The only ones that I found were the ones that
15 were already provided. And I did find a list that
16 shows the spare parts that had been submitted on this
17 machine that were from 2006. And I found a service
18 document that was prepared and signed by the customer
19 after the machine was serviced in February of 2006.

20 When I say "machine," I mean the 420.

21 Q So did you bring with you today any new
22 documents to be produced as a part of this lawsuit?

23 A The only new documents would be those two.

24 Q Can I get those from you?

25 MR. HUDOCK: Yeah, if you want to produce

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

11

1 those.

2 A I think it was these two.

3 MR. HUDOCK: Yeah, if you want to make copies
4 of those, feel free.

5 MR. TEUFEL: Let me look at them real
6 quickly.

7 Q I appreciate you bringing those documents
8 with you. Did you search on the DMG computers at all
9 for the type of documents being requested in the notice
10 of deposition?

11 A No, I didn't.

12 Q Do you know if any e-mails exist related to
13 this case, related to Gortech, on DMG's computer
14 system?

15 A There must be e-mails on the computer system.

16 Q I don't know if you heard Mr. Henne reference
17 price lists for options for the V6, the CTX 420V6. Do
18 you believe that DMG would still have price lists that
19 would be accurate for 2006 pricing for the CTX 420V6?

20 A I don't know specifically, but I would have
21 to assume the documents would be available, but I don't
22 know that because it's not really my area.

23 MR. TEUFEL: Are we able to get both those
24 price lists?

25 MR. HUDOCK: I would have no idea. I mean,

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

12

1 you've heard him just say he's assuming that
2 they're there. I mean, if they are and we could
3 get them, we'll get them to you. But, you know,
4 to the extent it's based on assumption, that may
5 or may not be the case.

6 MR. TEUFEL: Okay. I just want to request
7 that we have those at some point. We'll try and
8 assemble the pricing information to price all the
9 items that we were promised.

10 BY MR. TEUFEL:

11 Q Did you speak with anyone to prepare for
12 today?

13 A Only with my attorney.

14 Q Have you spoken with anyone prior to this
15 deposition about the contract or Gortech other than
16 your attorney?

17 A What time frame are you speaking of?

18 Q Ever.

19 A Ever.

20 Q In the past.

21 A In the past?

22 Q Yeah.

23 A This has been going on for something like
24 four years.

25 Q Okay.

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

13

1 A So during the course of those four years
2 there were different documents that had to be
3 submitted. And I can't remember every conversation.

4 Q Sure.

5 A But I'm sure, in gathering the documents, I
6 had to look through the files, and I may have talked to
7 other people at DMG about it.

8 Q Any specific conversations between you and
9 other people at DMG regarding Gortech or regarding this
10 case?

11 A I know that I spoke to Mark Henne when he was
12 still employed by DMG.

13 Q What can you recall about that conversation?

14 A Only -- I think it was at the very beginning
15 when the issue was first raised, but I don't even
16 remember what we talked about other than what the
17 problem was and how did we find ourselves in this
18 situation and how did we solve the problem. But
19 specifics I can't recall. It had to be in 2006.

20 Q You heard portions of Mr. Henne's deposition.
21 Correct?

22 A I did.

23 Q Was there anything that he testified that did
24 not sound correct to you?

25 A Not that didn't sound correct. There were

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

14

1 some things that I didn't know that he testified to,
2 which I think is normal. But nothing that he said
3 struck me as being not correct or not true.

4 Q What were some of the things that he said
5 that you didn't know before?

6 A I didn't know who authorized the swap of the
7 machine. He says that he was told by Peter Riehle or
8 Darren McCarthy to do it, but I don't know -- I've
9 never seen any document about it. I don't know --
10 There's no way for me to tell whether it's true or not,
11 but I have to -- if he says it, I have to assume that
12 it was true.

13 Q Do you recall speaking with anyone else at
14 DMG regarding the contract, Exhibit 1, or this case or
15 regarding Gortech prior -- in the past other than Mark
16 Henne?

17 A There was some correspondence with Phil
18 Rugari, and I think that there may even be something in
19 the file about Phil Rugari's name coming up, who took
20 over from Jim Gondeck in 2007. At one time he was
21 inquiring about what this case was all about because he
22 wasn't with the company when the transaction occurred.

23 Q Can you recall specifically what
24 conversations you may have had with Phil Rugari?

25 A I don't remember the specifics.

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

15

1 Q Okay. Fair enough.

2 So other than the conversations you've
3 already described, can you remember any other
4 conversations you've had other than with the lawyer
5 about this case or about Gortech or about the contract?

6 A Yeah. The only other person that I would
7 have talked to at some point would have been York
8 Franke, who is the one that made the offer to trade the
9 CTX 320 for the 420.

10 I think I had the numbers right.

11 Q Correct.

12 What did you discuss with York Franke?

13 A I would have asked him about the transaction.
14 Again, it was when we realized that there was a problem
15 or I first realized that there was a problem and
16 something was happening with this customer and this
17 machine. I would have at some point talked to him
18 about his involvement in it. And when I asked him
19 about it, I'm sure he would have given me these
20 documents that you show as Exhibit 2, which is
21 basically his invoice to Gortech.

22 Q Did Mr. Henne, in his role as area sales
23 manager at DMG, have the authority to enter into the
24 contract at Exhibit 1?

25 A No.

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

16

1 Q Why do you say that?

2 A I say that because it's a very -- First of
3 all, it says that it has to be signed by an officer of
4 DMG, but the second reason is, it's an unusual
5 transaction. It's not a normal transaction.

6 Q When you say it says that it has to be signed
7 by an officer of DMG, where does it say that?

8 A It says, "Accepted by an officer of DMG," on
9 the very bottom, "this" blank "day of" blank two
10 thousand blank.

11 (Discussion off the record.)

12 Q We're back on the record.

13 Did you hear Mr. Henne's testimony that he
14 had signed similar agreements to this in the past as
15 area sales manager on behalf of DMG?

16 A Yes. I think he signed documents that were
17 for machine sales, where a customer is buying a
18 machine, you know, for cash. But I don't think that he
19 ever signed -- or I never saw another document signed
20 by a salesman where they take an old small machine and
21 exchange it evenly for a new larger machine. That's
22 why I said it was an unusual transaction.

23 Q So when Mr. Henne signs an agreement like
24 Exhibit 1, hands it to a customer, is it your
25 understanding that a customer's supposed to understand,

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

17

1 because it says "Accepted by an officer of DMG," that
2 Mark Henne's not an officer and he's not authorized to
3 sign this document?

4 A I'm not saying that the customer should know
5 that.

6 Q Okay. So from DMG's perspective, what else
7 would have had to happen after Mark Henne signed and
8 gave this to the customer for it to become an
9 authorized, binding agreement? What else would DMG
10 have required?

11 A For a transaction like this, swapping a used
12 old machine for a newer bigger machine, it would have
13 had to have been authorized by the president of the
14 company. And I don't know if we have a specific rule,
15 but an unusual transaction like this we do have a
16 four-eye principle where two managers have to approve
17 it.

18 Q A what principle?

19 A They call it the "four eyes," where two sets
20 of people have to sign an agreement.

21 Q Four eyeballs?

22 A Four eyeballs.

23 Q Gotcha. I didn't know if you meant four I's
24 as in the letter I.

25 But, again, that's not necessarily something

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

18

1 that the customer should know or be aware of?

2 A From the customer's point of view, I cannot
3 assume that they would know that.

4 Q .Do you happen to know, in looking at
5 Exhibit 1, the values of the various listed -- For
6 example, the options and accessories for the CTX 420V6,
7 without looking at a price list, off the top of your
8 head, are you able to say what the value of all options
9 and accessories would be?

10 A When it's referred to "all options and
11 accessories" and referring to a serial number, that
12 means the options and accessories that that machine is
13 equipped with. It doesn't mean every single option
14 available --

15 Q Gotcha.

16 A -- because that would mean you could have a
17 machine in three different colors with three different
18 controls. It doesn't make sense to have --

19 Q Okay. A hundred options wouldn't make any
20 sense?

21 A Yeah, because they overlap. You can't
22 have --

23 Q What options did the machine with that serial
24 number have?

25 A I don't specifically know.

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

19

1 Q How would we determine that?

2 A We must have a document that lists the
3 options for that, for that specific serial number.

4 MR. TEUFEL: I just want to make a request
5 for that document, if it can be found, listing the
6 options.

7 MR. HUDOCK: Yeah. Do you know if that
8 document -- You say it must be there. How do you
9 know it must be there?

10 THE WITNESS: At one point DMG Chicago would
11 have bought this machine from the factory. If we
12 can locate the order and the invoice from the
13 factory, it will list all the options. This is
14 2005, so I'm not sure if it exists.

15 MR. HUDOCK: I'm sure Greg's going to have to
16 ask you: Who would have this? Where are they
17 normally kept?

18 MR. TEUFEL: I wouldn't have asked where is
19 it normally kept.

20 THE WITNESS: The documents relating to the
21 purchases of machines would be kept in the
22 purchasing office. And the documents are purged
23 after a number of years, and I'm not sure that
24 this would still be available.

25

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

20

1 BY MR. TEUFEL:

2 Q And who in the purchasing office would you
3 contact to receive that document?

4 A Unfortunately, the person that was there at
5 this time is no longer with the company.

6 Q So who would you -- How would you follow up
7 on this document?

8 A I would look to see if there are any old
9 boxes that have purchasing documents in them. We had
10 moved twice since this machine was purchased, so it's
11 more likely, if it is still available, that it's stored
12 off site. That might be a challenge to locate it.

13 Q Do we know what customer this CTX 420V6 with
14 that serial number that's listed in Exhibit 1 was sold
15 to?

16 A I don't know.

17 Q How would we determine that?

18 A I could also research that, but it's the same
19 situation where we would have to make a search and try
20 to find the documents.

21 Q Pretty unlikely, though, that DMG would lose
22 track of a customer from 2006 for a big machine like
23 that. Right?

24 A Yes. I would say that the other option
25 available to see where that machine is now is, there's

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

21

1 a central database that we could search by serial
2 number, and it would say where that machine is
3 installed today, if it's still installed.

4 Q Okay.

5 A But that's a little bit different from
6 finding the options because the options you have to
7 actually go back to a piece of paper, not actually
8 finding the location of the machine.

9 Q If you look at the machine, you can see what
10 a lot of options are?

11 A I couldn't because I'm an accounting guy.
12 But somebody would be able to. Yes.

13 Q Okay. The services tooling package, do you
14 have any idea what that would cost?

15 A I don't even know what that is.

16 Q What about machine installation and training;
17 what were the typical charges associated with that?

18 Was Mark Henne accurate in describing what
19 those charges were?

20 A He was accurate. Every machine has a
21 different number of days to install. And the numbers
22 that Mark referred to sounded reasonable to me.

23 Q Okay. Do you know what "T.C. Services
24 Tooling" -- what "T.C." would refer to?

25 A I've never heard that term, and I'm not sure

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

22

1 what it is.

2 Q Okay. Would we find the pricing information
3 regarding the services tooling in the same place you'd
4 find the pricing information for the options?

5 A I don't think so because I never heard of
6 T.C. services, so I wouldn't even know where to begin
7 to look.

8 For the configuration, it's built by the
9 factory, so, if we find that invoice, we can see the
10 options.

11 T.C. services, I don't even know -- It says
12 tooling, so it could be a third party, but I really
13 don't know.

14 Q Were tooling packages for machines that DMG
15 sold typically third party or typically DMG made?

16 A Typically, they weren't offered -- The
17 typical situation is, they're not offered with the
18 machine. Sometimes the customer requests tooling, and
19 we would purchase that and deliver it with the machine.
20 I would say it's not normal.

21 Q So when they ultimately purchase the tooling
22 package for a DMG machine, it would typically be
23 purchased from some other company other than DMG?

24 A Yes.

25 Q Do you have any idea what the tooling

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

23

1 packages would run for a lathe of this nature, what the
2 ballpark cost of a tooling package would be?

3 A I can't say because you can order a package
4 and you want two tools for \$100 or a thousand tools for
5 \$100,000.

6 Q Gotcha.

7 A I mean, there's no way to say what a typical
8 package would be.

9 Q Thank you.

10 Do you know what the approximate value, in
11 2006, of the used CTX 420V4 was that was being traded
12 in on Exhibit 1?

13 Better question, I guess, would be: How
14 would you go about determining the value of that
15 machine?

16 A On the value of a trade-in machine?

17 Q Yeah.

18 A Is that the question?

19 Q Uh-huh.

20 A Normally -- First of all, it's not really my
21 area.

22 Q Okay.

23 A And I have some knowledge of the percentages
24 that are used to depreciate machines only because, when
25 working with finance companies, when they finance a

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

24

1 machine --

2 Q Right.

3 A -- they want to finance a value so that they
4 are never going to be under water on a machine. And
5 the people that I know in the industry use 30 to
6 35 percent in the first year.

7 Q And, then, what about subsequent years?

8 A In subsequent years it goes down by a smaller
9 percentage.

10 What Mark said in his testimony that -- or
11 his deposition, that after five years it's fully
12 depreciated, is probably reasonable. I would say five
13 to seven years.

14 Q Not to get too technical here, but would that
15 be sort of -- after the first 30 to 35 percent, would
16 it typically be like a straight line depreciation from
17 there of an equal percentage per year?

18 A That would be my assumption.

19 Q Would there be additional depreciation based
20 on the condition of the machine? If it were
21 particularly a damaged machine that had been repaired
22 multiple times, would it impact the depreciation more
23 so?

24 A I would think it would have to.

25 Q Are you aware of the damage issues with

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

25

1 regard to the CTX 420V4 that Gortech had?

2 A I heard that there was a collision and the
3 machine may have been out of alignment, but I don't
4 know how severe, but I've heard that the machine may
5 have had a collision.

6 Q So a 2003 machine -- I take that as an
7 assumption, that the CTX 420V4 was a 2003 machine that
8 Gortech had, had some damage issues. You're not sure
9 of the scope of them.

10 An original price DMG has provided -- I
11 presume you provided the information -- that it was
12 \$193,900, the original price of the V4. Would you take
13 off 30 to 35 percent for the first year and then, you
14 know, at least 10 percent a year thereafter additional,
15 so maybe another 20 percent at least, so you'd be
16 looking at a value of the CTX 420V4 of, at most, half
17 of its original price?

18 A At what time period are you saying?

19 Q Now at 2006. Sorry.

20 By 2006 a 2003 machine of this nature would
21 be down to, at most, half its original price?

22 A I would say it's possible. It depends on the
23 use and the condition. And if it's sitting in a
24 warehouse and not used, obviously, it's different than
25 if it's used in a heavy production environment.

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

26

1 Q Sure. Okay. Certainly, you wouldn't put the
2 value of the CTX 420V4 over \$100,000; would you, this
3 particular one, knowing what you know about it?

4 A The CTX 420V4?

5 Q Yeah, the one they're turning in. You
6 wouldn't put it over \$100,000 in value at that point,
7 would you, given its original price of \$193,000, given
8 what you know about its condition?

9 MR. HUDOCK: When you say "at that point," do
10 you refer to sometime in 2006?

11 MR. TEUFEL: As of June 2006.

12 A The \$193,000, can you clarify, is that the
13 list price without options?

14 Q Yes.

15 A Okay. Because I think you have to look at it
16 a little bit more -- in more detail. That is -- The
17 193 is the base machine and then options, so you're
18 starting from a different point.

19 Q Gotcha.

20 A I just want to make sure I understand.

21 Q The value of the base machine -- Let's put it
22 that way -- wouldn't be more than \$100,000 in June of
23 2006; would it? The value of the base machine. Let's
24 forget the options for a second.

25 A Using the percentage we discussed, if it was

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

27

1 used for two or three years in a production
2 environment, I would say that that would be the case.

3 Q Okay. Do you know whether DMG provided a
4 CTX 420V6 to Gortech or not?

5 A They did not.

6 Q Okay. Why didn't they? Why didn't DMG
7 provide them a machine?

8 A The machine was not provided because the
9 transaction was not approved.

10 Q Not approved by who?

11 A Not approved by anyone other than Mark Henne.

12 Q Are you familiar with features of the
13 CTX 420V4 compared to the V6 at all?

14 A I didn't understand, really, what Mark was
15 saying when he was talking about spindles and
16 subspindles. I know that a V6 sounds like it has more
17 functions than a V4, but I don't know, really, how the
18 machines are functioning.

19 Q Okay. Fair enough.

20 Have you reviewed the complaint in this
21 lawsuit and the answer to the complaint?

22 A I've read it.

23 Q And you've read DMG's answer to the complaint
24 as well?

25 A (No verbal response.)

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

28

1 MR. TEUFEL: Let me go ahead and I'll mark
2 (Whereupon, Deposition Exhibit 6 was marked
3 for identification.)

4 (Whereupon, Deposition Exhibit 7 was marked
5 for identification.)

6 BY MR. TEUFEL:

7 Q You've seen these documents before,
8 Exhibits 6 and 7?

9 A I have seen them before.

10 Q In fact, you were not the one that signed the
11 verification of the answer. That was Mark Henne.

12 Were you asked to review the answer before it
13 was submitted to the court?

14 A Honestly, I don't remember.

15 Q Okay. Let's look at the new matter. That
16 would be near the end. It says "New Matter" at the top
17 of the page.

18 A It starts with 52?

19 Q Okay.

20 A Yeah.

21 Q It says there that "Defendant pleads the
22 defense of accord and satisfaction as an affirmative
23 defense to all of the plaintiff's claims."

24 Do you know what that references?

25 A It sound like some legal terms, and I don't

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

29

1 really understand what that means.

2 Q Do you have any information of Gortech
3 agreeing to a settlement of this matter?

4 A To a settlement of --

5 Q Of this lawsuit --

6 A No.

7 Q -- or these claims.

8 A No.

9 Q In 53 of the new matter it says, "Defendant
10 pleads the defense of impossibility of performance as
11 an affirmative defense. . ."

12 Do you know what that's referencing?

13 A It also sounds like some legal terms. I
14 could guess, but I can say that I don't know exactly
15 what it means.

16 Q So you don't have any information supporting
17 the concept that it would have been impossible for DMG
18 to deliver the machine as promised?

19 A No, other than --

20 MR. HUDOCK: I'm just going to place an
21 objection on the record to the form of the
22 question. It wasn't that DMG promised it. As
23 you've heard the testimony, Mark Henne promised
24 it. But he's already answered it.

25 Q So, I mean, DMG, clearly, could have

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

30

1 delivered the equipment as promised in Exhibit 1, we'll
2 say?

3 MR. HUDOCK: I'm going to object. It calls
4 for speculation.

5 MR. TEUFEL: Okay. I still want to have an
6 answer.

7 MR. HUDOCK: Sure. He can answer.

8 MR. TEUFEL: Sure.

9 A Could we have delivered the machine?

10 Q Yes.

11 A Yes.

12 Q Okay. You're not aware of any information
13 why it would have been impossible or impractical to do
14 that?

15 A No.

16 Q Paragraph 55 --

17 A Can I back up one second?

18 Q Sure. Sure.

19 A Just to clarify, I mean, today it would be
20 impossible because the machine is not available.

21 Q Sure.

22 A If you're talking about the time frame when
23 the machine was available --

24 Q Right.

25 A -- it's possible. I don't know exactly what

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

31

1 time frame this is referring to, but, if we don't own
2 the machine today, then I would say it's impossible to
3 deliver that serial number because it's not our machine
4 anymore.

5 Q You also can't sell me the Brooklyn Bridge.
6 Right?

7 A I can't sell you the Brooklyn Bridge.

8 Q Fair enough.

9 In 55 it says, "Defendant pleads the defense
10 of release as an affirmative defense to all of the
11 plaintiff's claims."

12 You're not aware of Gortech releasing its
13 claims in this case; are you, any release of claims by
14 Gortech?

15 A I don't know of that.

16 Q And 56 references supervening or intervening
17 causes of the alleged damages. Are you aware of any
18 specific supervening or intervening causes of Gortech's
19 damages?

20 A Can you ask that in a way that I could
21 understand it better?

22 Q Sure. Are you aware of something else that
23 caused Gortech's damages other than Gortech's alleged
24 breach of contract by DMG?

25 A That caused their damages --

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

32

1 Q In terms of like the losses alleged in the
2 complaint.

3 A I don't know that I really get what we're
4 asking.

5 Q Fair enough. It's not important enough to
6 kill you over it. We'll move on. It's okay.

7 A Okay. I'm sorry.

8 Q It's all right. That's all right. I really
9 don't need to belabor that.

10 Now I want to hand you the discovery
11 responses. We'll mark that the next exhibit.

12 (Pause in the proceedings.)

13 (Whereupon, Deposition Exhibit 8 was marked
14 for identification.)

15 Q I have a few questions regarding the
16 interrogatory responses.

17 First of all, you were the person who signed
18 the verification of these answers. Correct? That's
19 you, Jerry Fitzpatrick, sort of the middle of the
20 document, signing a verification. Right?

21 A Yes. That's my signature.

22 Q On behalf of DMG you verified the answers
23 given were correct?

24 A Yes.

25 Q In answer to interrogatory number 3, on

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

33

1 page 9, you indicated that DMG attempted to send
2 someone to fix the machine in question but was rebuffed
3 by plaintiff.

4 Do you know what that's referencing?

5 A That's referencing the letter that was
6 written, I believe, by Mark Henne to Jens Hardenacke,
7 which I saw either in this stack or one of the other
8 sets of documents.

9 (Whereupon, Deposition Exhibit 9 was marked
10 for identification.)

11 Q What I've just handed you as Exhibit 9, is
12 that the letter you were just referencing?

13 A Yeah. I don't know if this was exactly the
14 letter, although there was a paragraph in this letter
15 where it says several calls to Gortech were unanswered
16 to try to resolve the issue.

17 There is another document in this set of
18 documents where it said that we tried to send someone
19 in, in September of 2006, to do the training, and they
20 said, we don't want to do the training.

21 Q So you're referring to the September 2006
22 time frame of when they tried to send someone to do
23 training, not to fix the machine?

24 A I believe that's what I was referring to.

25 Q Okay.

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

34

1 A I guess, in this whole thing, it was a little
2 unclear whether the problems were machine problems or
3 training problems, so I viewed them as us trying to
4 solve the problem and not being allowed to send our
5 technician.

6 Q Gotcha. I think I understand what you mean
7 there now. Thank you.

8 In interrogatory number 6 we ask, if you
9 contend, as in paragraph 30 of your answer -- if you
10 want to refer back to the answer that you have there as
11 well, which was Exhibit 7, I believe. There's a
12 paragraph 30.

13 A Exhibit 7. Okay.

14 Q It says: "It is specifically denied --" In
15 paragraph 30 of your answer it says: "It is
16 specifically denied that the plaintiff had not received
17 the training to use the machine in question by May
18 2006. To the contrary, the plaintiff did receive the
19 necessary training in a timely manner."

20 We asked, in interrogatory number 6, which is
21 Exhibit 8, I believe: "If you contend, as in
22 paragraph 30 of your answer, that Gortech received the
23 necessary training in a timely manner, identify all
24 facts and documents related to this contention and all
25 persons with knowledge of facts related to this

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

35

1 contention, and please explain in detail the basis for
2 this contention, including the dates on which such
3 training was provided, the number of hours of training
4 provided on such dates, the nature of the training
5 provided on such dates, the persons trained, and the
6 persons providing training."

7 You said: "See answer to interrogatory
8 number 3," which said: We attempted to send someone to
9 fix the machine and were rebuffed.

10 So what is the answer to this question? What
11 is the basis for the contention that all the training
12 was provided in a timely manner?

13 And you heard, did you not, Mark Henne say
14 his understanding was there was an issue with not
15 sufficient training being provided?

16 What is the basis for DMG's contention that
17 all training was provided by May 2006?

18 A There's two things. Number one, I reviewed
19 the document that is -- I don't know what document it
20 is, but it's the invoice from the used machine division
21 for the -- It's document 2. And behind document 2 is a
22 proposal that is referred to for the CTX 420V4 machine.
23 And the proposal says that the machine will be
24 delivered -- I don't have it in front of me, but, going
25 from memory, it says, the machine will be delivered; it

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

36

1 will be installed. It does not say that there will be
2 any training provided.

3 I do remember, although I don't exactly know
4 when or who, that there was an applications engineer
5 that was sent to Gortech or Predator to do training on
6 the new machine, but that would have been over and
7 above what was called for in the agreement because I
8 could not see where training was part of the agreement.

9 And, for me, it made sense because they had a
10 320 machine that they were using. They go to a 420.
11 It's not that different of a machine. Again, I'm not a
12 technical guy, but it makes sense to me that they
13 wouldn't provide training because they would have been
14 trained on their other machine. So that's why I said
15 that the promised training was really zero, but we did
16 provide some training.

17 Q We said, referring back to paragraph 38 of
18 your answer: "If you contend, as in paragraph 38 of
19 your answer, that DMG complied with the contract at all
20 times relevant hereto. . ." -- In paragraph 38 it says:
21 "To the extent a response is deemed necessary,
22 defendant complied with the contract at all times
23 relevant hereto."

24 It says: ". . .DMG attempted in good
25 faith --" in your answer to interrogatory number 7 --

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

37

1 ". . .to provide the machine provided for in the
2 contract but was rebuffed by plaintiff."

3 You don't recall, ever, a situation, do you,
4 where DMG attempted to provide the CTX 420V6 and was
5 rebuffed; do you?

6 A The V6 was never delivered, so --

7 Q Okay. All right. And, then, interrogatory
8 number 9 we asked: "If you contend that the contract
9 is not a valid and binding contract, identify all the
10 facts and documents related to this contention and all
11 persons with knowledge of facts related to this
12 contention and explain why the contract is not valid
13 and binding."

14 Now, just tell me, if you will, all the
15 reasons you are aware of -- I understand you're not a
16 lawyer, but any reasons you're aware of why this would
17 not be a valid and binding contract.

18 A You are referring to Exhibit 1?

19 Q Exhibit 1, yes.

20 A The main reason is that Mark Henne was not
21 authorized to approve, by himself, an unusual
22 transaction where you're swapping out one machine for
23 another machine.

24 Q Okay.

25 A I found out today in his testimony that he

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

38

1 had verbal approval, but I still have not seen anything
2 more.

3 Q Did he need written approval, or was verbal
4 approval sufficient?

5 A Again, if you go to the four-eye principle
6 for a transaction that's unusual like this, for sure
7 you would need at least two people agreeing on DMG's
8 side.

9 Q And he mentioned two people; didn't he? The
10 president and vice president both gave him verbal
11 approval, so that would satisfy your four-eye
12 principle?

13 A It would if I knew what that was about. I
14 mean, I don't know -- I wasn't party to the
15 conversation. I don't know if the facts were presented
16 accurately. I don't know that they were. I do not
17 know that they weren't.

18 Q Okay.

19 A It's hard for me to say one way or the other.

20 Q Okay. But, I mean, if both the vice
21 president and the president provided verbal approval,
22 would that have been sufficient approval for it to be a
23 binding contract as far as you know?

24 A In my opinion, no, because you would need to
25 have something signed.

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

39

1 Maybe that's just my training as an
2 accounting guy, and I like to have things documented.
3 But if we had verbal agreements and nothing written
4 down or backed up, then we end up in a room like this
5 where we're discussing whether something's valid or
6 not, so --

7 Q Is the four-eye principle written down
8 anywhere at DMG? Is that a written policy?

9 A Yes. We have numerous policies, but there
10 is -- I don't remember the name of the document, but
11 there is a policies and procedures manual.

12 Q Is that a policies and procedures manual that
13 Mark Henne would have had?

14 A I don't know.

15 (Discussion off the record.)

16 Q When was the four-eye principle written down?

17 A I don't know.

18 Q Was it written down as of June 2006?

19 A I don't exactly know. I don't exactly know.

20 Q Did it exist even just in unwritten form as a
21 policy, to your knowledge, as of June 2006, the
22 four-eye principle?

23 A I don't know.

24 Q Would DMG have documents relating to the
25 performance features of the CTX 420V6 and the

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

40

1 CTX 420V4?

2 A Like product brochures, you mean?

3 Q Yeah.

4 A We have product brochure for all machines, so
5 I would assume we have them also for --

6 Q Where do you have those? Where does DMG have
7 those product brochures?

8 A Normally, in each of the offices.

9 Q So even for a CTX 420V4 manufactured in 2003
10 you should still have a product brochure somewhere at
11 DMG?

12 A I really doubt that we would have one that is
13 on the magazine rack in the showroom that you can pull
14 off and look at.

15 Q You would have an archival copy somewhere?

16 A I don't have specific knowledge, but I would
17 think there's -- an electronic copy would be available,
18 would be my assumption. I don't know for sure.

19 Q We'll assume that same would be true, you
20 expect, for a CTX 420V6 manufactured in 2006?

21 A Yes.

22 MR. TEUFEL: I just want to request, to the
23 extent they can be found, the product brochures
24 for those products, the V6 and the V4.

25 MR. HUDOCK: Would you do me a favor; would

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

41

1 you write me a letter and tell me what it is,
2 specifically, because I'll forget and, you know,
3 he'll probably forget. But if you could just send
4 me a letter, you want product brochures and I know
5 you wanted a couple other things.

6 MR. TEUFEL: Yeah, we'll do a follow-up
7 letter, recapping the items that Mr. Fitzpatrick
8 indicated probably exist or must exist.

9 MR. HUDOCK: Or may exist.

10 MR. TEUFEL: Yeah. Right. Whatever his
11 statements were. But things that are a fair shot
12 they're there that I would ask you to follow up
13 and try to obtain for us.

14 MR. HUDOCK: I would be happy to do that.

15 MR. TEUFEL: I'm not asking for mountains of
16 stuff, just the specific stuff to price out the
17 various things listed on Exhibit 1, I understand
18 the capabilities of the two different machines,
19 the options and the accessories as well. So,
20 hopefully, that's not asking too much.

21 BY MR. TEUFEL:

22 Q But the pricing information that was provided
23 in the interrogatory responses with regard to -- Look,
24 for example, at answer to interrogatory number 10 and
25 interrogatory number 11. Where did DMG obtain the list

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

42

1 price of a new CTX 420V6?

2 A It would have been out of our pricing --
3 Every machine has a list price.

4 Q Okay. Where would have that been found by --
5 What did you reference to give that information?

6 A It would have been from our quoting system.

7 Q And is that quoting system something capable
8 of generating like a printout of that pricing
9 information that could be produced to us in this case?

10 A Yes. At that time we could do it. I don't
11 know what the archiving process is, but --

12 Q These answers were provided to us in March of
13 2010, so as of March 2010 you were able to access the
14 quoting system and print out the information. You
15 don't know if you could do it today?

16 A I would assume, if I could do it in February,
17 I could do it today.

18 MR. TEUFEL: I'll add that to the list that
19 I'll send to you in the letter.

20 Q And the information given in paragraph 12 as
21 to the list price of a new CTX 420V4, that also would
22 have been accessed in the same place, on the quoting
23 system?

24 A Yes.

25 Q We're going to turn to the deposition notice,

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

43

1 which we marked Exhibit 5. It should be in front of
2 you marked Exhibit 5.

3 (Discussion off the record.)

4 Q Does DMG have any last known address
5 information for York Franke?

6 We heard today from Mark Henne --

7 A Yes.

8 Q -- his work information and cell phone.

9 Do you have an address for York Franke?

10 A I think we provided it.

11 Q I don't think you did.

12 A Did we provide it to you?

13 MR. HUDOCK: Jeremy, I gave that to you;
14 didn't I?

15 MR. SAMEK: Yeah, Mark Henne and -- We have
16 that.

17 MR. TEUFEL: Okay. I'm sorry. I didn't know
18 we have that.

19 MR. HUDOCK: Jeremy, we talked on the phone,
20 I think. Right?

21 MR. TEUFEL: I'm sorry. You already have
22 that?

23 MR. SAMEK: Yeah, the most recent place.

24 MR. TEUFEL: Okay. Sorry about that. The
25 right hand did not know what the left hand knew,

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

44

1 so --

2 Let me make sure I covered all these issues.

3 I think I may have nothing left to ask you.

4 BY MR. TEUFEL:

5 Q Do you know whether the CTX 420V6 had an
6 automatic feeder?

7 That's one of the issues we're trying to nail
8 down. I kind of doubt that you do. But do you happen
9 to know that?

10 A What Mark was talking about was bar feed
11 interfaces and bar feeders.

12 Q Right.

13 A And bar feeders are always bought locally.
14 So I would say that the CTX 420V6 had the interface
15 like Mark mentioned, but the bar loader, itself, would
16 be bought from a local vendor, so I would say it would
17 not have it. It's not normal to buy it for a machine
18 in stock.

19 Q Do you know how much the bar loaders would
20 typically cost?

21 A There are various sizes and configurations,
22 but they're between \$10,000 and \$25,000, is just a
23 guess. I mean, that's just my best guess.

24 Q Okay. All right. What is the document
25 retention policy at DMG? Do you know how long you keep

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

45

1 documents and so forth?

2 A We keep documents normally at least six
3 years.

4 Q Did DMG seek to preserve documents related to
5 this case?

6 A The binder for the original machine purchase,
7 which was a CTX 320 machine, I kept in my office when
8 this complaint was filed so that it wouldn't get
9 destroyed.

10 Q Do you know what a litigation hold is?

11 A No.

12 Q Okay. Did DMG make any kind of efforts to
13 suspend its document retention policy with respect to
14 documents related to this case so that, if there's any
15 documents related to this case that are six years or
16 older, they wouldn't get thrown away?

17 A The documents related to this case would all
18 be in that one binder, and that's the one I pulled out.

19 Q Except, for example, e-mails wouldn't be in
20 the binder; they would be on the computer. Right?

21 A Right.

22 Q Any efforts to try and preserve those?

23 A I don't know what the policy is for purging
24 e-mails, but I could find out.

25 Q Is there any document or policy that would

46

25

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

47

1 C-E-R-T-I-F-I-C-A-T-E

2 I, Rebecca L. Schnur, the undersigned, do hereby
3 certify that the foregoing pages are a true and correct
4 transcript of my stenotypy notes taken of the
5 proceedings held at the above-referenced address on the
6 above-referenced date.

7

8

9


Rebecca L. Schnur
Notary Public in and for the
Commonwealth of Pennsylvania
My Commission Expires: June 16, 2013

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NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

49

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3 November 23, 2010

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5 Joseph A. Hudock, Jr., Esq.

Summers McDonnell Hudock

6 Guthrie & Skeel, P.C.

707 Grant Street

7 Suite 2400, Gulf Tower

Pittsburgh, PA 15219

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9 In re: Gortech vs. DMG

10 Dear Mr. Hudock:

11 Enclosed please find the signature page and a copy of
12 the deposition transcript of Gerald Fitzpatrick taken
before me on November 11, 2010.

13 Please have the witness read the transcript, make any
14 corrections he may have on the errata sheet and sign
the original signature page. Please send the original
15 signed signature page and any corrections to
Gregory Teufel, Esq.

16 If the witness does not sign the transcript within
17 30 days of receipt, signature will be deemed waived.

18 Sincerely,

19

20 Rebecca Schnur

21 CC: Gregory Teufel, Esq.

22

23

24

25

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

1

A	alleged 31:17,23 32:1 ALLEGHENY 48:2 allowed 34:4 amended 2:20 9:18,22 Anderson 7:12 7:13,23 Angeles 7:14,15 7:16,17 8:4 answer 2:21 4:16,23 5:6,7,8 5:11 27:21,23 28:11,12 30:6 30:7 32:25 34:9,10,15,22 35:7,10 36:18 36:19,25 41:24 answered 29:24 answers 2:22 4:13 5:14 8:20 9:11 32:18,22 42:12 48:17 anymore 31:4 APPEARAN... 2:1 applications 36:4 appreciate 11:7 approval 38:1,3 38:4,11,21,22 46:3 approve 17:16 37:21 approved 27:9 27:10,11 approximate 23:10 archival 40:15 archiving 42:11 area 7:15 11:22 15:22 16:15 23:21	Arthur 7:12,13 7:22 asked 15:13,18 19:18 28:12 34:20 37:8 asking 32:4 41:15,20 assemble 12:8 associated 21:17 assume 7:22 11:21 14:11 18:3 40:5,19 42:16 assuming 12:1 assumption 12:4 24:18 25:7 40:18 attempted 33:1 35:8 36:24 37:4 attorney 9:2 12:13,16 audible 4:13 auditor 7:24,25 authority 15:23 authorized 14:6 17:2,9,13 37:21 automatic 44:6 available 8:19 11:21 18:14 19:24 20:11,25 30:20,23 40:17 aware 18:1 24:25 30:12 31:12,17,22 37:15,16 a.m 1:17	backed 39:4 background 6:18 ballpark 23:2 bar 44:10,11,13 44:15,19 base 26:17,21,23 based 12:4 24:19 basic 6:18 8:8 basically 15:21 basis 35:1,11,16 beginning 13:14 behalf 2:2 8:15 8:20 16:15 32:22 belabor 32:9 believe 9:13 11:18 33:6,24 34:11,21 best 9:9 44:23 better 23:13 31:21 big 20:22 bigger 17:12 bills 8:13 binder 45:6,18 45:20 binding 8:20 17:9 37:9,13 37:17 38:23 bit 21:5 26:16 blank 16:9,9,10 bottom 16:9 bought 19:11 44:13,16 boxes 20:9 breach 31:24 break 3:19 Bridge 31:5,7 bring 10:21 bringing 11:7 brochure 40:4 40:10	brochures 40:2 40:7,23 41:4 Brooklyn 31:5,7 built 22:8 buy 44:17 buying 16:17
			C	
			call 17:19 called 1:13 3:2 36:7 calls 30:3 33:15 capabilities 41:18 capable 42:7 Carpentersville 7:2 case 4:4 8:25 10:12 11:13 12:5 13:10 14:14,21 15:5 27:2 31:13 42:9 45:5,14 45:15,17 cash 16:18 caused 31:23,25 causes 31:17,18 CC 49:21 CD 1:7 cell 43:8 central 21:1 Certainly 26:1 CERTIFICA... 48:15 certified 3:3 certify 47:3 48:17 cetera 3:18 challenge 20:12 CHANGE 48:4 48:4 changes 48:3 charges 21:17 21:19	

2

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NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

3

32:22 33:1 36:19,24 37:4 39:8,24 40:6 40:11 41:25 43:4 44:25 45:4,12 49:9 DMG's 11:13 17:6 27:23 35:16 38:7 document 6:16 9:10,12,16 10:7,18 14:9 16:19 17:3 19:2,5,8 20:3,7 32:20 33:17 35:19,19,21,21 39:10 44:24 45:13,25 documented 39:2 documents 9:5,6 9:8 10:10,11 10:22,23 11:7 11:9,21 13:2,5 15:20 16:16 19:20,22 20:9 20:20 28:7 33:8,18 34:24 37:10 39:24 45:1,2,4,14,15 45:17 doubt 40:12 44:8 duly 3:3 duties 8:9	employment 7:10 employment-r... 4:3 Enclosed 49:11 engineer 36:4 enter 15:23 entities 5:24 environment 25:25 27:2 equal 24:17 equipment 30:1 equipped 18:13 errata 48:1,18 49:13 Esq 2:3,3,7 49:5 49:15,21 et 3:18 evenly 16:21 exactly 29:14 30:25 33:13 36:3 39:19,19 EXAMINATI... 2:15 3:5 example 18:6 41:24 45:19 exchange 16:21 exhibit 2:18,19 6:5,6,9,10,13 6:15 9:13,13 9:14,15,20 10:2 14:14 15:20,24 16:24 18:5 20:14 23:12 28:2,4 30:1 32:11,13 33:9,11 34:11 34:13,21 37:18 37:19 41:17 43:1,2 exhibits 9:13 28:8 exist 11:12 39:20 41:8,8,9	exists 19:14 expect 6:17 40:20 Expires 47:11 explain 5:5 35:1 37:12 explained 4:11 extent 12:4 36:21 40:23 eyeballs 17:21 17:22 eyes 17:19 e-mails 11:12,15 45:19,24	files 13:6 finance 23:25,25 24:3 financial 8:12 8:14 find 10:13,15 13:17 20:20 22:2,4,9 45:24 49:11 finding 21:6,8 fine 3:13 finish 4:23 first 3:2 13:15 15:15 16:2 23:20 24:6,15 25:13 32:17 Fitzpatrick 1:13 3:1,7 6:23 32:19 41:7 49:11 five 24:11,12 fix 33:2,23 35:9 Floor 1:16 2:4 follow 20:6 41:12 following 48:3 follows 3:4 follow-up 41:6 foregoing 47:3 48:16 forget 26:24 41:2,3 form 29:21 39:20 forth 1:17 45:1 found 10:14,17 19:5 37:25 40:23 42:4 four 12:24 13:1 17:19,21,22,23 four-eye 17:16 38:5,11 39:7 39:16,22 frame 12:17	30:22 31:1 33:22 Franke 15:8,12 43:5,9 free 11:4 front 5:21 6:14 6:16 35:24 43:1 full 6:21 fully 5:1 24:11 functioning 27:18 functions 8:11 8:14 27:17 further 48:17 F-i-t-z-p-a-t-r... 6:25
E earlier 4:10 5:13 Eckert 1:16 2:4 education 7:3 efforts 45:12,22 either 33:7 electronic 40:17 employed 13:12				G gather 10:8,10 gathering 13:5 general 4:1 46:13 generating 42:8 Gerald 1:13 3:1 6:23 49:11 getting 3:17 give 4:1 6:21 7:3 7:10 8:20 42:5 given 15:19 26:7 26:7 32:23 42:20 46:6 Global 1:5 5:22 go 4:11 5:12 21:7 23:14 28:1 36:10 38:5 goes 24:8 going 5:19 6:5,6 6:15 12:23 19:15 24:4 29:20 30:3 35:24 42:25 Gondeck 14:20

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

4

good 3:7 36:24	happening	huh-uh 4:19	interfaces 44:11	kill 32:6
Gortech 1:5	15:16	hundred 18:19	interject 4:24	kind 9:8 44:8
5:21,22 6:2	happy 5:4 41:14		Interrogatories	45:12
11:13 12:15	hard 4:20 38:19	I	2:22	knew 38:13
13:9 14:15	Hardenacke	idea 11:25 21:14	interrogatory	43:25
15:5,21 25:1,8	33:6	22:25	32:16,25 34:8	Knoll 7:1
27:4 29:2	head 4:14,15 9:8	identification	34:20 35:7	know 3:19 5:2,4
31:12,14 33:15	18:8	6:11 9:21 28:3	36:25 37:7	5:17,18,23
34:22 36:5	hear 16:13	28:5 32:14	41:23,24,25	11:12,16,20,22
49:9	heard 5:1 11:16	33:10	interrupt 4:20	12:3 13:11
Gortech's 31:18	12:1 13:20	identify 34:23	intervening	14:1,5,6,8,9
31:23,23	21:25 22:5	37:9	31:16,18	16:18 17:4,14
Gotcha 17:23	25:2,4 29:23	Illinois 7:2,7	invoice 15:21	17:23 18:1,3,4
18:15 23:6	35:13 43:6	impact 24:22	19:12 22:9	18:25 19:7,9
26:19 34:6	heavy 25:25	important 32:5	35:20	20:13,16 21:15
graduate 7:8	held 47:5	impossibility	involvement	21:23 22:6,11
Grant 1:16,20	Henne 2:22 4:11	29:10	15:18	22:13 23:10
2:5,9 49:6	11:16 13:11	impossible	issue 13:15	24:5 25:4,14
Greg 3:7	14:16 15:22	29:17 30:13,20	33:16 35:14	26:3,8 27:3,16
Gregory 2:3	16:23 17:7	31:2	issues 24:25	27:17 28:24
49:15,21	21:18 27:11	impractical	25:8 44:2,7	29:12,14 30:25
Greg's 19:15	28:11 29:23	30:13	items 9:1 12:9	31:15 32:3
ground 4:9	33:6 35:13	including 35:2	41:7	33:4,13 35:19
guess 6:2 23:13	37:20 39:13	incorrect 5:12	I's 17:23	36:3 38:14,15
29:14 34:1	43:6,15	INDEX 2:18	I-N-D-E-X 2:14	38:16,17,23
44:23,23	Henne's 13:20	indicated 33:1		39:14,17,19,19
Gulf 1:20 2:9	16:13 17:2	41:8	J	39:23 40:18
49:7	hereinafter 3:3	industry 24:5	Jens 33:6	41:2,4 42:11
Guthrie 2:8 49:6	hereto 36:20,23	information	Jeremy 2:3	42:15 43:17,25
guy 21:11 36:12	he'll 5:17 41:3	6:19 9:11 12:8	43:13,19	44:5,9,19,25
39:2	hired 46:6	22:2,4 25:11	Jerry 32:19	45:10,23 46:1
G-e-r-a-l-d 6:25	history 7:3,10	29:2,16 30:12	Jim 14:20	46:5
	hold 45:10	41:22 42:5,9	job 8:9	knowing 26:3
H	Honestly 28:14	42:14,20 43:5	jobs 7:19	knowledge
H 2:3	hopefully 5:15	43:8	joined 7:17	23:23 34:25
half 25:16,21	41:20	inquired 10:2	Joseph 2:7 49:5	37:11 39:21
hand 9:16 32:10	hours 35:3	inquiring 14:21	Jr 2:7 49:5	40:16
43:25,25	Hudock 2:7,8	install 21:21	June 26:11,22	known 8:19
handed 33:11	10:25 11:3,25	installation	39:18,21 47:11	43:4
hands 16:24	19:7,15 26:9	21:16	K	L
handwritten 9:3	29:20 30:3,7	installed 21:3,3	keep 44:25 45:2	L 1:15 2:3 47:2
9:5	40:25 41:9,14	36:1	kept 19:17,19,21	47:9
happen 17:7	43:13,19 46:17	instruction 46:6	45:7	larger 16:21
18:4 44:8	49:5,5,10	interface 44:14		

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

5

lathe 23:1	26:15 28:15	manual 39:11	monthly 8:11	notice 1:13 2:20
lawsuit 3:8,10	40:14 41:23	39:12	morning 3:7	9:18,22,23
3:11 5:25	looking 18:4,7	manufactured	mountains	11:9 42:25
10:22 27:21	25:16	40:9,20	41:15	November 1:11
29:5	Los 7:14,15,16	March 42:12,13	move 32:6	49:3,12
lawyer 15:4	7:17 8:4	mark 9:15 13:11	moved 20:10	number 5:23,24
37:16	lose 20:21	14:15 17:2,7	multiple 24:22	18:11,24 19:3
left 43:25 44:3	losses 32:1	21:18,22 24:10		19:23 20:14
legal 28:25	lot 21:10	27:11,14 28:1	N	21:2,21 31:3
29:13		28:11 29:23	nail 44:7	32:25 34:8,20
letter 2:22 17:24	M	32:11 33:6	name 6:21 14:19	35:3,8,18
33:5,12,14,14	machine 6:2,13	35:13 37:20	39:10 48:19	36:25 37:8
41:1,4,7 42:19	10:17,19,20	39:13 43:6,15	nature 23:1	41:24,25
Let's 26:21,23	14:7 15:17	44:10,15	25:20 35:4	numbers 15:10
28:15	16:17,18,20,21	marked 2:19	near 28:16	21:21
limits 46:7	17:12,12 18:12	9:20 28:2,4	necessarily	numerous 39:9
line 24:16 48:4	18:17,23 19:11	32:13 33:9	17:25	
list 10:1,15 18:7	20:10,22,25	43:1,2	necessary 34:19	O
19:13 26:13	21:2,8,9,16,20	materials 10:2,8	34:23 36:21	Oak 7:1
41:25 42:3,18	22:18,19,22	matter 2:21	need 4:20 32:9	object 30:3
42:21	23:15,16 24:1	28:15,16 29:3	38:3,7,24	objection 29:21
listed 18:5 20:14	24:4,20,21	29:9	NETWORK	obtain 41:13,25
41:17	25:3,4,6,7,20	matters 8:19	1:19	obviously 25:24
listening 4:24	26:17,21,23	10:2	never 14:9 16:19	occurred 14:22
listing 19:5	27:7,8 29:18	McCarthy 14:8	21:25 22:5	offer 15:8
lists 11:17,18,24	30:9,20,23	McDonnell 2:8	24:4 37:6	offered 22:16,17
19:2	31:2,3 33:2,23	49:5	new 2:21 10:21	office 10:11
litigation 45:10	34:2,17 35:9	mean 10:6,20	10:23 16:21	19:22 20:2
little 21:5 26:16	35:20,22,23,25	11:25 12:2	28:15,16 29:9	45:7
34:1	36:6,10,11,14	18:13,16 23:7	36:6 42:1,21	officer 16:3,7,8
LLC 1:5,16 2:4	37:1,22,23	29:25 30:19	newer 17:12	17:1,2
5:22	42:3 44:17	34:6 38:14,20	nodding 4:14	offices 1:15 40:8
loader 44:15	45:6,7	40:2 44:23	normal 14:2	okay 3:11,20
loaders 44:19	machines 19:21	means 18:12	16:5 22:20	4:17 5:7 8:23
local 44:16	22:14 23:24	29:1,15	44:17 46:2,2	9:3,15 10:8
locally 44:13	27:18 40:4	meant 17:23	normally 19:17	12:6,25 15:1
locate 19:12	41:18	medications	19:19 23:20	17:6 18:19
20:12	magazine 40:13	3:14	40:8 45:2	21:4,13,23
location 21:8	main 9:10 37:20	Mellott 1:16 2:4	Northern 7:7	22:2 23:22
long 44:25	manager 15:23	memory 35:25	Notary 1:15	26:1,15 27:3,6
longer 20:5	16:15	mentioned 38:9	47:10 48:25	27:19 28:15,19
look 5:16 9:17	managers 17:16	44:15	noted 48:18	30:5,12 32:6,7
11:5 13:6 20:8	manner 34:19	Merit 7:14,19	notes 8:25 9:4,5	33:25 34:13
21:9 22:7	34:23 35:12	middle 32:19	47:4	37:7,24 38:18

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

6

38:20 42:4 43:17,24 44:24 45:12 old 16:20 17:12 20:8 older 45:16 once 3:25 10:11 ones 10:14,14 46:10 opinion 38:24 option 18:13 20:24 options 11:17 18:6,8,10,12 18:19,23 19:3 19:6,13 21:6,6 21:10 22:4,10 26:13,17,24 41:19 order 2:20 19:12 23:3 original 25:10 25:12,17,21 26:7 45:6 49:14,14 overlap 18:21 o'clock 1:17	part 10:22 36:8 particular 26:3 particularly 24:21 parts 10:16 party 22:12,15 38:14 Pause 32:12 paying 8:13 payroll 8:13 Pennsylvania 1:2,14,15,17 1:21 47:10 48:1 people 13:7,9 17:20 24:5 38:7,9 percent 24:6,15 25:13,14,15 percentage 24:9 24:17 26:25 percentages 23:23 performance 29:10 39:25 performing 8:10 period 25:18 person 4:22 15:6 20:4 32:17 persons 34:25 35:5,6 37:11 perspective 17:6 pertaining 1:14 Peter 14:7 Phil 14:17,19,24 phone 43:8,19 piece 21:7 Pittsburgh 1:16 1:21 2:5,10 49:7 place 22:3 29:20 42:22 43:23 plaintiff 1:6,13	2:2 3:2,8 33:3 34:16,18 37:2 plaintiff's 28:23 31:11 pleads 28:21 29:10 31:9 PLEAS 1:1 please 3:18 4:13 4:22 5:2,4,9,17 6:8 7:4 35:1 49:11,13,14 point 3:17 12:7 15:7,17 18:2 19:10 26:6,9 26:18 policies 39:9,11 39:12 policy 39:8,21 44:25 45:13,23 45:25 portions 13:20 position 8:2,4,6 possession 6:3 possible 25:22 30:25 potentially 5:24 Predator 36:5 prepare 8:23 12:11 prepared 10:18 preparing 8:11 Present 2:11 presented 6:11 38:15 preserve 45:4,22 president 17:13 38:10,10,21,21 presume 25:11 Pretty 20:21 price 11:17,18 11:24 12:8 18:7 25:10,12 25:17,21 26:7 26:13 41:16	42:1,3,21 pricing 11:19 12:8 22:2,4 41:22 42:2,8 principle 17:16 17:18 38:5,12 39:7,16,22 print 42:14 printout 42:8 prior 6:6 9:23 12:14 14:15 probably 24:12 41:3,8 problem 13:17 13:18 15:14,15 34:4 problems 34:2,2 34:3 Procedure 1:14 procedures 39:11,12 proceedings 32:12 47:5 process 42:11 processing 8:12 produce 10:25 produced 10:3,9 10:22 42:9 product 40:2,4,7 40:10,23 41:4 production 25:25 27:1 products 7:15 7:20 40:24 promised 12:9 29:18,22,23 30:1 36:15 proposal 35:22 35:23 provide 5:15 27:7 36:13,16 37:1,4 43:12 provided 9:12 10:15 25:10,11	27:3,8 35:3,4,5 35:12,15,17 36:2 37:1 38:21 41:22 42:12 43:10 46:1 providing 35:6 Public 1:15 47:10 48:25 pull 40:13 pulled 45:18 purchase 22:19 22:21 45:6 purchased 20:10 22:23 purchases 19:21 purchasing 19:22 20:2,9 purged 19:22 purging 45:23 pursuant 1:13 put 26:1,6,21 P.C 2:8 49:6 p.m 46:19
P PA 2:5,10 49:7 package 21:13 22:22 23:2,3,8 packages 22:14 23:1 page 2:15 28:17 33:1 48:4 49:11,14,14 pages 47:3 paper 21:7 paragraph 30:16 33:14 34:9,12,15,22 36:17,18,20 42:20				Q question 4:23,25 5:2,3,7,13 23:13,18 29:22 33:2 34:17 35:10 questions 6:20 32:15 46:9 quickly 4:12 11:6 quoting 42:6,7 42:14,22
				R rack 40:13 raised 13:15 Raybuck 2:12 read 9:25 10:6,6 27:22,23 46:17

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

7

48:16 49:13 READING 48:15 real 4:11 11:5 realize 5:11 realized 15:14 15:15 really 11:22 22:12 23:20 27:14,17 29:1 32:3,8 36:15 40:12 reason 16:4 37:20 reasonable 21:22 24:12 reasonably 8:19 reasons 37:15 37:16 Rebecca 1:15 47:2,9 49:20 rebuffed 33:2 35:9 37:2,5 recall 9:7,9 13:13,19 14:13 14:23 37:3 recapping 41:7 receipt 49:16 receivable 8:14 receive 20:3 34:18 received 6:3 34:16,22 record 6:22 16:11,12 29:21 39:15 43:3 refer 3:10 5:21 5:23 6:1,4,12 6:14 21:24 26:10 34:10 reference 11:16 42:5 referenced 6:13 references 28:24	31:16 referencing 29:12 33:4,5 33:12 referred 18:10 21:22 35:22 referring 3:11 5:20 6:5,12,15 18:11 31:1 33:21,24 36:17 37:18 regard 25:1 41:23 regarding 13:9 13:9 14:14,15 22:3 32:15 related 10:12 11:12,13 34:24 34:25 37:10,11 45:4,14,15,17 relating 19:20 39:24 release 31:10,13 releasing 31:12 relevant 36:20 36:23 remember 4:9 4:18 13:3,16 14:25 15:3 28:14 36:3 39:10 repaired 24:21 repeat 5:2 reporter 4:21 representing 3:8 request 9:11 12:6 19:4 40:22 requested 11:9 requests 22:18 required 17:10 46:3 reread 10:4 research 20:18	resolve 33:16 respect 45:13 response 27:25 36:21 responses 32:11 32:16 41:23 retention 44:25 45:13 review 9:22 10:1 28:12 reviewed 8:25 27:20 35:18 Riehle 14:7 right 15:10 20:23 24:2 30:24 31:6 32:8,8,20 37:7 41:10 43:20,25 44:12,24 45:20 45:21 46:12 Road 7:1 role 15:22 rolling 6:19 room 39:4 Rugari 14:18,24 Rugari's 14:19 rule 17:14 rules 1:14 4:9 run 23:1 S S 2:3 7:16 sales 2:20 15:22 16:15,17 salesman 16:20 salesmen 46:1 Samek 2:3 43:15 43:23 satisfaction 28:22 satisfy 38:11 saw 16:19 33:7 saying 4:22 17:4 25:18 27:15	says 14:7,11 16:3,6,8 17:1 22:11 28:16,21 29:9 31:9 33:15 34:14,15 35:23,25 36:20 36:24 Schnur 1:15 47:2,9 49:20 scope 25:9 Seamans 1:16 2:4 search 10:10 11:8 20:19 21:1 second 16:4 26:24 30:17 see 5:16 20:8,25 21:9 22:9 35:7 36:8 seeing 6:16 seek 45:4 seen 14:9 28:7,9 38:1 sell 31:5,7 send 33:1,18,22 34:4 35:8 41:3 42:19 49:14 sense 18:18,20 36:9,12 sent 36:5 September 33:19,21 serial 18:11,23 19:3 20:14 21:1 31:3 service 10:17 serviced 10:19 services 1:19 21:13,23 22:3 22:6,11 set 1:17 9:14 33:17 sets 17:19 33:8	settlement 29:3 29:4 seven 24:13 severe 25:4 shake 4:15 shaking 4:14 sheet 48:1,18 49:13 short 6:17 shot 41:11 show 6:8 15:20 showroom 40:13 shows 10:16 side 38:8 sign 17:3,20 49:13,16 signature 32:21 49:11,14,14,16 signed 10:18 16:3,6,14,16 16:19,19 17:7 28:10 32:17 38:25 49:14 signing 32:20 signs 16:23 similar 16:14 Sincerely 49:18 single 18:13 site 20:12 sitting 25:23 situation 13:18 20:19 22:17 37:3 six 45:2,15 sizes 44:21 Skeel 2:8 49:6 small 16:20 smaller 24:8 sold 20:14 22:15 solve 13:18 34:4 somebody 21:12 something's 39:5

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

8

sorry 25:19 32:7 43:17,21,24	submitted 9:2,6 10:16 13:3 28:13	talked 13:6,16 15:7,17 43:19	44:3	training 21:16 33:19,20,23
sort 24:15 32:19	Subscribed 48:21	talking 5:21,24 6:1 9:3 27:15	third 22:12,15	34:3,17,19,23
sound 13:24,25 28:25	subsequent 24:7 24:8	30:22 44:10	thirsty 3:18	35:3,3,4,6,11
sounded 21:22	subspindles 27:16	technical 24:14 36:12	thousand 16:10 23:4	35:15,17 36:2
sounds 27:16 29:13	substantive 6:20	technician 34:5	three 18:17,17 27:1	36:5,8,13,15 36:16 39:1
spare 10:16	sued 4:5	tell 5:8,9 14:10 37:14 41:1	thrown 45:16	transaction 14:22 15:13
speak 12:11	sufficient 35:15 38:4,22	term 21:25	THURSDAY 1:11	16:5,5,22
speaking 12:17 14:13	Suite 2:9 49:7	terms 28:25 29:13 32:1	time 3:19 4:22 5:11 12:17	17:11,15 27:9
special 46:3	Summers 2:8 49:5	46:7	14:20 20:5	37:22 38:6
specific 13:8 17:14 19:3	supervening 31:16,18	testified 3:22 13:23 14:1	25:18 30:22	46:2,3
31:18 40:16 41:16	supervising 8:12	testify 8:15,19	31:1 33:22	transcript 5:16
specifically 9:7 11:20 14:23	supporting 29:16	testimony 3:15 16:13 24:10	42:10 46:16	47:4 48:3,16
18:25 34:14,16 41:2	supposed 16:25	Teufel 2:3,16 3:6,8 6:8 11:5	timely 34:19,23 35:12	49:11,13,16
specifics 13:19 14:25	sure 5:1,3,6,7,9 5:10 13:4,5	11:23 12:6,10	times 3:24 24:22 36:20,22	transferred 7:18
speculation 30:4	15:19 19:14,15	19:4,18 20:1	tired 3:18	trial 4:7
spell 6:24	19:23 21:25	26:11 28:1,6	today 3:12 10:21 12:12	tried 33:18,22
spindles 27:15	25:8 26:1,20	30:5,8 40:22	21:3 30:19	true 14:3,10,12
spoke 13:11	30:7,8,18,18	41:6,10,15,21	31:2 37:25	40:19 47:3
spoken 12:14	30:21 31:22	42:18 43:17,21	42:15,17 43:6	48:17
stack 33:7	38:6 40:18	43:24 44:4	today's 8:24 9:18,24	try 4:18,20,22
starting 26:18	44:2	46:16 49:15,21	told 14:7	4:23 5:4 12:7
starts 28:18	suspend 45:13	Thank 3:13 23:9 34:7 46:16	tooling 21:13,24 22:3,12,14,18	20:19 33:16
statement 46:14	swap 14:6	thing 34:1	22:21,25 23:2	41:13 45:22
statements 8:12 41:11	swapping 17:11 37:22	things 5:20 14:1 14:4 35:18	tools 23:4,4	trying 34:3 44:7
Steel 1:16 2:4	sworn 3:3 48:21	39:2 41:5,11	top 9:8 18:7 28:16	turn 42:25
stenotypy 47:4	system 11:14,15 42:6,7,14,23	41:17 46:7	topics 10:1	turning 26:5
stock 44:18		think 5:8 9:10 11:2 13:14	Tower 1:16,20 2:4,9 49:7	twice 20:10
stop 5:12		14:2,18 15:10	track 20:22	two 7:13 10:23 11:2 16:9
stored 20:11		16:16,18 22:5	trade 15:8	17:16,19 23:4
straight 24:16		24:24 26:15	traded 23:11	27:1 35:18
Street 1:16,20 2:5,9 49:6		34:6 40:17	trade-in 23:16	38:7,9 41:18
struck 14:3		43:10,11,20	trained 35:5 36:14	type 11:9
stuff 41:16,16				typical 21:17 22:17 23:7

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

9

U	39:3	19:20 48:19	\$100,000 23:5	26:11,23 33:19
U 7:16	verification	49:13,16	26:2,6,22	33:21 34:18
uh-huh 4:19	28:11 32:18,20	Wood 7:16 8:2	\$193,000 26:7	35:17 39:18,21
23:19	verified 32:22	word 5:3	26:12	40:20
uh-huhs 4:24	vice 38:10,20	work 43:8	\$193,900 25:12	2007 14:20
ultimately 22:21	view 18:2	worked 7:12,13	\$25,000 44:22	2010 1:11 42:13
unanswered	viewed 34:3	7:14,15		42:13 48:17,22
33:15	vs 1:7 49:9	working 23:25	0	49:3,12
unclear 34:2	V4 25:12 27:17	wouldn't 18:19	07-754 1:7	2013 47:11
undersigned	40:24	19:18 22:6		23 49:3
1:15 47:2	V6 11:17 27:13	26:1,6,22	1	2400 2:9 49:7
understand 5:3	27:16 37:6	36:13 45:8,16	1 2:20 6:5,6,9,10	28 2:21,21
8:18,21 16:25	40:24	45:19	6:13,15 9:13	
26:20 27:14	W	write 41:1	14:14 15:24	3
29:1 31:21	waived 49:16	written 33:6	16:24 18:5	3 2:16 9:14
34:6 37:15	want 3:19 4:15	38:3 39:3,7,8	20:14 23:12	32:25 35:8
41:17 46:11	5:20 6:18 9:15	39:16,18	30:1 37:18,19	30 24:5,15 25:13
understanding	10:25 11:3	wrong 5:17	41:17	34:9,12,15,22
16:25 35:14	12:6 19:4 23:4	Y	10 25:14 41:24	49:16
understood 46:8	24:3 26:20	Yeah 8:1 10:6	10/8/06 2:22	32 2:22
Unfortunately	30:5 32:10	10:25 11:3	11 1:11 41:25	320 15:9 36:10
20:4	33:20 34:10	12:22 15:6	49:12	45:7
University 7:7	40:22 41:4	18:21 19:7	11:09 1:17	3251 7:1
unusual 16:4,22	46:13,14	23:17 26:5	1101 1:20	33 2:22
17:15 37:21	wanted 41:5	28:20 33:13	12 42:20	35 24:6,15 25:13
38:6	warehouse	40:3 41:6,10	12:12 46:19	38 36:17,18,20
unwritten 39:20	25:24	43:15,23	15219 1:17,21	
use 5:4 24:5	wasn't 14:22	year 7:14,16	2:5,10 49:7	4
25:23 34:17	29:22 38:14	24:6,17 25:13	16 47:11	420 10:20 15:9
U.S 1:16 2:4 8:2	water 24:4	25:14	193 26:17	36:10
	way 14:10 23:7	years 7:13 12:24	1986 7:9	420V4 6:1,4
V	26:22 31:20	13:1 19:23	2	23:11 25:1,7
valid 37:9,12,17	38:19	24:7,8,11,13	2 9:13 15:20	25:16 26:2,4
39:5	weren't 4:10	27:1 45:3,15	35:21,21	27:13 35:22
value 18:8 23:10	22:16 38:17	year-end 8:11	20 25:15	40:1,9 42:21
23:14,16 24:3	we'll 12:3,7 30:1	York 15:7,12	2001 7:17	420V6 2:20 6:4
25:16 26:2,6	32:6,11 40:19	43:5,9	2003 25:6,7,20	6:12 11:17,19
26:21,23	41:6 46:17	Z	40:9	18:6 20:13
values 18:5	we're 16:12 32:3	zero 36:15	2004 7:18	27:4 37:4
various 18:5	39:5 42:25	\$	2005 19:14	39:25 40:20
41:17 44:21	44:7	\$10,000 44:22	2006 10:17,19	42:1 44:5,14
vendor 44:16	witness 1:13 3:2	\$100 23:4	11:19 13:19	44th 1:16 2:4
verbal 27:25	3:22 6:8 19:10		20:22 23:11	5
38:1,3,10,21			25:19,20 26:10	5 2:20 9:15,20

NETWORK DEPOSITION SERVICES
Transcript of Gerald Fitzpatrick

10

43:1,2
52 28:18
53 29:9
55 30:16 31:9
56 31:16

6

6 2:20,21 28:2,8
34:8,20
600 1:16 2:5

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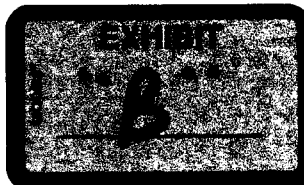
7 2:21 28:4,8
34:11,13 36:25
707 1:20 2:9
49:6

8

8 2:22 32:13
34:21

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9 2:20,22 33:1,9
33:11 37:8



Gregory Teufel
412.566.5977
gteufel@eckertseamans.com

March 11, 2011

Joseph A. Hudock, Jr., Esq.
Summers McDonnell Hudock Guthrie & Skeel, P.C.
707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

16887

RE: GORTECH GLOBAL FABRICATION, LLC, v. DMG CHICAGO, INC.; No. 07-754 CD

Dear Joe:

I am writing to follow up on a number of the items we discussed at the November depositions in this matter. First, enclosed please find an affidavit from Stephanie Radaker, former Sensus employee who was the contact person on the Sensus RFQs sent to Gortech, for the parts Gortech was going to make for Sensus, if and when it had the proper machine and training. This is specific business Gortech lost due to DMG's breach of contract. Based on the information in the RFQs, which is confirmed by Ms. Radaker in her affidavit, our expert, Mike Bronder, was able to calculate Gortech's lost sales to Sensus to be \$1,505,240, and lost profits related to the Sensus opportunity alone at \$982,771.

We still need more information from DMG to confirm the difference in value between the new CTX 420 V6 and used CTX 420 V4, but based on the information DMG has provided thus far, that difference in value appears to be at least \$325,000. Therefore, pre-judgment interest at 6% would be in excess of \$220,000. We therefore already have ample support for a damages claim in excess of \$1.5 million. Hopefully, this additional information puts DMG in a better position to evaluate and respond to Gortech's settlement offer. Gortech was willing to settle for \$1 million at the time of the depositions in November, but due to the passage of time during which additional interest has piled up, and due to the legal expenses incurred since November, Gortech's settlement demand is now \$1.1 million.

As time goes by, it will only get harder to reach a settlement, and there appears to be no further reason for delay in reaching a settlement of this matter. DMG now has all the information it should need to evaluate both its liability and likely range of damages at trial. Based on this information, we trust that a substantial settlement offer will be forthcoming soon. We would hate to see both parties waste further money on legal costs before settling this matter. But if we do not hear from DMG on settlement within the next month, we will have little choice but to press the matter to trial as fast as possible. So please do what you can to expedite a response from DMG on settlement.

Meanwhile, there are a number of items we need from DMG, in follow up to what we requested in our discovery requests, as well as what you and Mr. Fitzpatrick indicated during his deposition is available from DMG's electronic and paper files. This letter also serves as follow up to the letters Mr. Samek sent you on June 14, 2010 and July 2, 2010, and the conversations he had with you around that time regarding DMG supplementing its discovery responses.

Joseph A. Hudock, Jr., Esq.
March 11, 2011
Page 2

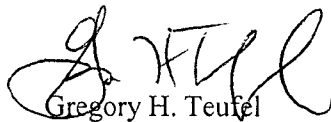
Per the discussion at pages 18-20 of the Fitzpatrick deposition, Mr. Fitzpatrick was going to search for the order and invoice documents for the CTX 420 V6 with serial number 022600003961, which should list all the options associated with that specific machine, and search the central database to see where that machine is installed today. Therefore, we are requesting that you provide those order and invoice documents and the current location of the CTX 420 V6 at issue, along with any other information of what options were associated with that machine;

Per the discussion at pages 40-41 of the Fitzpatrick deposition, we are requesting the product brochures for the 2006 CTX 420 V6 and 2003 CTX 420 V4 (Mr. Fitzpatrick referenced electronic copies). Such brochures would also go a long way toward answering Interrogatory No. 22 and Request for Production No. 14, which DMG failed to answer in its written responses.

Per the discussion at pages 40-41 of the Fitzpatrick deposition, we are requesting a printout of the pricing information from the quoting system, which, for example, was the source of the pricing information provided by DMG in response to Gortech's Interrogatories Nos. 10 and 12. Interrogatories 10 and 12 also sought all of the pricing information for all related options and accessories, tooling packages, installation, training, and new machine warranty. This information is essential for a complete damages calculation and DMG must have it. Please provide it as soon as possible.

This letter should provide you some focus in terms of the most critical areas for follow up and supplementation of DMG's discovery responses. If we do not receive the documents and information requested by April 11, 2011, we will be forced to proceed with a motion to compel. So please give your prompt attention to following up with DMG to gather the documents and information that have been both formally and informally requested. If you have any questions or comments, please do not hesitate to let me know. I will be calling you soon to discuss the needed information and documents as well. Thank you.

Very truly yours,



Gregory H. Teufel

GHT/sac

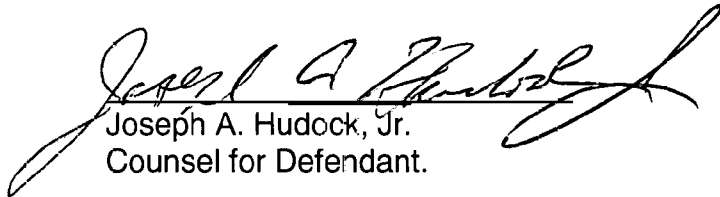
Enclosure

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Answer to Motion to Compel was served upon counsel of record by mailing the same via first class mail, postage pre-paid, this 25th day of May, 2011, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.


Joseph A. Hudock, Jr.
Counsel for Defendant.

CA

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS (To be executed by Trial Counsel Only)		TO THE PROTHONOTARY DATE PRESENTED	
CASE NUMBER 2007-00754-CV	TYPE TRIAL REQUESTED ☒ Jury ☐ Non-jury ☐ Arbitration	ESTIMATED TRIAL TIME 3 DAYS	

FILED

JUN 22 2011

William A. Shaw
Prothonotary/Clerk of Courts

No 4/6 OK

PLAINTIFF(S)

Gortech Global Fabrication, LLC ()

DEFENDANT(S)

DMG Chicago, Inc. ()

ADDITIONAL DEFENDANT(S)

Check Block
if a Minor
is a Party
to the Case

JURY DEMAND FILED BY:

Plaintiff

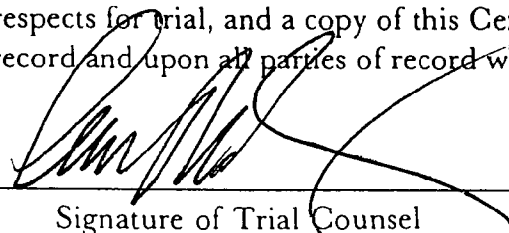
DATE JURY DEMAND FILED:

with Complaint on or about 1/27/09

AMOUNT AT ISSUE In excess of \$20,000.00 plus interest, costs & other relief deemed just and proper	CONSOLIDATION ☐ Yes ☒ No	DATE CONSOLIDATION ORDERED n/a

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.



 Signature of Trial Counsel
 Christopher E. Mohnen, co-counsel

COUNSEL WHO WILL ACTUALLY TRY THE CASE

FOR THE PLAINTIFF Gregory H. Teufel, Esquire, U.S. Steel Tower, 600 Grant Street, 44th Floor, Pittsburgh, PA 15219	TELEPHONE NUMBER (412) 566-5977
FOR THE DEFENDANT Joseph A. Hudock, Jr., Esquire, 707 Grant Street, Suite 2400, Gulf Tower, Pittsburgh, PA 15219	TELEPHONE NUMBER (412) 261-3232
FOR ADDITIONAL DEFENDANT	TELEPHONE NUMBER

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

FILED

GORTECH GLOBAL FABRICATION, LLC :

Plaintiff :

vs. :

DMG CHICAGO, INC. :

Defendant :

NO. 2007-0754-CD

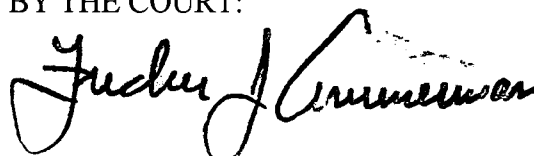
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William A. Shaw
Prothonotary/Clerk of Courts
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TO: MOUNTY
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ORDER

AND NOW, this 22nd day of June, 2011, it is the Order of the Court that a pre-trial conference in the above-captioned matter shall be and is hereby scheduled for **Friday, July 1, 2011, at 10:00 AM** in Judge's Chambers, Clearfield County Courthouse, Clearfield, PA.

Additionally, Civil Jury Selection in this matter shall be and is hereby scheduled for **Wednesday, July 27, 2011 at 9:00 AM in Courtroom No. 1** of the Clearfield County Courthouse, Clearfield, Pennsylvania. **All Plaintiffs, Defendants, and their attorneys must be present for Jury Selection.**

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GORTECH GLOBAL FABRICATION, :
LLC :

-VS-

No. 07-754-CD

DMG CHICAGO, INC. :

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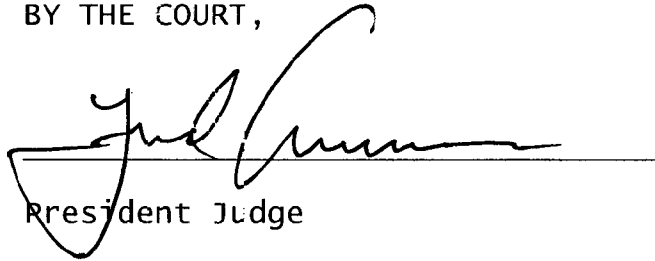
O R D E R

AND NOW, this 22nd day of June, 2011, following further argument on the Plaintiff's Motion to Compel Discovery, and in regard to two (2) redacted e-mails and a redacted proposal submitted from Defendant to Plaintiff, it is the ORDER of this Court as follows:

1. Upon the Court's review of the e-mail dated May 30, 2007, at the time of 18.53, the Court finds the redaction to be appropriate under Rule of Procedure 4003.3;
2. Relative redaction to the e-mail dated May 30, 2007, at the time of 8:50 p.m., it is the ORDER of this Court that counsel for the Defendant have no more than fifteen (15) days to submit a brief as to why sentences four and five should be redacted and are not admissible. The Court notes that in regard to other sentences that have been redacted, the Court believes the redactions to be appropriate under Rule 4003.3;
3. In regard to the redacted proposal dated

February 20, 2006, Plaintiff's counsel shall have no more than fifteen (15) days from this date to submit a letter brief to the Court as to why the name of the individual or company to whom the proposal was provided should be released.

BY THE COURT,

A handwritten signature in black ink, appearing to read "Judith", is written over a horizontal line. The signature is fluid and cursive.

President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GORTECH GLOBAL FABRICATION, :
LLC :

-VS-

DMG CHICAGO, INC. :

No. 07-754-CD

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William A. Shaw
Prothonotary/Clerk of Courts

Cent to Atty's
G. T. E. F. F.
S. Summer

O R D E R

AND NOW, this 22nd day of June, 2011, following argument on the Plaintiff's Motion to Compel Discovery Responses, and in regard to the request by the Plaintiff for e-mails from the defendant company, it is the ORDER of this Court that the Defendant shall have no more than thirty (30) days from this date in which to appropriately search and review the company's computer database in order to determine the existence or nonexistence of all defendant company employees, whether present or prior employees, e-mails generated in regard to the sale of the product in question and the dealings between the companies. Copies of e-mails in existence shall be provided within no more than the said thirty (30) days. In the event that any e-mails are no longer in existence, then an appropriate certification of the same shall be provided by Defendant to Plaintiff.

BY THE COURT,


President Judge

5

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

**PLAINTIFF'S MOTION FOR
STIPULATED PROTECTIVE ORDER**

DMG CHICAGO, INC.,

Defendant.

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohny, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

FILED 3cc
014000d Amy Teufel
JUL 05 2011

William A. Shaw
Prothonotary/Clerk of Courts

6K

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

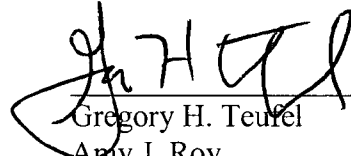
Defendant.

MOTION FOR STIPULATED PROTECTIVE ORDER

AND NOW, NOW COMES Plaintiff, Gortech Global Fabrication, LLC, by and through its undersigned attorneys, and hereby requests that the Court enter the attached stipulated protective order. All parties consent to this Motion.

Respectfully submitted,

Date: July 1, 2011



Gregory H. Teufel
Amy J. Roy
Christopher E. Mohnney

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

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JUL 05 2011
William A. Sines
Prothonotary/Clerk of Court
3CC Amy Teufel

STIPULATED PROTECTIVE ORDER

AND NOW, to wit, this 5 day of July, 2011, it is hereby
ORDERED, ADJUDGED, and DECREED that this Protective Order shall govern all discovery
herein:

1. A party or third party may designate as "Confidential" any document, testimony, or other discovery material that contains a trade secret or other confidential technical, financial, business, or medical information to which the producing party or producing third party in good faith believes access should be limited as described in ¶2. "Confidential" material, as used herein, shall refer to any so designated document, testimony or other discovery materials and all copies thereof, and shall also refer to the information contained in such materials. No designation shall be made unless counsel of record or the person signing the applicable discovery response or certificate of compliance with subpoena believes in good faith that the designated material is in fact or contains a trade secret or other such confidential information.

2. Discovery materials designated "Confidential" shall be maintained in confidence by the parties to whom such materials are produced and shall not be disclosed to any person except:

a. the Court and its officers and employees;

b. litigation counsel of record and employees of such counsel, including, but not limited to, paralegals and clerical personnel;

c. parties or witnesses to whom counsel of record believes in good faith it is necessary for the purposes of the prosecution or defense of the claims in this litigation to disclose materials designated “Confidential,” provided that each such person shall first be advised by counsel making the disclosure that, pursuant to this protective order, such person may not divulge such materials designated “Confidential” to any other person; and

d. third party experts or copy services engaged by counsel or the parties to assist in this litigation provided that each such third party expert or copy service shall first be advised by counsel making the disclosure that, pursuant to this protective order, such third party expert or copy service may not divulge such materials designated “Confidential” to any other person.

3. A party or third party may designate as “Restricted Confidential” any document, testimony, or other discovery material that contains a trade secret or other confidential technical or financial business information to which the producing party or producing third party in good faith believes access should be limited as described in ¶4. “Restricted Confidential” material, as used herein, shall refer to any so designated document, testimony or other discovery materials and all copies thereof, and shall also refer to the information contained in such materials. No designation shall be made unless counsel of record or the person signing the applicable discovery response or certificate of compliance with subpoena believes in good faith that the designated material is in fact or contains a trade secret or other such confidential technical or financial business information.

4. Discovery materials designated “Restricted Confidential” shall be maintained in confidence by the litigation counsel of the party to whom such materials are produced and shall not be disclosed to any person except:

- a. the Court and its officers and employees;
- b. litigation counsel of record and employees of such counsel, including, but not limited to, paralegals and clerical personnel;
- c. parties to whom counsel of record believes in good faith it is necessary for the purposes of the prosecution or defense of the claims in this litigation to disclose materials designated “Restricted Confidential,” provided that such persons have signed an undertaking in the form of Exhibit A hereto, and that the producing party is provided with a copy of said undertaking within sixty (60) days after the conclusion of this litigation or the final conclusion of any appeal taken from a final judgment in this action; and
- d. third party experts or copy services engaged by counsel or the parties to assist in this litigation provided that each such third party expert or copy service has signed an undertaking in the form of Exhibit A hereto, and that the producing party is provided with a copy of said undertaking within sixty (60) days after the conclusion of this litigation or the final conclusion of any appeal taken from a final judgment in this action.

5. Nothing in this Order shall be taken as indicating that any discovery materials are in fact “Confidential” or “Restricted Confidential” or entitled to confidential treatment. A party shall not be obligated to challenge the propriety of a “Confidential” or “Restricted Confidential” designation at the time made, and a failure to do so shall not preclude a subsequent challenge

thereto and shall not be deemed an admission that any material is confidential or contains trade secrets. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation by the producing party or producing third party of materials designated “Confidential” or “Restricted Confidential,” the parties shall try first to resolve such disputes in good faith on an informal basis. If the dispute cannot be resolved, the objecting party may seek appropriate relief from the Court, and the party or third party asserting confidentiality shall have the burden of proving the same.

6. No designation of “Confidential” or “Restricted Confidential” material shall be effective unless there is placed or affixed on each page of such material (in such manner as will not interfere with the legibility thereof) a “CONFIDENTIAL” or “RESTRICTED CONFIDENTIAL” notice.

7. Testimony given at a deposition may be designated “Confidential” or “Restricted Confidential” by an appropriate statement at the time of the giving of such testimony. Such designations should be made on the record whenever possible, but a party or third party may designate portions of depositions as “Confidential” or “Restricted Confidential” after transcription, provided written notice of such designation is given to all parties within a thirty day period after receipt of the transcript of the proceedings. All deposition transcripts shall be treated as “Confidential” for a period of thirty days after the receipt of the transcript of the proceedings or until receipt of the notice referred to in this paragraph, whichever occurs first.

8. Financial or medical records obtained from third parties pursuant to release authorizations shall be treated as “Confidential.”

9. Only persons qualified under ¶2 of this Order and the court reporter present to record the deponent’s testimony will be allowed to attend that portion of any deposition in which

material designated as “Confidential” is used with or elicited from the deponent. Only persons qualified under ¶4 of this Order and the court reporter present to record the deponent’s testimony will be allowed to attend that portion of any deposition in which material designated as “Restricted Confidential” is used with or elicited from the deponent.

10. All discovery material (and the information contained therein), whether designated “Confidential” or “Restricted Confidential” or not so designated, shall be used by the person receiving it solely for the prosecution or defense of the claims in this litigation or any appeal therefrom and shall not be used by that person for any business, commercial, competitive, personal or other purpose.

11. Nothing shall prevent disclosure beyond the terms of this Order if the party or third party designating the information as “Confidential” or “Restricted Confidential” consents to such disclosure, or if the Court, after notice to all affected parties, orders such disclosure.

12. The parties or third parties may designate discovery material as “Confidential” or “Restricted Confidential” after it has been produced and erroneously not designated as “Confidential” or “Restricted Confidential,” by providing written notice of such designation to the parties that received such discovery material. Such discovery material shall be considered designated “Confidential” or “Restricted Confidential” from the time of receipt of such written notification forward.

13. Nothing in this Order shall require disclosure of any material which counsel for any party or third party contends is protected from disclosure by the attorney-client privilege or the work product doctrine. The entry of this Order does not waive an objection, otherwise available to a party or third party, that a discovery request is unreasonably burdensome or harassing.

14. All “Confidential” material shall be stored under the direct control of persons qualified under ¶ 2 of this Order and such persons shall be responsible for preventing any disclosure thereof, except in accordance with the terms of this Order.

15. All “Restricted Confidential” material shall be stored under the direct control of persons qualified under ¶ 4 of this Order and such persons shall be responsible for preventing any disclosure thereof, except in accordance with the terms of this Order.

16. Within sixty (60) days after the conclusion of this litigation or the final conclusion of any appeal taken from a final judgment in this action, the original and/or copies of all “Confidential” and “Restricted Confidential” documents and things produced by a party or third party, attached to motions, or marked as deposition exhibits shall be destroyed with affidavit of destruction or returned to the producing party or producing third party, at the option of the party to whom such documents and things have been produced. Notwithstanding the above, litigation counsel of record shall have the right to retain one copy of each document produced during discovery as an archival file copy, provided that such copies are maintained in a manner consistent with this Order. Insofar as the provisions of this Order restrict the communication or use of the documents produced hereunder, this Order shall continue to be binding after the conclusion of this litigation except that a party may seek the written permission of the producing party or producing third party to waive any restrictions.

17. Nothing contained in this Order shall be construed to prejudice any party’s right to use any “Confidential” or “Restricted Confidential” material in any hearing or trial before the Court in this case. Any party or third party opposing or seeking to limit any such use may apply to the Court for further protection of the confidentiality of such material.

18. No “Confidential” or “Restricted Confidential” material shall be filed in the public record of this action. All material so designated in accordance with the terms of this Order that is filed with the Court, and any pleadings, motions, or other papers filed with the Court disclosing any such material, shall be filed in a sealed envelope and kept under seal by the Court until further order of the Court. Where possible, only confidential portions of filings with the Court shall be filed under seal.

19. To facilitate compliance with this Order, material filed under the designation “Confidential” or “Restricted Confidential” shall be contained in a sealed envelope bearing such designation on its front face. In addition, the envelope shall bear the caption of the case, shall contain a concise, non-disclosing inventory of its contents for docketing purposes, and shall state thereon that it is filed under the terms of this Order.

20. Nothing in this Order shall prohibit the transmission or communication by hand delivery of “Confidential” or “Restricted Confidential” information between or among persons qualified under ¶ 2 of this Order, in face to face conferences, or

a. in sealed envelopes or containers via the mails or an established freight, delivery or messenger service; or

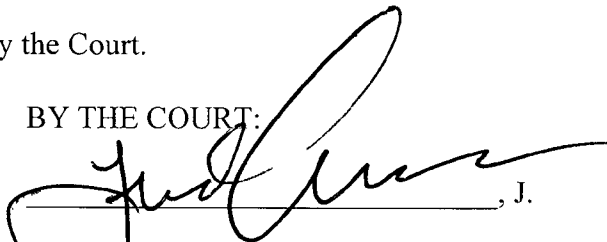
b. by telephone, telegram, facsimile, e-mail, or other electronic transmission system;

if, under the circumstances, there is no reasonable likelihood that the transmission will be intercepted or misused by any person who is not a qualified person under either ¶2 or ¶4 of this Order.

21. The restrictions set forth in any of the preceding paragraphs shall not apply to information or material that was lawfully possessed by the non-designated party prior to the production of same by the producing party or producing third party.

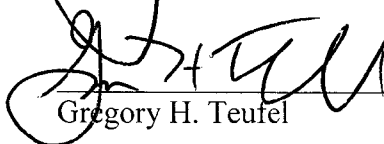
22. The parties agree to submit this Order for entry by the Court and to be bound by its terms prior to and subsequent to entry by the Court.

BY THE COURT:

 J.

SO STIPULATED:

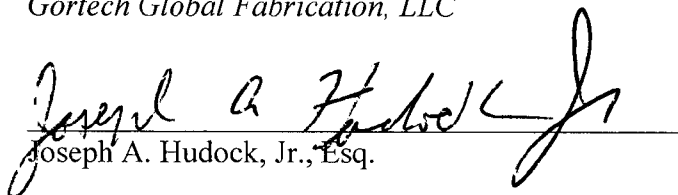
Date: July 1, 2011



Gregory H. Teufel

*Attorney for Plaintiff,
Gortech Global Fabrication, LLC*

Date: 7-1-11



Joseph A. Hudock, Jr., Esq.

*Attorney for Defendants,
DMG Chicago, Inc.*

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff, No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

**UNDERTAKING CONCERNING RESTRICTED CONFIDENTIAL
MATERIAL COVERED BY PROTECTIVE ORDER**

The undersigned hereby acknowledges that he or she has read the Protective Order dated _____, 20__, entered by the Court of Common Pleas of Clearfield County, in the above-entitled action, that he or she understands the terms thereof, and that he or she agrees to be bound by such terms and to treat discovery materials designated "Restricted Confidential" as required by that Order.

Date _____

Signature _____

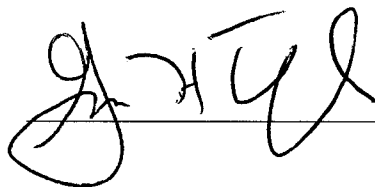
Print Name _____

EXHIBIT "A"

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Motion for Stipulated Protective Order**, was served via hand delivery, this 1st day of July, 2011, upon the following:

Joseph A. Hudock, Jr., Esq.
Summers, McDonnell, Hudock, Guthrie & Skeel, L.L.P.
Suite 2400, Gulf Tower
707 Grant Street
Pittsburgh, PA 15219



CA

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

GORTECH GLOBAL FABRICATION, LLC,
Plaintiff

vs

DMG CHICAGO, INC.,
Defendant

NO. 07-754-CD

FILED

14:00
JUL 07 2011

ICC Atlys:

Tewfel/Roy
Summers/Haddock

ORDER

William A. Shaw
Prothonotary/Clerk of Courts

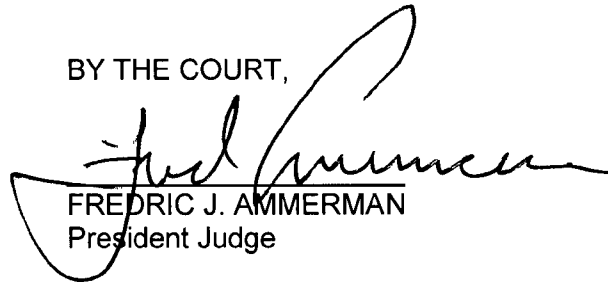
NOW, this 1st day of July, 2011, following pre-trial conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on **July 27, 2011** commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Jury Trial is hereby scheduled for **October 19, 20, and 21, 2011**, commencing at 9:00 a.m. each day in Courtroom No. 2 of the Clearfield County Courthouse, with Senior Judge Charles C. Brown, Jr., Specially Presiding.
3. All depositions which are to be used for trial presentation purposes shall be completed by absolutely no later than forty-five (45) days prior to the commencement of trial or the same will not be available for use at trial. A copy of the transcript of any such deposition(s) shall be provided to opposing counsel within no more that ten (10) days following completion of the deposition(s).
4. The written report of any expert who will testify at trial which has not previously been provided to opposing counsel shall be delivered within no more than sixty (60) days from this date. Failure to comply will result in the witness not being available for use at trial.
5. Any party making objections relative the testimony to be provided by any witness in the form of a deposition at the time of trial shall submit said objections to the Court, in writing, no later than thirty (30) days prior to the commencement of trial. All objections shall reference specific page and line numbers within the deposition(s) in question along with that party's brief relative same. The opposing party shall file an Answer thereto and

submit its brief in opposition to said objections no later than fifteen (15) days prior to the commencement of trial.

6. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than thirty (30) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than fifteen (15) days prior to trial.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

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

GORTECH GLOBAL FABRICATION, LLC

vs.

DMG CHICAGO, INC.

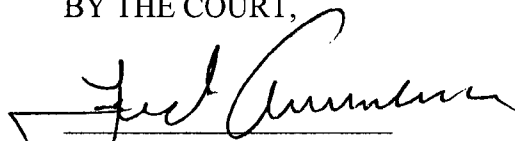
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NO. 2007-754-CD

ORDER

AND NOW, this 19th day of July, 2011, it is the ORDER of this Court that sentences four and five of the redacted email dated May 30, 2007, at the time of 8:50 p.m. is appropriate for discovery under Pennsylvania Rule of Civil Procedure No. 4003.3. Defendant shall provide an additional copy of the said email to Plaintiff with sentences four and five not redacted within no more than 10 days from this date. As for the redaction in the February 20, 2006, proposal, the Court notes Plaintiff has rescinded its request for disclosure of the alleged customer's identity. *See* attached letter to Court from Plaintiff's counsel, dated June 29, 2011. Thus, that issue is moot.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED 200 11/15
010:28701
JUL 20 2011 Summers/Hudock
Teusel/Roy
William A. Shaw
Prothonotary/Clerk of Courts
GL

Via: U.S. Mail

Gregory H. Teufel
412.566.5977
gteufel@eckertseamans.com
Admitted in PA and WV

June 29, 2011

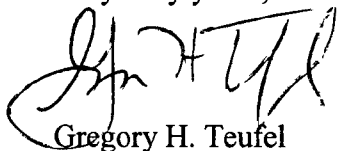
Hon. Judge Fredric J Ammerman
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
Fax: 814-765-7649

RE: *Gortech Global Fabrication, LLC v. DMG Chicago, Inc.*
Court of Common Pleas of Clearfield County, PA
No. 2007-00754-C.D.

Judge Ammerman:

With regard to your order dated June 22, 2011, paragraph 3: The Plaintiff wishes to rescind its request that Defendant disclose the identity of the alleged customer which Defense counsel redacted in the proposal dated February 20, 2006.

Very truly yours,



Gregory H. Teufel

GHT/sac

Cc: Joseph Hudock

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

**MOTION FOR EXTENSION OF TIME TO
FILE EXPERT REPORT**

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

Counsel of Record for this Party:

Joseph A. Hudock, Jr.
PA I.D. #66064

SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, P.C.

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

16887

FILED NO CC
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AUG 03 2011 GL
S William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

MOTION FOR EXTENSION OF TIME TO FILE EXPERT REPORT

1. On June 16, 2011, the undersigned wrote to plaintiff's counsel and asked that he provide dates when he would be available for a deposition in this case.

2. Despite the fact that plaintiff's counsel was clearly aware that defendant wished to conduct additional discovery, plaintiff's counsel nevertheless proceeded to file a certification with the court representing that discovery was complete.

3. On July 1, 2011, this Honorable court entered an Order scheduling trial for October 19, 2011 and directing that the parties file expert reports within the next sixty (60) days.

4. Defendant's expert requires additional time to prepare his report as plaintiff is claiming lost profits of \$1,118,803.00 but has not provided copies of tax returns or any supporting documentation.

5. In addition, the defendant is taking the deposition of a key witness on August 16, 2011 who has knowledge of the claim for lost profits.

6. It is therefore extremely unlikely that defendant will be able to produce a report from his expert by August 30, 2011.

7. Inasmuch as the trial is not scheduled until October 19, 2011, plaintiff will not be prejudiced by receipt of a report after August 30, 2011.

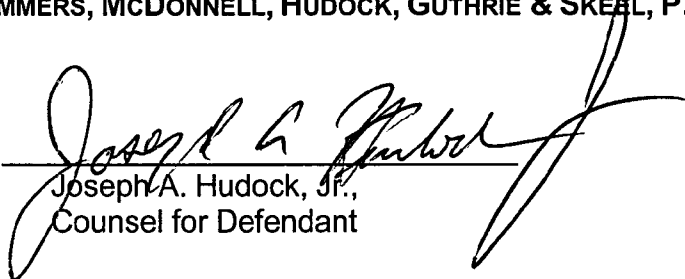
8. Moreover, to the extent plaintiff has any argument that it is prejudiced, that argument is waived by plaintiff's own conduct in certifying a case for trial and representing discovery was complete when it knew perfectly well it was not.

WHEREFORE, defendant respectfully requests this Honorable Court enter an Order extending the time for filing expert reports.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEAL, P.C.

By: _____

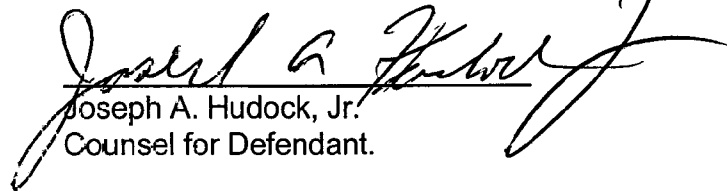

Joseph A. Hudock, Jr.,
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion was served upon counsel of record by mailing the same via first class mail, postage pre-paid, this 29th day of July, 2011, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.



Joseph A. Hudock, Jr.
Counsel for Defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

CIVIL DIVISION

No.: 07-754-CD

vs.

DMG CHICAGO, INC.,

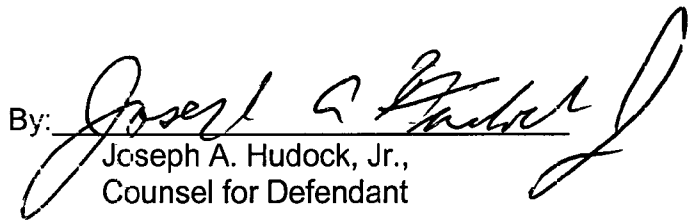
Defendant.

CERTIFICATION PURSUANT TO LOCAL RULE 208.2(e)

Plaintiff counsel and defense counsel have conferred concerning the subject matter of the within Motion and have been unable to reach an agreement.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.

By: 

Joseph A. Hudock, Jr.,
Counsel for Defendant

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

CIVIL DIVISION

No.: 07-754-CD

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

ORDER OF COURT

AND NOW, to wit this _____ day of _____, 2011, upon consideration of the foregoing Motion, it is hereby ORDERED that the time for filing expert reports is extended to _____, 2011.

BY THE COURT:

J.

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

MOTION TO COMPEL

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

Counsel of Record for this Party:

Joseph A. Hudock, Jr.
PA I.D. #66064

SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, P.C.
Firm #911

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

16887

FILED
112.3761
AUG 08 2011
William A. Shaw
Prothonotary/Clerk of Courts
cc
GK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

MOTION TO COMPEL

AND NOW comes the Defendant, DMG Chicago, Inc., by and through its attorneys, Summers, McDonnell, Hudock, Guthrie & Skeel, and sets forth the following Motion to Compel and in support thereof avers as follows:

1. The above-captioned case is a commercial dispute involving an alleged breach of contract.
2. The plaintiff is claiming that his company lost \$1,118,803.00 in profits due to the defendant's failure to provide a particular machine in accordance with the contract. Attached hereto is a copy of the plaintiff's expert report.
3. On March 12, 2009, defendant served a Request for Production of Documents requesting copies of plaintiff's tax returns.
4. Despite repeated requests, plaintiff has failed and refused to provide copies of the tax returns.
5. According to defendant's expert, there is no piece of information more important than tax returns in calculating plaintiff's lost profits.

6. Defendant will be severely prejudiced if it is not permitted to review plaintiff's tax returns

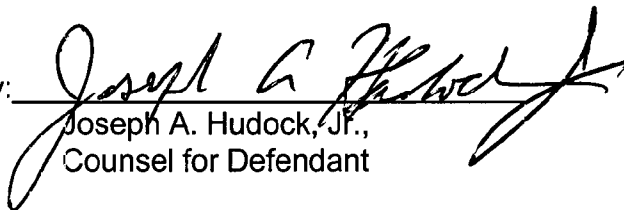
7. Defendant has already signed a Confidentiality Agreement agreeing to keep any tax returns confidential.

8. Plaintiff will therefore suffer no prejudice if made to produce the tax returns.

WHEREFORE, defendant respectfully requests this Honorable Court enter an Order granting the within Motion and ordering the plaintiff to produce its tax returns from 2004 – present.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.

By: 
Joseph A. Hudock, Jr.,
Counsel for Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC

Plaintiff,

v.

DMG CHICAGO, INC.

Defendant.

CIVIL DIVISION

No. 17-75-CD

AFFIDAVIT OF JAMES S. FELLIN

Before me, a Notary Public in and for Allegheny County, on July 29, 2011, appeared James S. Fellin, known to me to be the same, and having been duly sworn, stated as follows:

1. My name is James S. Fellin.
2. I am a Certified Public Accountant, qualified to practice as such in the Commonwealth of Pennsylvania.
3. I am a principal of the Nottingham Group, LLC, a Pennsylvania limited liability company that is dedicated to conducting forensic accounting investigations.
4. Directly and through the Nottingham Group, LLC, I have been involved in the practice of forensic accounting for 25 years. The forensic accounting services that I have performed in the course of my career include, in large part, constructing and evaluating claims for lost income and lost profits. Throughout my career, I have directly worked, supervised and/or testified on literally hundreds of matters where my charge was to assess or quantify lost income and/or lost profits in litigation matters.
5. I have qualified as an expert in business and economic damages numerous times in a variety of legal forums including matters in both Federal and State Courts.
6. I have been retained in the current litigation to provide my professional opinions and conclusions with regard to the amount of potential economic loss sustained by Gortech

Global Fabrication, LLC ("Gortech"), as a result of the actions of DMG Chicago, Inc. ("DMG"). My work in this matter includes a review of a claim for potential lost profits put forth by Plaintiff Gortech. Gortech's alleged lost profits were quantified by Michael H. Bronder and are contained in his report dated July 20, 2011.

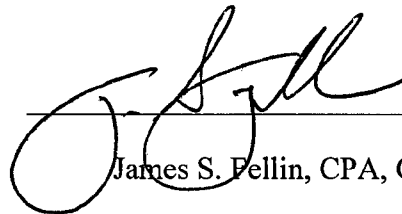
7. It is my observation, from a review of the discovery in this case, that the Plaintiffs have produced very little in the way of reliable and relevant financial and accounting data, which would support its claim for lost profits. Specifically, it appears that the Plaintiff's claim for lost profits is almost based entirely upon a document entitled "Machine Shop Gross Profit Study 2005-2009", which appears to be a document that was prepared by the Plaintiff contemporaneously with this current litigation.
8. It is my further understanding from a review of the discovery in this matter that the Plaintiff has thus far, not produced any Federal Income Tax Returns that contain financial results for Gortech, nor have they produced any compiled, reviewed or audited financial statements for the business nor other relevant financial documents that would have been prepared by Gortech in the normal course of business, including general ledgers, bid information, etc.
9. Based upon my professional experience, it is my strong opinion that it would be difficult, if not impossible, to properly and credibly assess and evaluate a claim for potential lost profits of Gortech without either or both of these critical documents (tax returns and financial statements). While it would be extremely useful to have substantially more of Gortech's financial information, the tax returns and financial statements would be the minimum necessary to formulate a credible opinion on lost profits, within a reasonable degree of professional certainty.
10. In commercial litigation matters where lost profits are being asserted, it is routine and customary for the claimant company to produce financial statements and/or income tax returns, as well as any other relevant business documents prepared in the ordinary course of business that would support a claim for lost profits. In many cases, several levels of documentation are necessary to corroborate the claim for damages.

11. Income tax returns and financial statements are critical documents in general and in this case for a number of reasons. Most importantly, these summary level documents are prepared in the ordinary course of business and usually have been submitted or presented to third parties outside of the litigation and thus, they have a much higher degree of probative value. The reasons that these documents are essential in this case include, but are not limited to the following:

- To assess the overall profitability of the company,
- To identify specific expense line items that were incurred in order to generate revenues,
- To determine the overall gross margin achieved by the company on a historical basis,
- To determine trends, patterns and anomalies in the financial data,
- To evaluate the overall manufacturing capacity of the entity,
- To identify and determining the magnitude of fixed and variable costs and, perhaps most importantly,
- To corroborate the limited financial information that has been provided in a support of a claim for lost profits.

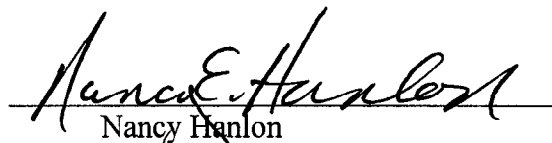
12. For the reasons listed above, it is my professional opinion that the Plaintiff's claim for economic damages in this case cannot be considered valid without the support of, at a minimum, income tax returns and financial statements.

Further he says not.

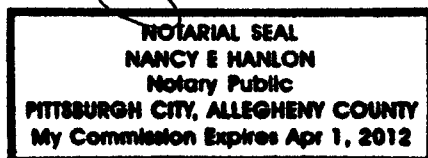


James S. Pellin, CPA, CFE, CFF

Notary Public



Nancy Hanlon

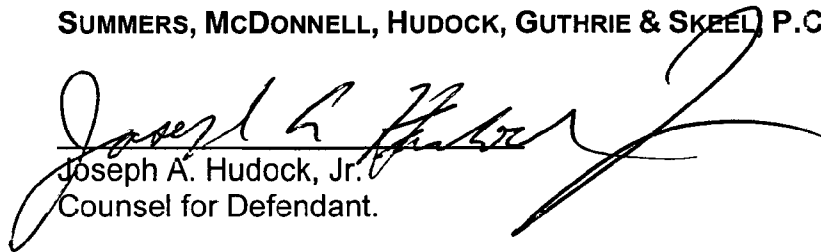


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion was served upon counsel of record by mailing the same via first class mail, postage pre-paid, this 29th day of July, 2011, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL P.C.



Joseph A. Hudock, Jr.
Counsel for Defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

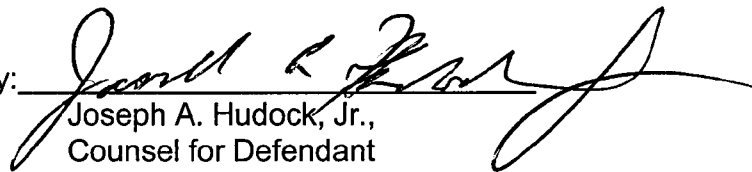
CERTIFICATION PURSUANT TO LOCAL RULE 208.2(e)

On numerous occasions between March of 2009 and as recently as July 27, 2011, counsel for the defendant spoke to counsel for the plaintiff concerning defendant's request for copies of the plaintiff's tax returns. Plaintiff's counsel refuses to provide tax returns on the basis that they are irrelevant.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.

By: _____


Joseph A. Hudock, Jr.,
Counsel for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

CIVIL DIVISION

No.: 07-754-CD

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

ORDER OF COURT

AND NOW, to wit this _____ day of _____, 2011, upon consideration of the foregoing Motion, it is hereby ORDERED that plaintiff is to produce its tax returns from 2004 – present.

BY THE COURT:

_____ J.

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

GORTECH GLOBAL

VS

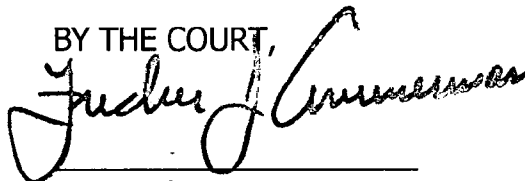
DMG CHICAGO, INC.,

* No. 2007-754-CD
*
*
*
*

ORDER

NOW, this 8th day of August, 2011, upon receipt and review of the Plaintiff's Motion to Compel filed August 3, 2011 and Motion for Extension of Time to File Expert Report; it is the ORDER of this Court that argument on said Motions be and is hereby scheduled for the **12th day of September 2011 at 2:30 p.m.** in Hearing Room No. 3 of the Clearfield County Courthouse, Clearfield, Pennsylvania before Senior Judge Charles C. Brown, Jr., Specially Presiding.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

4
FILED
014:0001
AUG 08 2011
William A. Shaw
Prothonotary/Clerk of Courts
ICC Attys: Tenfel/Roy
Summers/Haddock

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC

Plaintiff,

v.

DMG CHICAGO, INC.,

Defendant.

: CIVIL DIVISION

:
: No. 07-754-CD

:
: **PLAINTIFF'S MOTION FOR**
: **PARTIAL SUMMARY JUDGMENT**

:
: **ORAL ARGUMENT REQUESTED**

:
: Filed on behalf of Plaintiff

:
: Counsel of Record for this Party:

:
: Gregory H. Teufel, Esq.

:
: Pa. Id. No. 73062

:
: Amy J. Roy, Esq.

:
: Pa. Id. No. 86584

:
: Jeremy L.S. Samek, Esq.

:
: Pa. Id. No. 205060

:
: Eckert Seamans Cherin & Mellott, LLC

:
: U.S. Steel Tower

:
: 600 Grant Street, 44th Floor

:
: Pittsburgh, PA 15219

:
: 412.566.6000 telephone

:
: 412.566.6099 fax

:
: Christopher E. Mohny, Esq.

:
: PA I.D. 63494

:
: 25 East Park Avenue, Suite 6

:
: DuBois, PA 15801

:
: 814.375.1044 telephone

:
: 814.375.1088 fax

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William A. Shaw
Promulgatory/Clerk of Courts

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, Gortech Global Fabrication, LLC ("Gortech" or "Plaintiff"), by its undersigned attorneys, hereby files the following Motion for Partial Summary Judgment pursuant to Pa. R. Civ. P. 1035.2:

Introduction

1. In this action, Gortech seeks to recover damages from Defendant DMG Chicago, Inc. ("DMG" or "Defendant") for breach of a contract ("the Contract") to supply a machine as a trade-in for another machine. A true and correct copy of the Contract at issue is attached hereto as Exhibit A.

2. It is now apparent, from the First Amended Pre-Trial Statement filed by DMG, that DMG's only asserted defense to liability is that the Contract at issue is invalid because there was no "approval in writing by the corporate headquarters in Chicago," which DMG asserts was required by terms and conditions on the reverse side of the Contract. A true and correct copy of DMG's First Amended Pre-Trial Statement is attached hereto as Exhibit B.

3. Because this asserted defense was waived by not being properly pled or disclosed, and it lacks any evidentiary support whatsoever, partial summary judgment as to liability in Gortech's favor is warranted.

Factual Background

4. Predator Performance, LLC ("Predator"), a company related to Gortech, originally purchased a CTX 320 Linear CNC from DMG for \$199,500 and conveyed it to Gortech. Complaint ¶¶ 7, 14, admitted at Answer ¶¶ 7, 14. A true and correct copy of the Complaint and Answer are attached hereto as Exhibits C and D, respectively.

5. DMG sold the CTX 320 Linear CNC that Gortech had to another DMG customer and gave Gortech a used 2003 CTX 420 V4, which Gortech presently possesses, in trade for the CTX 320 Linear CNC. Complaint ¶ 15, admitted at Answer ¶ 15.

6. Little did Gortech know that the CTX 420 V4 had numerous serious undisclosed problems, contrary to DMG's misrepresentations that induced Gortech to take the used CTX 420 V4 in trade for its new CTX 320 Linear CNC. See Complaint ¶¶ 21, 28 admitted at Answer ¶¶ 21, 28 (admitting problems with the CTX 420 V4); email from Phil Rugari of DMG to York Franke of DMG dated May 30, 2007 ("If you had not misrepresented this machine we wouldn't be in this mess."). A true and correct copy of that email is attached hereto as Exhibit E.

7. For months, DMG kept promising Gortech that it would send someone to fix the CTX 420 V4 and provide training, but DMG repeatedly failed to send someone when promised and rescheduled numerous times (this fact is disputed by DMG but not material to the relief requested).

8. Repeatedly, when a DMG person finally came to provide training for the CTX 420 V4, more problems surfaced with the CTX 420 V4 and time that was supposed to be spent training was instead spent dealing with those problems. See Complaint ¶ 28, admitted at Answer ¶ 28 (admitting problems surfacing during time scheduled for training on at least one occasion).

9. In light of the lost production time and the problems experienced with the CTX 420 V4 and the prior machine and the delays in receiving training, in an apparent effort to make things right, DMG entered into the Contract on June 8, 2006, promising to provide a new 2006 CTX 420 V6 “with all options and accessories” and “T.C. Services Tooling,” along with machine installation and training and a new machine warranty, in trade for the CTX 420 V4. See Complaint ¶ 33, admitted by failure to deny at Answer ¶ 33 (DMG’s Answer to ¶ 33 merely claims no response to ¶ 33 is required because ¶ 33 “references a document which speaks for itself”).

10. This was a highly favorable trade-in, in that the new 2006 CTX 420 V6 that was promised was substantially more valuable and had a substantially higher market price than the used 2003 CTX 420 V4 that Gortech had. Complaint ¶ 37, admitted at Answer ¶ 37.

11. DMG did not deliver the 2006 CTX 420 V6 as required by the Contract and Gortech filed this action seeking damages for breach of contract. DMG’s admission in response to Request for Admission 5. A true and correct copy of DMG’s responses to Gortech’s written discovery requests is attached hereto as Exhibit F.

DMG’s waiver of defense of contract invalidity.

12. DMG’s First Amended Pre-Trial Statement asserts the following as to a purported defense of contract invalidity:

. . . the document itself references terms and conditions on the reverse, but the copy faxed to the plaintiff was blank on the reverse side. Plaintiff therefore knew or should have known that there were other material terms involved in the alleged contract, one of which was that the agreement between one of defendant’s salesman [sic] and the plaintiff would need to be approved in writing by the corporate headquarters in Chicago.

13. The defense articulated in DMG’s Amended Pre-Trial Statement is an affirmative defense, based on alleged additional terms to the Contract.

14. As such, it was required to be pled as an affirmative defense in DMG's New Matter.

15. However, DMG failed to assert any such affirmative defense in its New Matter.

16. In addition, in response to ¶ 33 of the Complaint, which alleges that "A true and correct copy of the Contract is attached hereto as Exhibit B," DMG's Answer merely states that "Paragraph 33 of plaintiff's Complaint references a document which speaks for itself. Therefore, no response is required."

17. To the extent DMG intended to take the position that the document attached to the Complaint as Exhibit B was not a true and correct complete copy of the Contract, and that the Contract contained additional terms that formed the basis of a defense, DMG was obligated to state that rather than state that the "document speaks for itself."

18. DMG was required to deny that the Contract attached to the Complaint was true and correct if DMG intended to argue that there were additional terms.

19. By its response to ¶ 33 of the Complaint, DMG admitted that Exhibit B was a true and correct copy of the Contract at issue, and not merely a portion of the Contract.

20. In response to ¶ 45 of the Complaint, which alleged that the Contract was a valid and binding agreement, DMG merely stated that "Paragraph 45 of the Plaintiff's Complaint sets forth a legal conclusion to which no responsive pleading is required."

21. In its Answer and New Matter, DMG failed to deny that the Contract was a valid and binding agreement and failed to disclose any basis on which it might intend to contest the validity of the Contract.

22. In response to ¶ 35 of the Complaint, which alleged that, by email, Mark Henne (the DMG salesman that signed the Contract on behalf of DMG) represented that he was

authorized to enter into the Contract on behalf of DMG, DMG merely stated that “Paragraph 25[sic] of the plaintiff’s Complaint references a document which speaks for itself. Therefore no response is required.”

23. Nowhere in its Answer or New Matter did DMG indicate that it intended to argue that Mr. Henne was not authorized to execute the Contract on DMG’s behalf.

24. Not only did DMG fail to properly plead the contract invalidity defense, but also DMG failed to disclose its intention to assert that defense even in response to multiple on-point discovery requests.

25. Interrogatory 9 asked “If you contend that the Contract is not a valid and binding Contract, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and explain why the Contract is not valid and binding.”

26. DMG’s response to Interrogatory 9 did not even indicate whether DMG contended that the Contract was not valid or binding, and simply objected and stated “see response to Request for Production.”

27. DMG did not articulate any reasons why the Contract was not valid or binding anywhere in its discovery responses or in the few documents it chose to produce in response to Gortech’s Requests for Production.

28. Moreover, the alleged “other material terms involved in the alleged contract”, which DMG now references in its First Amended Pre-Trial Statement, were not produced by DMG in discovery.

29. DMG did state in response to Interrogatory 20 that “Mr. Henne was an area sales manager who had no authority to enter into the contract in question.” However, DMG did not

state that it intended to put forth a contract invalidity defense on that basis or on any other basis, and did not state that the reason DMG was asserting that Mr. Henne had no authority to enter into the Contract was because alleged additional terms of the Contract required approval "in writing by the corporate headquarters in Chicago," as DMG now asserts in its First Amended Pre-Trial Statement.

30. Mr. Henne testified in his deposition, at pages 23-25 and 29-31 (attached hereto as Exhibit G), that he was authorized to sign the Contract on behalf of DMG by both the CEO/President and the Vice President of Sales, as follows:

A That's when the machine came in, delivered, had problems with it. It was wrecked. It was --

Q Right. You were just describing that. Then what happened next?

A I would say that at that point -- Todd and I kept in communication at different times about this. He said: Could we do something? I don't want this thing anymore. And I believe this to be the case. Again, it's hard to recall everything. But the sales manager at the time, his name was Darren * * * McCarthy.

Q Darren McCarthy was the sales manager?

A Right. Right. Darren McCarthy was the vice president of sales, and the CEO was Peter Riehle. * * * I made them aware of the problems. And we had a CTX 420V6 in stock. And this machine represented an upgrade of the machine on Exhibit 2. So we were going to swap out the 420V4 for the 420V6 at no additional cost to the customer. That was the pre-arranged agreement. At that point I was told to go ahead and make the deal happen, make the customer happy. That's when I went back to them -- "them" being Gortech -- and said: This is what we can do. We have a machine. Executed the sales agreement and turned it in. Customer agreed. Turned it in to Chicago.

* * *

Q: . . . In your role as area sales manager at DMG did you have authority to enter into the contract at Exhibit 1?

A Yes -- Let me back up a minute. By definition, it's my understanding that only officers were allowed to do that when this was originally drafted, but our president said: Yes, you can sign it. If you need to get the deal -- If they require a signature to close it, go ahead, sign it.

Now, we were told to do that verbally, but I don't know the legal ramifications.

Q Okay. You were specifically told by the president --

A Yeah, I could do that. Yeah.

Q -- by the president of DMG Chicago, Inc., that you had authority to enter into this agreement on behalf of DMG?

A Yeah. There were other documents I'm sure you'll find, other orders that I signed.

Q Okay. You conveyed the fact that you had that authority to Gortech; you told them you had authority to enter into the agreement?

A I don't recall that coming up.

Q Okay. Maybe this will refresh your recollection. I have a document we'll mark Exhibit 3. (Whereupon, Deposition Exhibit 3 was marked for identification.)

Q Can you identify the document I just handed you as Exhibit 3. Just, for the record, state what it is.

A Yes. E-mail to Todd from me.

Q June 8, 2006 e-mail from you to Todd Gordon?

A Right.

Q And in that e-mail where you say "I have the okay to move ahead and switch out your machine and replace it with the subspindle machine," are you referring to the authority you were given to switch out the CTX 420V4 and switch it out for the CTX 420V6?

A Correct.

Q And you said you did sign other contracts like Exhibit 1 for DMG?

A Similar. Let me elaborate a little bit. I wasn't -- There are other area sales managers in the company at the time that did the same thing, so I wasn't the only one that did that.

Q "Did the same thing" in terms of sign similar agreements on behalf of DMG?

A Correct.

Q So did you understand that the document that I've shown you marked as Exhibit 1 to be a binding agreement?

A I do.

31. Gortech took the deposition of DMG pursuant to Pa.R.Civ.P. 4007.1(e), and DMG designated one witness, Gerald Fitzpatrick, to testify on its behalf.

32. When asked specifically about whether Mr. Henne was authorized to enter into the Contract on DMG's behalf and any reasons why the Contract was not a valid and binding agreement, he said nothing about any alleged "other material terms" on the reverse side of the Contract that required approval "in writing by the corporate headquarters in Chicago." Instead, he acknowledged he could not contradict Mr. Henne's testimony that he had verbal approval from both the President and Vice President of DMG to sign the Contract on DMG's behalf and Mr. Fitzpatrick responded to such questions as follows, on pages 15-18 and 37-39 of his deposition (attached hereto as Exhibit H):

Q Did Mr. Henne, in his role as area sales manager at DMG, have the authority to enter into the contract at Exhibit 1?

A No.

Q Why do you say that?

A I say that because it's a very -- First of all, it says that it has to be signed by an officer of DMG, but the second reason is, it's an unusual transaction. It's not a normal transaction.

Q When you say it says that it has to be signed by an officer of DMG, where does it say that?

A It says, "Accepted by an officer of DMG," on the very bottom, "this" blank "day of" blank two thousand blank.

Q: . . . Did you hear Mr. Henne's testimony that he had signed similar agreements to this in the past as area sales manager on behalf of DMG?

A Yes. I think he signed documents that were for machine sales, where a customer is buying a machine, you know, for cash. But I don't think that he ever signed -- or I never saw another document signed by a salesman where they take an old small machine and exchange it evenly for a new larger machine. That's why I said it was an unusual transaction.

Q So when Mr. Henne signs an agreement like Exhibit 1, hands it to a customer, is it your understanding that a customer's supposed to understand, because it says "Accepted by an officer of DMG," that Mark Henne's not an officer and he's not authorized to sign this document?

A I'm not saying that the customer should know that.

Q Okay. So from DMG's perspective, what else would have had to happen after Mark Henne signed and gave this to the customer for it to become an authorized, binding agreement? What else would DMG have required?

A For a transaction like this, swapping a used old machine for a newer bigger machine, it would have had to have been authorized by the president of the company. And I don't know if we have a specific rule, but an unusual transaction like this we do have a four-eye principle where two managers have to approve it.

Q A what principle?

A They call it the "four eyes," where two sets of people have to sign an agreement.

Q Four eyeballs?

A Four eyeballs.

Q Gotcha. I didn't know if you meant four I's as in the letter I. But, again, that's not necessarily something that the customer should know or be aware of?

A From the customer's point of view, I cannot assume that they would know that.

* * *

Q: . . . Now, just tell me, if you will, all the reasons you are aware of -- I understand you're not a lawyer, but any reasons you're aware of why this would not be a valid and binding contract.

A You are referring to Exhibit 1?

Q Exhibit 1, yes.

A The main reason is that Mark Henne was not authorized to approve, by himself, an unusual transaction where you're swapping out one machine for another machine.

Q Okay.

A I found out today in his testimony that he had verbal approval, but I still have not seen anything more.

Q Did he need written approval, or was verbal approval sufficient?

A Again, if you go to the four-eye principle for a transaction that's unusual like this, for sure you would need at least two people agreeing on DMG's side.

Q And he mentioned two people; didn't he? The president and vice president both gave him verbal approval, so that would satisfy your four-eye principle?

A It would if I knew what that was about. I mean, I don't know -- I wasn't party to the conversation. I don't know if the facts were presented accurately. I don't know that they were. I do not know that they weren't.

Q Okay.

A It's hard for me to say one way or the other.

Q Okay. But, I mean, if both the vice president and the president provided verbal approval, would that have been sufficient approval for it to be a binding contract as far as you know?

A In my opinion, no, because you would need to have something signed. Maybe that's just my training as an accounting guy, and I like to have things documented. But if we had verbal agreements and nothing written down or backed up, then we end up in a room like this where we're discussing whether something's valid or not, so --

Q Is the four-eye principle written down anywhere at DMG? Is that a written policy?

A Yes. We have numerous policies, but there is -- I don't remember the name of the document, but there is a policies and procedures manual.

Q Is that a policies and procedures manual that Mark Henne would have had?

A I don't know.

Q When was the four-eye principle written down?

A I don't know.

Q Was it written down as of June 2006?

A I don't exactly know. I don't exactly know.

Q Did it exist even just in unwritten form as a policy, to your knowledge, as of June 2006, the four-eye principle?

A I don't know.

33. Interrogatory 21 asked, if DMG contended that Mark Henne did not have proper authority to enter in the Contract on DMG's behalf on June 8, 2006, then identify all contracts which Mark Henne signed on behalf of DMG, with or without authority, and for each state whether he had proper authority, and identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention. DMG merely objected and

stated “see contract attached to Request for Production of Documents.” The only contract that DMG attached to its response to the Request for Production of Documents was the Contract at issue.

34. Request for Production 3 asked for all contracts or agreements entered into between DMG and Gortech or any other document evidencing or relating to any such agreement, and DMG produced no alleged additional terms and conditions from the reverse side of the Contract in response thereto.

35. Request for Production 5 asked for all documents identified, reviewed, or relied upon in support of the factual allegations in the Answer and New Matter and any other pleadings filed on behalf of DMG, and DMG produced no alleged additional terms and conditions from the reverse side of the Contract in response thereto.

36. Request for Production 6 sought each and every document, item, or other exhibit that DMG intended to introduce into evidence or use at trial and each and every document related thereto, and DMG produced no alleged additional terms and conditions from the reverse side of the Contract in response thereto.

37. Request for Production 7 sought all documents relating to or consisting of communications or agreements between Gortech and DMG, and DMG produced no alleged additional terms and conditions from the reverse side of the Contract in response thereto.

38. Request for Production 9 sought all documents related to any fact alleged in the Complaint, Answer, New Matter, Reply to New Matter, or any pleading in this action, and, again, DMG produced no alleged additional terms and conditions from the reverse side of the Contract in response thereto.

39. In response to Request for Admission 1, DMG admitted that a true and correct copy of the Contract was attached to the Complaint as Exhibit B. DMG's response to Request for Admission 1 contained no caveats or qualifications as to asserted additional terms to the Contract.

40. In response to Request for Admission 6, DMG denied that the Contract was a valid and binding agreement, but gave no reasons for the denial.

41. In Interrogatory 19, Gortech requested, to the extent DMG responded to any of the requests for admissions with anything but an unqualified admission, that DMG describe any and all facts supporting its failure to unqualifiedly admit such request and identify any documents that support its failure to unqualifiedly admit such request. Nevertheless, DMG provided no facts or documents in support of its denial of Request for Admission 6.

42. Even as recently as the pretrial conference held before the Honorable Frederic J. Ammerman on July 1, 2011, the Court inquired of DMG's counsel what DMG's defense was, and DMG's counsel simply and succinctly stated that DMG's defense was that "there was no breach," and made no mention of any defense as to the validity of the Contract.

43. Thus, DMG has clearly waived any defense of invalidity of the Contract based on alleged additional material terms that DMG admits were not actually on the reverse side of the Contract that both parties signed.

44. Allowing DMG to suddenly assert a defense of contract invalidity based on alleged additional terms and conditions from the reverse side of the Contract after it failed to plead such a defense and failed to disclose the basis of that defense or even to provide the alleged additional terms and conditions in discovery, despite being asked to elaborate and provide documents and facts in support of any contention as to Contract invalidity in every conceivable

way (through interrogatories, requests for production, requests for admissions, and depositions), would be highly prejudicial to Gortech in that it would, at the minimum require retaking of depositions and additional discovery that would delay trial.

No evidence to support contractual invalidity defense.

45. Moreover, there is simply no evidence to support such a Contract invalidity defense and the uncontradicted evidence and admissions conclusively demonstrate both that Exhibit B to the Complaint is a true and correct copy of the entire Contract and that Mark Henne was fully authorized by both the President and Vice President of DMG to sign the Contract on DMG's behalf.

46. DMG does not allege, much less has it disclosed any evidence, that DMG ever even discussed or showed any alleged "other material terms" to Gortech prior to execution of the Contract.

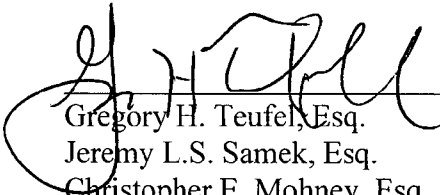
Relief sought.

47. For reasons explained more fully in the Brief in support of this Motion, which is being filed herewith, which Brief is incorporated by reference as if fully set forth herein, Gortech requests that this Court enter an Order granting partial summary judgment in Plaintiff Gortech's behalf and against Defendant DMG, such that the only remaining issue for trial would be the amount of damages.

WHEREFORE, Plaintiff Gortech requests that this Court enter the attached proposed Order or grant such other and further relief as this Court may deem proper.

Respectfully submitted,

Dated: August 19, 2011



Gregory H. Teufel, Esq.
Jeremy L.S. Samek, Esq.
Christopher E. Mohny, Esq.
Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this ____ day of _____, 2011, upon consideration of the Motion for Partial Summary Judgment filed by Plaintiff Gortech Global Fabrication, LLC, and any responses thereto, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is Granted. It is hereby ORDERED that DMG is liable for breach of the June 8, 2006 contract at issue, and the sole issue remaining for trial is the amount of damages caused by such breach.

_____. J.

Office:
☒ Chicago ☐ Charlotte ☐ Los Angeles

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

**FIRST AMENDED PRE-TRIAL
STATEMENT**

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

Counsel of Record for this Party:

Joseph A. Hudock, Jr.
PA I.D. #66064

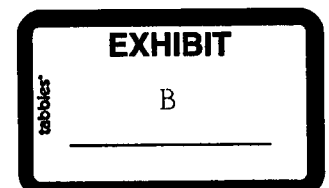
SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, P.C.
Firm #911

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

FIRST AMENDED PRE-TRIAL STATEMENT

AND NOW comes the Defendant, DMG Chicago, Inc., by and through its attorneys, Summers, McDonnell, Hudock, Guthrie & Skeel, and sets forth the following First Amended Pre-Trial Statement and in support thereof avers as follows:

FACTS

The above-captioned case is an action for alleged breach of contract. However, defendant denies the existence of any valid contract. It is undisputed that defendant sold several precision milling machines to plaintiff which are designed to produce parts for use in other machines. One of the machines involved is known as a CTX420V4, which was sold by the defendant's used machine division.

The plaintiff is claiming that it experienced problems with the CTX420V4 and that the defendant agreed to provide plaintiff with a different machine, a new CTX420V6, which was much more expensive. A true and correct copy of the document purporting to memorialize this transaction is attached to plaintiff's Complaint as Exhibit "B". The plaintiff would have this Honorable Court believe that Exhibit "B" constitutes a valid and binding

contract. However, the document itself references terms and conditions on the reverse, but the copy faxed to plaintiff was blank on the reverse side. Plaintiff therefore knew or should have known that there were other material terms involved in the alleged contract, one of which was that this agreement between one of defendant's salesman and the plaintiff would need to be approved in writing by the corporate headquarters in Chicago.

Plaintiff also unilaterally attempted to apply money it owed to defendant from previous transactions to this transaction, which was never authorized by the defendant.

LIABILITY WITNESSES

1. Jerry Fitzpatrick
DMG Chicago, Inc.
2400 Huntington Boulevard
Hoffman Estates, IL 60192
2. Phil Rugari
800 Commerce Park Drive
Cranberry Township, PA 16066
3. Dennis C. Fritz
(Address unknown)
4. York Franke
GF Agie Charmilles
560 Bond Street
Lincolnshire, IL 60069-4224
5. Mark Henne
28 Kenneth Drive
Pittsburgh, PA 15223
6. Stephanie Radaker
1152 Treasure Lake
Du Bois, PA 15801
7. Yens Hardenacke
DMG/Mori Seiki
12-3 Industrial 33 Road
Industrial Park
Taichung City 40768
Taiwan, R.O.C.

8. Mark Page
DMG Chicago, Inc.
2400 Huntington Boulevard
Hoffman Estates, IL 60192
9. Any individual or entity identified in the plaintiff's pre-trial statement.

DAMAGE WITNESSES

1. Any individual or entity identified in the liability portion of this pre-trial statement.
2. Any individual or entity identified in the plaintiff's pre-trial statement.
3. James S. Fellin, CPA, CFE, CFF
The Nottingham Group, LLC
One Gateway Center, Suite 700
420 Fort Duquesne Blvd.
Pittsburgh, PA 15222
(Report to be provided)

EXHIBITS

1. All pleadings.
2. Any and all e-mails between plaintiff and its representatives and defendant and its representatives or former representatives.
3. All deposition transcripts.
4. Any exhibit identified in any deposition or discovery.
5. Any exhibit identified in the plaintiff's pre-trial statement.

LEGAL THEORY

This is a claim for an alleged breach of contract. Defendant's position is that no valid contract was ever formed between the parties.

EXTRAORDINARY EVIDENTIARY PROBLEMS

Defendant does not anticipate any extraordinary evidentiary problems.

STIPULATIONS

It is anticipated that plaintiff will stipulate to the authenticity of the exhibits.

ESTIMATED TIME FOR TRIAL

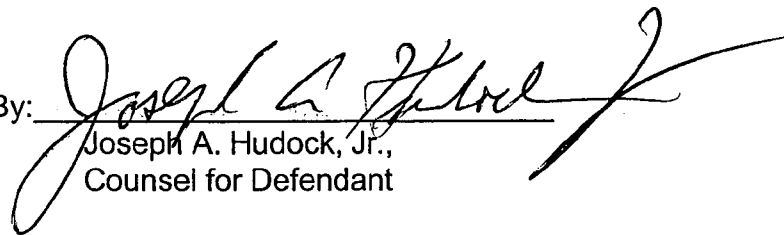
It is anticipated that the trial will take three days.

Defendant reserves the right to supplement this pre-trial statement up to and including the time of trial.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.

By: _____

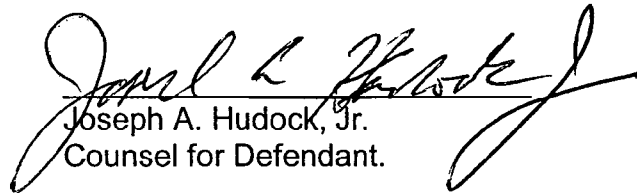

Joseph A. Hudock, Jr.,
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PRE-TRIAL STATEMENT was served upon counsel of record by mailing the same via first class mail, postage pre-paid, this 29th day of July, 2011, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.



Joseph A. Hudock, Jr.
Counsel for Defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

COMPLAINT

DMG CHICAGO, INC.,

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Defendant.

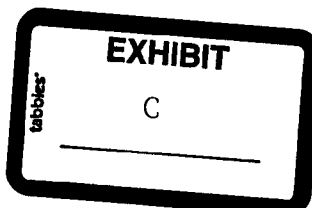
Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

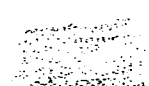
Christopher E. Mohny, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

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

JAN 28 2009



Attest.



William L. Shaw
Prothonotary/
Clerk of Court

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

NOTICE TO DEFEND

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 50-51

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

COMPLAINT IN CIVIL ACTION

Plaintiff, Gortech Global Fabrication, LLC ("Gortech"), by its undersigned attorneys, hereby files the following Complaint in Civil Action against Defendant DMG Chicago, Inc., the grounds of which the following are statements:

Introduction

1. This action seeks to recover damages from Defendant for breach of a contract to supply a machine as a trade-in for another machine.

Parties

2. Plaintiff Gortech is a Limited Liability Company organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business at 215 Beaver Dr. DuBois, PA 15801.

3. Upon information and belief, Defendant DMG Chicago, Inc. t/d/b/a "DMG, INC." and "DMG Used Machine Division" (hereafter "DMG") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 265 Spring Lake Drive, Itasca, IL 60143.

4. At the time of the commencement of this lawsuit via praecipe for writ of summons, DMG's principal place of business was at 1665 Penny Lane, Schaumburg, IL 60173.

Jurisdiction and Venue

5. This Court has original jurisdiction over this action pursuant to 42 Pa.Cons.Stat. § 931.

6. Venue is proper in this Court under Pa.R.Civ.P. 2179 because transactions and occurrences out of which the causes of action set forth herein arose took place in Clearfield County and DMG regularly conducts business in Clearfield County.

Factual Background

7. Predator Performance, LLC ("Predator"), a company related to Gortech, originally purchased two machines from DMG; a DMU 100T 5 for \$325,500, and a CTX 320 Linear CNC for \$199,500.

8. Predator gave a 10% down payment totaling \$52,500 toward both machines, via check dated February 9, 2005.

9. The DMU 100T 5 was returned because it would not perform the functions promised (breach of written warranties).

10. DMG wanted Predator to take a credit toward future purchases, but Predator insisted on applying the monies toward the CTX 320 Linear CNC.

11. In addition, DMG agreed to reimburse Predator for the expenses associated with the DMU 100T 5, which consisted of \$3,750 in shipping, \$7,903.85 in scaffolding, and \$3,000 in rigging, totaling \$14,653.85.

12. After subtracting the \$52,500 down payment and the \$14,653.85 reimbursement from the \$199,500 purchase price for the CTX 320 Linear CNC, the amount remaining that Predator owed toward that purchase price was \$132,346.15.

13. Predator sent DMG a check for that balance, \$132,346.15, on October 12, 2005, leaving a balance owed to DMG for the CTX 320 Linear CNC of zero dollars.

14. Predator conveyed the CTX 320 Linear CNC to Gortech, and Gortech had discussions with DMG regarding trading in the CTX 320 Linear CNC.

15. DMG sold the CTX 320 Linear CNC that Gortech had to another DMG customer and gave Gortech a used CTX 420 V4, which Gortech presently possesses, in trade for the CTX 320 Linear CNC ("the first trade-in Agreement"). A true and correct copy of the first trade-in Agreement is attached hereto as Exhibit A, along with the fax cover sheet by which York Franke of DMG sent the first trade-in Agreement to Todd Gordon of Gortech.

16. Gortech honored all terms and conditions of the first trade-in Agreement.

17. After discussing it but before agreement was reached on trading it in, DMG had already sold the CTX 320 Linear CNC to another customer.

18. Gortech had decided against doing a trade-in of the CTX 320 Linear CNC by that point, but accepted the first trade-in Agreement as an accommodation to DMG in light of the fact that DMG had made a commitment to another customer in the interim.

19. York Franke referenced that accommodation in the fax cover sheet included in Exhibit A hereto where he stated "THANK YOU AGAIN FOR HELPING ME OUT OF THIS BIND!"

20. As part of that first trade-in Agreement, DMG agreed to provide training on the CTX 420 V4.

21. The CTX 420 V4 had been crashed; possibly more than one collision.
22. DMG expressed disbelief when this was discovered, asserting that the CTX 420 V4 had been used in a laboratory and had a total of 200 hours of use.
23. Gortech requested to know the name of the facility and a contact from where the CTX 420 V4 originated, but this information was not provided.
24. DMG sent Gortech replacement parts for those parts on the CTX 420 V4 that needed to be replaced due to the prior collision(s).
25. Despite Gortech replacing those parts, there were significant vibration problems with the CTX 420 V4.
26. For months, DMG kept promising Gortech that it would send someone to fix the CTX 420 V4 and provide training, but DMG repeatedly failed to send someone when promised and rescheduled numerous times.
27. A DMG technician finally came to Gortech to align the CTX 420 V4 and stop the vibration problems.
28. However, when a subsequent DMG person came to Gortech to provide training for the CTX 420 V4, software problems surfaced with the CTX 420 V4.
29. Thus, time that was supposed to be spent training was instead spent dealing with those software problems.
30. The CTX 420 V4 was delivered in February 2006, and, by May 2006, Gortech still had not received the training necessary to use it.
31. A DMG person came to Gortech and installed new software, to correct the software problems.

32. At that point DMG again promised to send someone to provide training for the CTX 420 V4, but again DMG failed to send anyone.

33. In light of the year of lost production and the problems experienced with the CTX 420 V4 and the prior machine and the delays in receiving training, to its credit, in an apparent effort to make things right, DMG entered into a contract ("the Contract") on June 8, 2006, promising to provide a new CTX 420 V6, along with a new machine warranty, in trade for the CTX 420 V4. A true and correct copy of the Contract is attached hereto as Exhibit B.

34. Mark Henne, Area Sales Manager for DMG, sent the Contract to Todd Gordon of Gortech via fax, and signed it on behalf of DMG.

35. Mark Henne, by email on June 8, 2006, represented that he was authorized to enter into the Contract on behalf of DMG. A true and correct copy of said June 8, 2006 email is attached hereto as Exhibit C.

36. Todd Gordon signed the Contract on behalf of Gortech and hand delivered the fully executed Contract to Mark Henne on June 8, 2006.

37. This was a highly favorable trade-in, in that the new CTX 420 V6 that was promised was substantially more valuable and had a substantially higher market price than the used CTX 420 V4 that Gortech had.

38. DMG did not deliver the CTX 420 V6 as required by the Contract.

39. Instead, DMG reverted back to offering to provide training on the CTX 420 V4.

40. By September 6, 2006, Gortech was fed up waiting for either delivery of the CTX 420 V6 or training on the CTX 420 V4 and Gortech issued an ultimatum, demanding performance as promised within two weeks and threatening legal action.

41. Rather than actually sending someone to provide training within those two weeks, DMG responded by merely offering to send someone to provide training on September 25, 2006, more than two weeks after the date of the ultimatum.

42. Gortech was no longer interested in promise after broken promise of training and responded by insisting that DMG honor the Contract or refund money.

43. Thereafter, DMG has consistently failed and refused to refund money or to honor the Contract.

Count I – Breach of Contract

44. Gortech hereby incorporates the averments contained in the preceding paragraphs 1 through 43 by reference as if fully set forth herein.

45. The Contract was a valid and binding agreement.

46. DMG breached the Contract by failing to deliver the CTX 420 V6.

47. DMG's breach of contract caused damages to Gortech in excess of \$20,000, including but not limited to the difference in value between the used CTX 420 V4 and the new CTX 420 V6 and the loss of profits due to the loss of use of the CTX 420 V6.

48. Gortech intended to use the CTX 420 V6 to produce parts for Gortech's customers.

49. The CTX 420 V6 would have allowed Gortech to perform a greater volume of work without having to do multiple setups to produce one part, and to take on additional customers. In addition, the CTX 420 V6 had an automatic feeder, which helped to speed up the process. The CTX 420 V4 lacked an automatic feeder.

50. Because Gortech did not have the CTX 420 V6, Gortech was unable to obtain certain work from customers that it would have been able to obtain if it had the CTX 420 V6.

51. DMG was aware of how Gortech intended to use the CTX 420 V6, was aware that the CTX 420 V6 would have expanded and improved Gortech's capabilities, and had reason to know and knew that Gortech would suffer lost profits as a result of DMG's failure to deliver the CTX 420 V6.

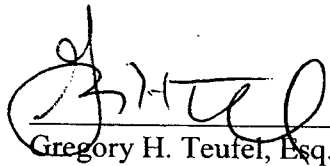
WHEREFORE, Plaintiff Gortech Global Fabrication, LLC respectfully requests that this Court enter judgment in its favor against Defendant DMG Chicago, Inc. in an amount in excess of \$20,000, plus interest, costs, and such other and further relief as this Court deems just and proper.

A JURY TRIAL IS DEMANDED

Plaintiff demands trial by jury on all issues so triable.

Respectfully submitted,

1/26/09



Gregory H. Teufel, Esq.

Amy J. Roy, Esq.

Christopher E. Mohnney, Esq.

*Attorneys for Plaintiff,
Gortech Global Fabrication, LLC*

02/02/2006 11:55 8477815053

DMG USED MACHINE DIV

PAGE 09/10

DMG

Used Machine Division

INVOICE #2006-5

Thursday February 2, 2006

Sold To:
Mr. Todd Gordon, General Manager
Gortech Global Fabrication
215 Beaver Dr.
Dubois, PA 15801

A member of the
GILDEMEISTER
group

DMG Chicago Inc.
1405 Perry Ave
Schweitzburg, IL 60173
Phone (847) 781-0777
Fax (847) 781-5033
E-mail info@dmgamerica.com
Internet www.dmgamerica.com

2003 Gildemeister CTX420V4 S/N 02260002561 as equipped per proposal number 164355-056148 dated February 2, 2006.

\$140,000.00 USD 2003 Gildemeister CTX420V4 S/N 02260002561

\$28,717.30 USD WTO tooling package per WTO quote# 06M026Q-03 (see attachment A)

(\$140,000.00 USD) Trade in value for 2005 Gildemeister CTX320V4 S/N 8039937279C
Gortech Global Fabrication guarantees free and clear title to machine and will pay open AR to DMG Chicago, Inc. if applicable

(\$26,717.30 USD) Trade in value for tooling package for CTX320V4 consisting of:

-5 live tool holders

- 1/5: 90 degree long driven unit for drilling/milling
- 2/5: 0 degree driven unit, short, for drilling/milling
- 3/5: 0 degree driven unit, long, for drilling/milling
- 4/5: Special 0 degree driven unit, max turning speed 8000 RPM-8 Nm for drilling/milling
- 5/5: 90 degree driven unit, universal H=100, Max turning speed 8000 RPM for drill/milling

-1 set of seven (7) collets

-All items listed on Gortech Global Fabrication purchase order number 11979 dated 01/26/06 issued to ITI Tooling Company, Inc. (see attachment B): total of eighteen (18) items

-In House tooling (see attachment C) already at Gortech Global Fabrication consisting of:

- 1 Sauter straight drill/milling unit
- 1 Sauter right angle drill/mill units
- 3 LH turning tool holders-metric
- 3 RH turning tool holders-metric
- 6 32 mm boring bar holders
- 6 32 mm various ID boring bar adaptors
- 6 Boring bars to match adaptors
- 1 32 mm collet chuck for ER25 collet
- 3 Iscar metric LH turning tools
- 1 Sauter straight (2:1) mill unit
- 1 Sauter right angle (2:1) mill unit

John L. White
President
2-2-06

If any of the above listed tooling is not received, Gortech Global Fabrication will pay for the actual cost to replace missing items

DMG Used Machine Division

DECKEL MAHO GILDEMEISTER

EXHIBIT

tabbies

A

02/02/2006 11:55

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DMG USED MACHINE DIV

PAGE 10/10



A member of the
GILDEMEISTER
group

DMG Chicago Inc.
1663 Perry Lane
Schaumburg, IL 60193
Phone (847) 781-0277
Fax (847) 781-5053
E-mail info@dmgamerica.com
Internet www.dmgamerica.com

INVOICE #2006-5 continued

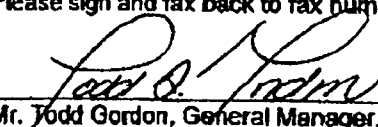
TERMS:

1. 2005 Gildemeister CTX320V4 S/N 8039837279C to be released for pickup immediately upon acceptance of this invoice. Machine to be loaded out onto truck that delivers the CTX420. Date to disconnect CTX320V4 Monday February 6. Removal date CTX320/Delivery date CTX420 Tuesday February 7, 2006.
2. DMG Used Machine Division to pay for engineer to disconnect and prep for shipment CTX320.

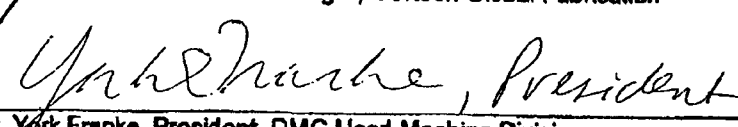
Upon acceptance of this invoice ownership of the machine is conveyed, before machine shipment.

Please sign and fax back to fax number 847-781-5053.

AGREED/ACCEPTED:


Mr. Todd Gordon, General Manager, Gortech Global Fabrication

2-2-06
Date


Mr. York Franke, President, DMG Used Machine Division

2-2-06
Date

Thank you for your order. We sincerely appreciate your business.

DATE: 02/02/2006

TO: GORTECH GLOBAL FABRICATION
215 BEAVER DRIVE
DUBOIS, PA 15801

PHONE: 1(814)372-5456

FAX: 1(814)375-5455

ATTN: TODD GORDON

FROM: YORK FRANKE

TODD, ATTACHED IS THE SIGNED INVOICE FOR YOUR RECORDS. I WILL ALSO SCAN
AND EMAIL TO YOU.

THANK YOU AGAIN FOR HELPING ME OUT OF THIS BIND!

I LOOK FORWARD TO MEETING YOU IN PERSON IN PA.

348

☒ Chicago ☐ Charlotte ☐ Los Angeles

The undersigned customer affirms to purchase from you the following described goods upon the terms, covenants, and conditions shown below.

Don't miss this!

Teufel, Gregory

From: Mark.Henne@dmgamerica.com
Sent: Thursday, June 08, 2006 8:50 AM
To: Todd Gordon
Cc: mhenne8420@aol.com
Subject: Machine switchout
Importance: High

Todd,

I have the OK to move ahead and switch out your machine and replace it with the subspindle machine. Again, you will pay NO ADDITIONAL MONEY. We will rig the old machine out and the new machine in, pay the freight for both machines in both directions, include the new tooling package, chucks and accessories. I do however need to get your signatures asap before someone else sells this new machine.

I can be at your place later this afternoon,,,,,and yes I'm buying for whoever wants to go.

Please let me know if I should head up or not...

Regards,
Mark A. Henne, CMTSE
Area Sales Manager
DMG-Chicago
(847) 781-0277 (office)
(412) 480-5227 (cell)
(412) 821-2983 (home office/fax)
Mark.Henne@DMGAmerica.com
<http://www.gildemeister.com>

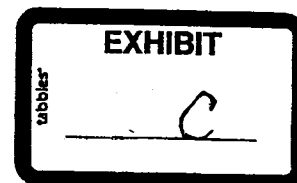
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to access and manipulate emails.

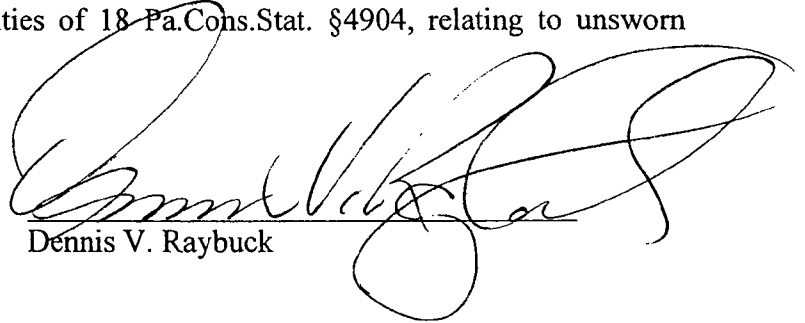
3/21/2007



VERIFICATION

Dennis V. Raybuck, the undersigned individual, as President of Gortech Global Fabrication, LLC, deposes and says that he is authorized to execute this Verification on behalf of Gortech Global Fabrication, LLC, that the averments in the foregoing Complaint in Civil Action are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Dated: January 23, 2009



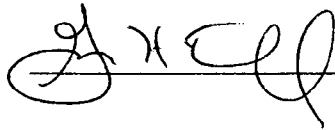
Dennis V. Raybuck

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing Complaint were served upon the following by deposit in the United States mail, first class postage prepaid, this 26th day of January, 2009.

James Gondeck, President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173

Dr. Christoph Reinkemeier (CEO)
DMG Chicago Inc.
265 Spring Lake Drive
Itasca, IL 60143



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

NO.: 07-754-CD

ANSWER AND NEW MATTER

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

Counsel of Record for this Party:

Joseph A. Hudock, Jr.
PA I.D. #66064

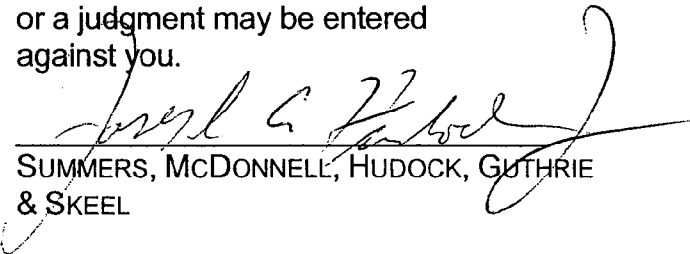
SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, L.L.P.
Firm #911

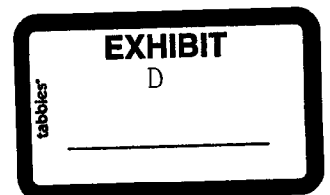
707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

TO: PLAINTIFF

You are hereby notified to
file a written response to
the enclosed Answer and New
Matter within twenty (20)
days from service hereof
or a judgment may be entered
against you.


SUMMERS, McDONNELL, HUDOCK, GUTHRIE
& SKEEL



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

NO.: 07-754-CD

ANSWER AND NEW MATTER

AND NOW, comes the defendant, DMG Chicago, Inc., by and through its counsel, Summers, McDonnell, Hudock, Guthrie & Skeel, L.L.P. and sets forth the following Answer and New Matter and in support thereof avers as follows:

1. Paragraph 1 of the plaintiff's Complaint is denied pursuant to Pa.R.C.P. 1029(d) and (e).

2. Paragraph 2 of the plaintiff's Complaint is admitted.

3. Paragraph 3 of the plaintiff's Complaint is admitted.

4. Paragraph 4 of the plaintiff's Complaint is admitted.

5. Paragraph 5 of the plaintiff's Complaint is admitted.

6. Paragraph 6 of the plaintiff's Complaint is admitted.

7. It is admitted that Predator Performance, LLC purchased two machines from defendant at the price in question. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 7 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

8. Paragraph 8 of the plaintiff's Complaint is admitted.

9. It is admitted that the machine in question was returned. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 9 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

10. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 10 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

11. Paragraph 11 of the plaintiff's Complaint is admitted.

12. Paragraph 12 of the plaintiff's Complaint is admitted.

13. Paragraph 13 of the plaintiff's Complaint is admitted.

14. Paragraph 14 of the plaintiff's Complaint is admitted.

15. Paragraph 15 of the plaintiff's Complaint is admitted.

16. Paragraph 16 of the plaintiff's Complaint is admitted.

17. Paragraph 17 of the plaintiff's Complaint is admitted.

18. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 18 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

19. Paragraph 19 of the plaintiff's Complaint refers to a document which speaks for itself. Consequently, no response is required.

20. Paragraph 20 of the plaintiff's Complaint is admitted.

21. Paragraph 21 of the plaintiff's Complaint is admitted.

22. Paragraph 22 of the plaintiff's Complaint is admitted.

23. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 23 of the

plaintiff's Complaint. Strict proof is demanded at the time of trial.

24. Paragraph 24 of the plaintiff's Complaint is admitted.

25. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 25 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

26. Paragraph 26 of the plaintiff's Complaint is admitted in part and denied in part. It is admitted that DMG promised to send someone to fix the machine in question and provide training. It is specifically denied that DMG failed to send someone when promised. To the contrary, DMG did fulfill its promises.

27. It is admitted that the defendant's technician aligned the machine in question.

28. Paragraph 28 of the plaintiff's Complaint is admitted.

29. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 29 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

30. Paragraph 30 of the plaintiff's Complaint is admitted in part and denied in part. It is admitted that the machine in question was delivered at the time in question. It is specifically denied that the plaintiff had not received the training to use the machine in question by May, 2006. To the contrary, the plaintiff did receive the necessary training in a timely manner.

31. It is admitted that a representative of the defendant installed new software on the machine in question. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 31 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

32. After reasonable investigation, defendant is without knowledge or information

sufficient to form a belief as to the truth of the averments contained in Paragraph 32 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

33. Paragraph 33 of the plaintiff's Complaint references a document which speaks for itself. Therefore, no response is required.

34. Paragraph 34 of the plaintiff's Complaint is admitted in part and denied in part. It is admitted that Mark Henne signed the contract on behalf of DMG. It is specifically denied that Mark Henne sent the contract to the plaintiff via fax. To the contrary, the contract was hand delivered.

35. Paragraph 25 of the plaintiff's Complaint references a document which speaks for itself. Therefore, no response is required.

36. Paragraph 36 of the plaintiff's Complaint is admitted.

37. Paragraph 37 of the plaintiff's Complaint is admitted.

38. Paragraph 38 of the plaintiff's Complaint sets forth a legal conclusion to which no responsive pleading is required. To the extent a response is deemed necessary, defendant complied with the contract at all times relevant hereto.

39. It is admitted that defendant offered training on the machine in question.

40. It is admitted that Gortech delivered an ultimatum to defendant. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 40 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

41. Paragraph 41 of the plaintiff's Complaint is admitted.

42. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 42 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

43. Paragraph 43 of the plaintiff's Complaint sets forth a legal conclusion to which no responsive pleading is required. To the extent a response is deemed necessary, defendant complied with the contract at all times relevant hereto.

COUNT I – BREACH OF CONTRACT

44. Defendant incorporates by reference the preceding paragraphs of this Answer and New Matter the same as if fully set forth at length herein.

45. Paragraph 45 of the plaintiff's Complaint sets forth a legal conclusion to which no responsive pleading is required.

46. Paragraph 46 of the plaintiff's Complaint sets forth a legal conclusion to which no responsive pleading is required.

47. Paragraph 47 of the plaintiff's Complaint sets forth a legal conclusion to which no responsive pleading is required.

48. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 48 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

49. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 49 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

50. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 50 of the plaintiff's Complaint. Strict proof is demanded at the time of trial.

51. Paragraph 51 of the plaintiff's Complaint sets forth a legal conclusion to which no responsive pleading is required.

WHEREFORE, defendant demands judgment in its favor and against the plaintiff.

NEW MATTER

52. Defendant pleads the defense of accord and satisfaction as an affirmative defense to all of the plaintiff's claims.

53. Defendant pleads the defense of impossibility of performance as an affirmative defense to all of the plaintiff's claims.

54. Defendant pleads the defense of impracticability of performance as an affirmative defense to all of the plaintiff's claims.

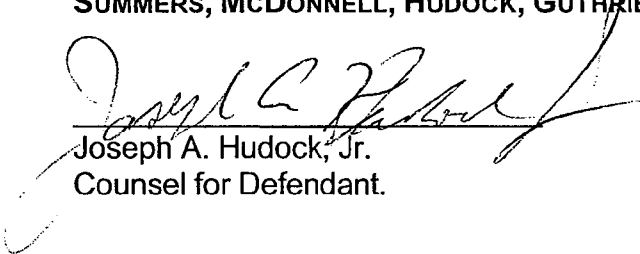
55. Defendant pleads the defense of release as an affirmative defense to all of the plaintiff's claims.

56. To the extent justified by information developed during discovery, the plaintiff's alleged damages were caused by intervening and/or superseding causes over which this defendant had no control.

WHEREFORE, defendant demands judgment in its favor and against the plaintiff.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, LLP



Joseph A. Hudock, Jr.
Counsel for Defendant.

VERIFICATION

I, MARK A. HENNE, a duly authorized representative of DMG Chicago, Inc., verify that the averments of fact set forth in the foregoing **ANSWER AND NEW MATTER** are true and correct to the best of my knowledge, information and belief.

I understand that the averments of fact made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Dated: 10-MAR-2009

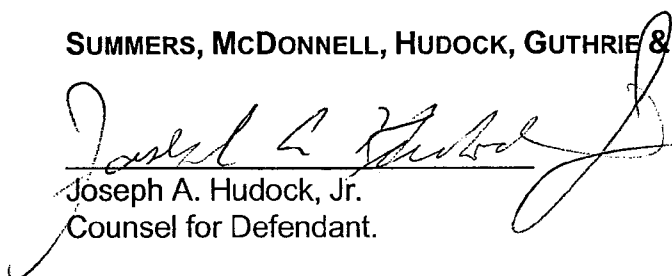
Mark A. Henne

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Answer and New Matter** has been served via first-class U.S. mail, postage prepaid, this 11th day of March, 2009, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, LLP



Joseph A. Hudock, Jr.
Counsel for Defendant.

Phil
Rugari/MG/DMGCC/GILDEMEISTER

05/30/2007 08:50 PM

To York
Franke/SV/DMGCC/GILDEMEISTER@GILDEMEISTER
cc Christoph
Reinkemeier/MG/DMGCC/GILDEMEISTER@GILDEMEISTER,
R, Gerald
Fitzpatrick/FI/DMGCC/GILDEMEISTER@GILDEMEISTER,
Kiran Shetty/FI/DMGAM/GILDEMEISTER@GILDEMEISTER,
Mark
Henne/SL/DMGCC/GILDEMEISTER@GILDEMEISTER,
Robert
Nedler/SL/DMGCC/GILDEMEISTER@GILDEMEISTER

bcc

Subject Re: Fw: Gortech Global Fabrication

York,

Please disrobe yourself of this mentality that you work for some other company. You are employed by DMG and need to be a parnter in our resolution here. You are not innocent here. If you had not misrepresented this machine we wouldn't me in this mess. Please fess up your failings in this transaction. If you do not now, surely you will be in front of a judge having to "tell the whole truth and nothing but the truth." York, start standing by your fellow DMG colleges and stop throwing people under the bus. We have a problem to deal with here and I need a professional report from you. Please stick to the facts and not your opinions.

York Franke

----- Original Message -----

From: York Franke
Sent: 30.05.2007 18:53 EDT
To: Phil Rugari
Cc: Christoph Reinkemeier; Gerald Fitzpatrick; Kiran Shetty; Mark Henne; Robert Nedler
Subject: Re: Fw: Gortech Global Fabrication

Responding to point one, I sold the machine based on DMG Chicago guaranteeing immediate availability upon acceptance of my trade in offer (attached-signed by Jim Gondeck).

If the customer did not want to trade in the machine and/or machine was not available Jim Gondeck should have never signed my trade in offer. DMG Chicago also guaranteed free and clear title free of all liens.

The trade in offer was accepted on December 9, 2005 and I sold the machine on February 3, 2006.

[attachment "Christnacht-Gondeck-Franke signed PREDATOR trade in.pdf" deleted by Phil Rugari/MG/DMGCC/GILDEMEISTER]

York Franke
President
DMG Used Machine Division
1665 Penny Lane
Schaumburg, IL 60173
USA

Phone: +847-781-0277 x 262
Cell Phone: +224-622-5376
Fax: +847-781-5053
Email: york.franke@dmgamerica.com
Website: www.dmgamerica.com

EXHIBIT

E

tabbles

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

**ANSWERS TO INTERROGATORIES,
RESPONSE TO REQUEST FOR
PRODUCTION OF DOCUMENTS AND
RESPONSE TO REQUEST FOR
ADMISSIONS**

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

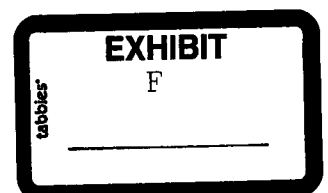
Counsel of Record for this Party:

Joseph A. Hudock, Jr.
PA I.D. #66064

SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, P.C.
Firm #911

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232



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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES, REQUESTS FOR
PRODUCTION, AND REQUESTS FOR
ADMISSIONS**

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohny, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

() ()

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

**PLAINTIFF'S FIRST SET OF INTERROGATORIES
REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSIONS**

Plaintiff Gortech Global Fabrication, LLC ("Gortech" or "Plaintiff"), by and through its undersigned counsel, hereby requests that Defendant, DMG Chicago, Inc. ("DMG" or "Defendant"), serve full and complete responses to the following Interrogatories, Requests for Production, and Requests for Admissions, under oath, within thirty (30) days from the date of service hereof on Defendant, in accordance with Rules 4006, 4009.12, and 4014 of the Pennsylvania Rules of Civil Procedure:

I. DEFINITIONS

1. The terms "concerning," "relating to," "related to," "relevant to," "pertaining to," or any form thereof shall mean constituting, reflecting, regarding, pertaining to, representing, supporting, contradicting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating, relevant to, relating to, referring to, evidencing, or constituting. As indicated, the terms necessarily include information that is in opposition to as well as in support of the position(s) or claim(s) of the parties in this action.

2. The term "communication" means the transmittal of information by any means,

which includes, without limitation, letters and written communications of every kind and description, emails, faxes, and any oral statements, conversations, discussions and conferences. "Communication" or "communications" as used herein includes, without limitation, letters and written communications of every kind and description, emails, faxes, and any oral statements, conversations, discussions, and conferences.

3. The terms "document" and "documents" are defined to be synonymous in meaning and equal in scope to the usage of the term "documents" in Pa.R.Civ.P. 4009.1 and include, without limitation, electronically stored information, writings, drawings, graphs, charts, photographs, records, recordings, electronically created data and other data compilations from which information can be obtained, translated, if necessary, through detection or recovery devices into reasonably usable form. The terms "writings," "recordings," and "photographs" are defined to be synonymous in meaning and equal in scope to the usage of those terms in Pa.R.Evid. 1001. A draft or non-identical copy is a separate document within the meaning of the term "document."

4. Identify or Identity (with respect to persons): When referring to a person, "identity" or to "identify" means to state the person's full name, present or last known address, and, when referring to a natural person, additionally, the present or last known place of employment. If the business and home telephone numbers are known to the answering party, and if the person is not a party or present employee of a party, said telephone numbers shall be provided. Once a person has been identified in accordance with this subparagraph, only the name of the person need be listed in response to subsequent discovery requesting the identification of that person.

5. Identify (with respect to documents): When referring to documents, to "identify"

means to state the: (i) type of document; (ii) general subject matter; (iii) date of the document; and, (iv) author(s), addressee(s), and recipient(s) or, alternatively, to produce the document.

6. The terms "Plaintiff," "Defendant," and "Defendants," as well as a party's full or abbreviated name or a pronoun referring to a party, mean that party or those parties in this action and, where applicable, its or their predecessors, successors, subsidiaries, past or present officers, directors, employees, agents, representatives, and attorneys, or any person who has acted or is acting or purporting to act on its or their behalf for any purpose whatsoever. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation or to limit the Court's jurisdiction to enter any appropriate order.

8. The term "person" is defined as any natural person or any business, legal or governmental association, firm, partnership, corporation, trustee, or other entity and also, where relevant, the persons representing or acting for such "person."

9. The terms "Defendant," "you," "your," "this party," or "DMG" include Defendant DMG Chicago, Inc., and all of its agents, representatives and attorneys, or any person who has acted or is acting or purporting to act on its behalf for any purpose whatsoever.

10. "All" means "any and all"; "any" means "any and all." "Including" means "including but not limited to."

11. "Plaintiff" or "Gortech" refers to the Plaintiff, Gortech Global Fabrication, LLC, its representatives, or attorneys, and any person who has acted or is acting or purporting to act on its behalf for any purpose whatsoever.

12. "This action" or "this matter" means the above-captioned action, Gortech Global Fabrication, LLC v. DMG Chicago, Inc., in the Court of Common Pleas of Clearfield County, Pennsylvania, at Civil Division No. 07-754-CD.

13. "The Complaint" means and refers to the Complaint filed by the Plaintiff in this action.

13. The "CTX 420 V4" is the machine referenced as such in paragraph 15 of the Complaint.

14. "The Contract" has the same meaning herein as given it in paragraph 33 of the Complaint.

15. The "CTX 420 V6" is the machine referenced as such in paragraph 33 of the Complaint and in the Contract.

II. INSTRUCTIONS

1. Where facts set forth in any response or any portion thereof are supplied upon information and belief rather than actual knowledge, the response should so state and specifically describe or identify the source of such information and belief. If Defendant cannot answer an Interrogatory or Request in full after exercising due diligence to secure the information and/or documents requested, so state and answer such Interrogatory or Request to the fullest extent possible, specifying the exact reason for Defendant's inability to answer the remainder and stating whatever information or knowledge Defendant has concerning the unanswered portion.

2. If you are withholding any documents for any reason other than an objection that it is beyond the scope of discovery or that a request is unduly burdensome, identify each such document and, in addition to the information requested in ¶8, below, please state the reason for withholding the document.

3. When a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a

document, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted document.

4. In addition to paper copies, you are requested to serve responses in an electronic format capable of having text selected and copied into a Word document, in order to reduce the clerical effort required to later cut and paste from such responses. The same courtesy was extended in serving these discovery requests in such a format, to reduce the clerical effort required to prepare responses.

5. These instructions and definitions should be construed to require answers based upon the knowledge of, and information available to, the responding party as well as its agents, representatives, and, unless privileged, attorneys. It is intended that the following discovery requests will not solicit any material protected either by the attorney/client privilege or work product doctrine which was created by, or developed by, counsel for the responding party after the date on which this litigation was commenced.

6. These Interrogatories and Requests for Production are continuing in character, so as to require that supplemental answers be filed seasonably if further or different information or additional documents are obtained with respect to any request or interrogatory. These Interrogatories and Requests for Production shall further be deemed continuing, to the extent required by Pa.R.Civ.P. 4007.4, so as to require amended responses if Defendant learns that any response is in some material respect is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Plaintiff during the discovery process or in

writing, and so as to require supplementation as to the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called as an expert witness, along with the subject matter on which each expert is expected to testify and the substance of each expert's opinion.

7. No part of an interrogatory or request should be left unanswered merely because an objection is interposed to another part of the interrogatory or request. If a partial or incomplete answer is provided, the responding party shall state that the answer is partial or incomplete.

8. In accordance with Pa.R.Civ.P. 4009(b)(2), where a claim of privilege or other protection from discovery is asserted in objecting to any interrogatory or request or part thereof, and information or documents are withheld on the basis of such assertion:

a. In asserting the privilege or protection, the responding party shall, in the objection to the interrogatory or request, or part thereof, identify with specificity the nature of the privilege (including work product) that is being claimed;

b. The following information should be provided in the objection, if known or reasonably available, unless divulging such information would cause disclosure of the allegedly privileged information,

(i) For oral communications:

- (a) the name of the person making the communication and the names of persons present while the communication was made or who otherwise heard the communication, and, where not apparent, the relationship of such persons present to the person making the communication;
- (b) the date, place(s), and manner of the communication; and
- (c) the general subject matter of the communication.

(ii) For documents, the responding party shall provide the following information:

- (a) the type of document,
- (b) the general subject matter of the document,
- (c) the date of the document,
- (d) such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other, in a manner that, without revealing the information claimed to be protected, will enable this party to assess the applicability of the privilege or protection claimed by you, and
- (e) the identity of all persons who have seen or been provided a copy of the document.

9. If the responding party elects to specify and produce business records in answer to any interrogatory, the specification shall be in sufficient detail to permit the interrogating party to locate and identify, as readily as the responding party can, the business records from which the answer may be ascertained.

10. If, in answering these interrogatories or requests, the responding party encounters any ambiguities when construing a question, instruction, or definition, the responding party's answer shall set forth the matter deemed ambiguous and the construction used in answering.

11. If production of any requested document(s) or information is objected to on the grounds that production is unduly burdensome or expensive, describe the burden or expense of the proposed discovery.

12. If the requested documents are maintained in a file, file drawer, and/or box, the file folder and the box or drawer label are included in the request for production of those documents.

13. The documents and information that you must produce in response to the Requests and Interrogatories are those documents and that information that are within your possession, custody, or control.

III. INTERROGATORIES

INTERROGATORY NO. 1. Identify all persons who are likely to have personal knowledge of any fact alleged in the Complaint, the Answer, New Matter, Reply to New Matter, or any other pleading in this action, related to the Contract, related to the negotiation, performance, and/or breach and/or alleged breach of the Contract, or related to any other alleged oral or written agreement(s) or amendment(s) to agreements between DMG and Gortech, and state the subject matter of the personal knowledge possessed by each such person.

Answer: Mark Henne, York Franke, Jerry Fitzpatrick.

INTERROGATORY NO. 2. Identify each witness you may use at trial to present evidence under Pa.R.Evid. 702, 703, or 705, or who you have retained or specially employed to provide expert testimony in this case, or employed by you whose duties regularly involve giving expert testimony and whom you expect to testify at trial, and for each such witness, provide a complete statement of the opinions to be expressed and basis and reasons therefor.

Answer: Undetermined at this time. Any experts will be listed in defendant's pre-trial statement.

INTERROGATORY NO. 3. With reference to paragraph 26 of the Complaint and your Answer, if you contend that DMG did not fail to send people to fix the CTX 420 V4 and provide training when promised and DMG fulfilled its promises,

- a. set forth the facts upon which you rely for this contention, including:
 - (1) the date and time of each scheduled repair and/or training related to the CTX 420 V4;
 - (2) the dates and time each such repair and/or training actually occurred; and

- (3) the particular individuals involved in performing each such repair and/or training;
- b. identify specifically the documents relating to this contention; and
- c. for each such repair and/or training, identify every person who has specific personal knowledge supporting your contentions related thereto.

Answer: DMG attempted to send someone to fix the machine in question but was rebuffed by plaintiff.

INTERROGATORY NO. 4. Identify all written communications and describe in detail all oral communications related to any fact alleged in the Complaint, the Answer, New Matter, Reply to New Matter, or any other pleading in this action, related to the Contract, related to the negotiation, performance, and/or breach and/or alleged breach of the Contract, or related to any other alleged oral or written agreement(s) or amendment(s) to agreements between DMG and Gortech and, as to each such alleged oral agreement or amendment:

- a. state the date or dates on which the oral agreement or amendment was offered and accepted;
- b. identify the persons who communicated and/or accepted the terms of such oral agreement or amendment;
- c. describe such terms, including the consideration for the oral agreement or amendment and state when such consideration was promised and when such consideration was performed or exchanged; and
- d. identify any documents related to such oral agreement or amendment.

Answer: Objected to as over broad, vexatious and burdensome. Without waiving said objection, see documents attached in response to Request for Production.

INTERROGATORY NO. 5. Identify all persons with whom you, your attorneys, employees, or agents have discussed this action or its subject matter, or from whom a statement, declaration, or affidavit has been taken related to this action or its subject matter and, for each such person, identify the subject discussed and/or each statement, declaration, or affidavit taken and the date of such discussion, statement, declaration, and/or affidavit.

Answer: Objected to as over broad, burdensome and vexatious. Without waiving the objection, defendant does not have any statements.

INTERROGATORY NO. 6. If you contend, as in the paragraph 30 of your Answer, that Gortech received the necessary training in a timely manner, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and please explain in detail the basis for this contention, including the date(s) on which such training was provided, the number of hours of training provided on such dates, the nature of the training provided on such dates, the persons trained, and the persons providing the training.

Answer: See answer to Interrogatory No. 3.

INTERROGATORY NO. 7. If you contend, as in paragraph 38 of your Answer, that DMG complied with the Contract at all times relevant hereto, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and please explain how DMG complied with the Contract, including what promises contained in the Contract were performed by whom and when.

Answer: Objected to as over broad, burdensome and vexatious. Without waiving the objection, DMG attempted in good faith to provide the machine provided for in the contract but was rebuffed by the plaintiff. By way of further response, see documents produced in response to Request for Production.

INTERROGATORY NO. 8. Explain all of the reasons why DMG did not deliver a new

CTX 420 V6 to Gortech.

Answer: It was never ordered.

INTERROGATORY NO. 9. If you contend that the Contract is not a valid and binding contract, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and explain why the Contract is not valid and binding.

Answer: Objected to as over broad, burdensome and vexatious. Without waiving the objection, see response to Request for Production of Documents.

INTERROGATORY NO. 10. State the prices, as of June 8, 2006 and in 2006 generally, at which DMG was offering for sale and/or selling new CTX 420 V6 machines, including the prices of all related options and accessories, tooling packages, installation, training, and new machine warranty, and identify all documents related to such pricing and all persons with knowledge of such pricing.

Answer: In 2006, the list price of a new CTX 420 V6 was \$232,900. This list price is for the base machine, which includes installation, one week of training and a 12-month warranty. There are almost 100 options and accessories available on a factory-ordered machine.

INTERROGATORY NO. 11. State the trade-in value, as of June 8, 2006 and in 2006 generally, of Gortech's used CTX 420 V4, along with its associated options, accessories, and tooling, identify all documents related to such trade-in value and all persons with knowledge of facts related to such trade-in value.

Answer: Normally CNC machinery will lose 30% of its value in the first year. The value assigned on the trade-in on the CTX320 of \$140,000 is consistent with this formula, as the purchase price was about \$200,000. \$140,000 was the exchange price of the CTX320 for the CTX 420 V4, so a trade-in

INTERROGATORY NO. 12. State the prices, as of June 8, 2006 and in 2006 generally, value would be at most \$140,000, and would be based on length of usage & condition.

at which DMG was offering for sale and/or selling new and used CTX 420 V4 machines, including the prices of all related options and accessories, tooling packages, installation, training, and warranties, and identify all documents related to such pricing and all persons with knowledge of such pricing.

Answer: In 2006, the list price of a new CTX 420 V4 was \$193,900. This list price is for the base machine, which includes installatoin, one week of training and a 12-month warranty. There are almost 100 options and accessories available on a factory-ordered machine.

INTERROGATORY NO. 13. State the trade-in values assigned or given by DMG for all used CTX 420 V4 machines that DMG ever received in trade, and identify all documents related to trade-in values and all persons with knowledge of such trade-in values.

Answer: Defendant is not aware of any used CTX 420 V4 machines received in on a trade.

INTERROGATORY NO. 14. If you contend, as in paragraph 52 of your New Matter, that Gortech's claims against DMG are barred in whole or in part by the doctrine of accord and satisfaction, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and describe specifically when and in what manner DMG tendered something in settlement of a claim or claims of Gortech, what was so tendered, what statements accompanied any such alleged tender, and when and in what manner Gortech accepted that tender.

Answer: Defendant delivered a second-hand CTX 420 machine to the plaintiff.

INTERROGATORY NO. 15. If you contend, as in paragraph 53 of your New Matter, that Gortech's claims against DMG are barred in whole or in part by impossibility of performance, identify all facts and documents related to this contention and all persons with

knowledge of facts related to this contention, and describe specifically what performance was impossible and why such performance was impossible.

Answer: Defendant did not have a new CTX 420 machine.

INTERROGATORY NO. 16. If you contend, as in paragraph 54 of your New Matter, that Gortech's claims against DMG are barred in whole or in part by impracticability of performance, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and describe specifically what performance was impracticable and why such performance was impracticable.

Answer: See answer to preceding interrogatory.

INTERROGATORY NO. 17. If you contend, as in paragraph 55 of your New Matter, that Gortech's claims against DMG are barred in whole or in part by some release, identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention, and describe specifically when and in what manner a claim or claims of Gortech were released, what claim or claims were released, what communications occurred in connection with any such alleged release, and when any such communications occurred, and who was involved in any such communications.

Answer: Plaintiff would have signed a release form upon acceptance of the machine in question.

INTERROGATORY NO. 18. If you contend, as in paragraph 56 of your New Matter, that Gortech's damages were caused by some intervening or superseding causes, over which DMG had no control, identify all facts and documents related to this contention and all persons

with knowledge of facts related to this contention, and describe specifically when and in what manner such intervening cause(s) caused Gortech's damages.

Answer: Objected to as over broad, burdensome and vexatious. Without waiving the objection, discovery is ongoing.

INTERROGATORY NO. 19. If you responded to any of the requests for admissions herein with anything but an unqualified admission, please state the following with respect to each such request:

- a. describe any and all facts that support your failure to unqualifiedly admit such request; and
- b. identify any documents that support your failure to unqualifiedly admit such request.

Answer: See documents produced in response to Request for Production of Documents.

INTERROGATORY NO. 20. Describe Mark Henne's job title, duties and responsibilities and employer as of June 8, 2006, and state whether Mr. Henne had actual authority to enter into the Contract on DMG's behalf on June 8, 2006.

Answer: Mr. Henne was an area sales manager who had no authority to enter into the contract in question.

INTERROGATORY NO. 21. If you contend that Mark Henne did not have proper authority to enter into the Contract on DMG's behalf on June 8, 2006:

- a. identify all contracts which Mark Henne signed on behalf of DMG, with or without proper authority, and for each such contract, state whether Mark Henne had proper authority to sign it on behalf of DMG; and

b. identify all facts and documents related to this contention and all persons with knowledge of facts related to this contention.

Answer: Objected to as over broad, burdensome and vexatious. Without waiving the objection, see contract attached to response to Request for Production of Documents.

INTERROGATORY NO. 22. Describe the performance features of the CTX 420 V6 and of the CTX 420 V4, explain how the machines and their performance features differed, and identify all documents related to such performance features and differences.

Answer: This interrogatory is objected to as calling for a narrative which is more properly the subject of a deposition.

INTERROGATORY NO. 23. Identify all documents related to any fact alleged in the Complaint, the Answer, New Matter, Reply to New Matter, or any other pleading in this action, related to the Contract, related to the negotiation, performance, and/or breach and/or alleged breach of the Contract, or related to any other alleged oral or written agreement(s) or amendment(s) to agreements between DMG and Gortech:

Answer: Objected to as overbroad, burdensome and vexatious. Without waiving the objection, see documents attached to response to Request for Production of Documents.

IV. REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all statements (as that term is used in Pa. R. Civ. P. 4003.4) which were previously made by DMG or any of its present or former directors, officers, or employees, concerning this action or its subject matter.

RESPONSE: None.

2. Produce all documents (including, but not limited to, fee agreements, reports, and

correspondence) provided to, received from, or prepared by each person in your Answer to Interrogatory No. 2, including a copy of the current C.V. or resume for each such witness.

RESPONSE: N/A

3. Produce all contracts or agreements entered into between DMG and Gortech or any other document evidencing or relating to any such agreements, or to the negotiation, performance, and/or breach and/or alleged breach of any such agreements.

RESPONSE: See attached.

4. Produce all documents or things identified, reviewed, or relied upon by you in answering the interrogatories, requests for production, and requests for admissions directed to you in this matter.

RESPONSE: See attached.

5. Produce all documents or things identified, reviewed, or relied upon by you in support of the factual allegations contained in your Answer and New Matter and any other pleadings filed on your behalf in this action.

RESPONSE: See attached.

6. Produce each and every document, item, or other exhibit you intend to introduce into evidence or use at trial and each and every document relating to the documents, items, or other exhibits you intend to introduce into evidence or use at trial.

RESPONSE: Undetermined at ths time. Any exhibits will be identified in defendant's pre-trial statement.

7. Produce all documents relating to or consisting of communications or agreements between Gortech and DMG.

RESPONSE: See attached.

8. Produce all documents provided to, received from, or prepared by each person identified by you in the process of answering the interrogatories, requests for production, and requests for admissions directed to you in this matter.

RESPONSE: See attached.

9. Produce all documents related to any fact alleged in the Complaint, the Answer, New Matter, Reply to New Matter, or any other pleading in this action.

RESPONSE: See attached.

10. Produce all documents relating to or about Gortech.

RESPONSE: See attached.

11. Produce all documents relating to the price paid in sales of new CTX 420 V6 machines by DMG in 2006.

RESPONSE: See attached.

12. Produce all documents relating to the price paid in sales of new or used CTX 420 V4 machines by DMG in 2006.

RESPONSE: See attached.

13. Produce all documents relating to the trade-in value given for used CTX 420 V4 machines by DMG.

RESPONSE: See attached.

14. Produce all documents relating to the performance features of the CTX 420 V6 and of the CTX 420 V4, and any and all differences in those machines or in such performance features.

RESPONSE: See attached.

V. REQUESTS FOR ADMISSIONS

1. Admit that a true and correct copy of the Contract is attached to the Complaint as Exhibit B.

RESPONSE: Admitted.

2. Admit that Mark Henne, by email on June 8, 2006, represented that he was authorized to enter into the Contract on behalf of DMG.

RESPONSE: Admitted.

3. Admit that Mark Henne was in fact authorized to enter into the Contract on behalf of DMG.

RESPONSE: Denied.

4. Admit that Exhibit C to the Complaint is a true and correct copy of a June 8, 2006 email from Mark Henne to Todd Gordon.

RESPONSE: Admitted.

5. Admit that DMG never delivered a CTX 420 V6 to Gortech.

RESPONSE: Admitted.

6. Admit that the Contract is a valid and binding agreement.

RESPONSE: Denied.

7. Admit that the CTX 420 V6 had an automatic feeder.

RESPONSE:
Denied.

8. Admit that the CTX 420 V4 lacked an automatic feeder.

RESPONSE: Admitted.

9. Admit that on or before June 8, 2006, DMG was aware of how Gortech intended to use the CTX 420 V6.

RESPONSE: Denied.

10. Admit that on or before June 8, 2006, DMG was aware that the CTX 420 V6 would have expanded and improved Gortech's capabilities.

RESPONSE:

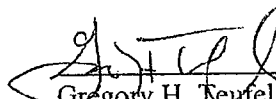
Denied.

11. Admit that on or before June 8, 2006, DMG knew that Gortech would suffer lost profits if DMG failed to deliver the CTX 420 V6 to Gortech.

RESPONSE:

Denied.

Dated: December 17 2009

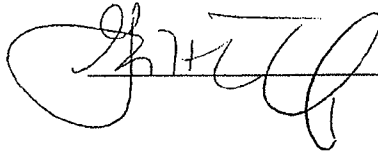


Gregory H. Teufel, Esq.
Amy J. Roy, Esq.
Christopher E. Mohnhey, Esq.
Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Plaintiff's First Set of Interrogatories, Requests for Production, and Requests for Admissions was served upon the following by deposit in the United States mail, first class postage prepaid, this 17th day of December, 2009.

Joseph A. Hudock, Jr., Esq.
Summers, McDonnell, Hudock, Guthrie & Skeel, L.L.P.
Suite 2400, Gulf Tower
707 Grant Street
Pittsburgh, PA 15219

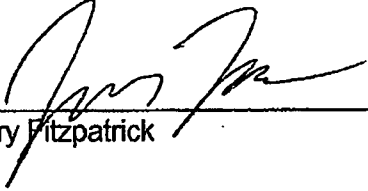


VERIFICATION

I, Jerry Fitzpatrick, a duly authorized representative of DMG Chicago, Inc., verify that the averments of fact set forth in the foregoing **Answers to Interrogatories** are true and correct to the best of my knowledge, information and belief.

I understand that the averments of fact made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Dated: _____

3/5/2010

Jerry Fitzpatrick

Assignment and safekeeping contract

between

DMG America
(Supplier)

and

ICP / Gortech
2572 Oklahoma-Salem Road
DuBois PA 15801

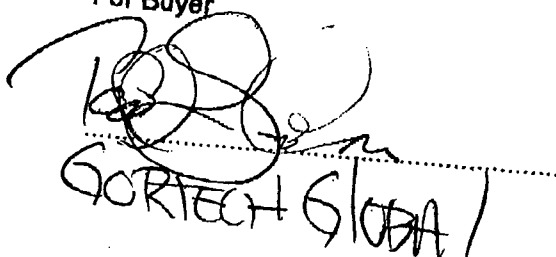
- hereafter referred to as (Buyer) -

One (1) GMX 400 machine no. 07500000331
One (1) DMU80P machine no. 11440000783
- hereafter referred to as object of the contract -

- 1) It was agreed between the supplier and the buyer on December, 30th 2005, that the machines specified in the contract will remain at the supplier's custody until the middle of January, 2006.
- 2) In signing this contract the supplier assigns the machine to the buyer and assures that the buyer is sole proprietor and has the right of disposal provided that full payment has been made.
- 3) Handing over is replaced by the agreement that the supplier commits the machine is property of the buyer and to safe-keep it without charge with due care as a business partner.
- 4) The machine in the contract has a value of US\$ 1,203,000.00 net. At the moment of signing this contract the machine is in the supplier's custody.
- 5) The supplier commits himself to insure the object of the contract on his own expense against loss or damage for the period of stock-keeping.
- 6) If the object of the contract cannot be handed over owing to the fault of the supplier, in case of deterioration or total loss, the supplier will be obliged to reimburse direct damage costs.
- 7) All other items of the contract remain unchanged.

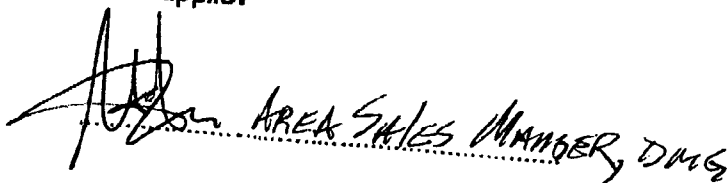
US, December, 30th 2005

For Buyer


GORTECH GLOBAL

US, December, 30th 2005

For Supplier


AREA SALES MANAGER, DMG

DMG America
Summary of Key Events with Gortech

1. Gortech purchased CTX320 Lathe in 2005 and paid in full.
2. Gortech ordered two additional machines (GMX400 and DMU80P) in November 2005. Gortech and DMG signed safekeeping agreement in December 2005 for these machines. The deposit was to be cash and a trade in of the CTX320. No cash or trade in was ever received by DMG.
3. In February, 2006, Gortech agreed with DMG Used Machines to evenly exchange CTX320 for a Used CTX420V4 machine.
4. The exchange was made, and initial technical issues were resolved by DMG.
5. Gortech was not satisfied with the CTX420V4.
6. On June 8, 2006, DMG salesman Mark Henne signed a document agreeing to and exchange for a CTX420V6 model. Mr. Henne was not authorized by DMG to make such an offer. This offer was accepted by Gortech.
7. On September 6, 2006, Gortech gives DMG two weeks to resolve the problems.
8. Advised on May 21, 2007 through CSC (via Robert Willson) that a civil action was filed by Gortech against DMG.
9. Various correspondence over the past nine months involving Gortech and various DMG personnel with no solution.

ECKERT SEAMANS

Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

TEL 412 566 6000
FAX 412 566 6099
www.eckertseamans.com

Gregory H. Teufel
412.566.5977
gteufel@eckertseamans.com
Admitted in PA and WV

January 26, 2009

Via First Class U.S. Mail

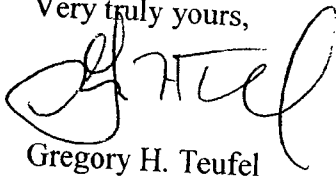
Prothonotary
Court of Common Pleas of Clearfield County, PA
P.O. Box 549
Clearfield, PA 16830

RE: Gortech Global Fabrication, LLC v. DMG Chicago, Inc.
No. 07-754-CD

To Whom It May Concern:

Enclosed for filing are an original and one copy of a Complaint in the above-captioned case. After filing, would you please time/date stamp the copy and return it to me in the enclosed self-addressed, stamped envelope. Thank you for your courtesy.

Very truly yours,



Gregory H. Teufel

GHT/jar

Enclosures

Cc w/encl. James Gondeck
Dr. Christoph Reinkemeier ✓
Christopher E. Mohnhey, Esq.

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

COMPLAINT

DMG CHICAGO, INC.,

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Defendant.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohny, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

NOTICE TO DEFEND

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 50-51

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

COMPLAINT IN CIVIL ACTION

Plaintiff, Gortech Global Fabrication, LLC ("Gortech"), by its undersigned attorneys, hereby files the following Complaint in Civil Action against Defendant DMG Chicago, Inc., the grounds of which the following are statements:

Introduction

1. This action seeks to recover damages from Defendant for breach of a contract to supply a machine as a trade-in for another machine.

Parties

2. Plaintiff Gortech is a Limited Liability Company organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business at 215 Beaver Dr. DuBois, PA 15801.

3. Upon information and belief, Defendant DMG Chicago, Inc. t/d/b/a "DMG, INC." and "DMG Used Machine Division" (hereafter "DMG") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 265 Spring Lake Drive, Itasca, IL 60143.

4. At the time of the commencement of this lawsuit via praecipe for writ of summons, DMG's principal place of business was at 1665 Penny Lane, Schaumburg, IL 60173.

Jurisdiction and Venue

5. This Court has original jurisdiction over this action pursuant to 42 Pa.Cons.Stat. § 931.

6. Venue is proper in this Court under Pa.R.Civ.P. 2179 because transactions and occurrences out of which the causes of action set forth herein arose took place in Clearfield County and DMG regularly conducts business in Clearfield County.

Factual Background

7. Predator Performance, LLC ("Predator"), a company related to Gortech, originally purchased two machines from DMG; a DMU 100T 5 for \$325,500, and a CTX 320 Linear CNC for \$199,500.

8. Predator gave a 10% down payment totaling \$52,500 toward both machines, via check dated February 9, 2005.

9. The DMU 100T 5 was returned because it would not perform the functions promised (breach of written warranties).

10. DMG wanted Predator to take a credit toward future purchases, but Predator insisted on applying the monies toward the CTX 320 Linear CNC.

11. In addition, DMG agreed to reimburse Predator for the expenses associated with the DMU 100T 5, which consisted of \$3,750 in shipping, \$7,903.85 in scaffolding, and \$3,000 in rigging, totaling \$14,653.85.

12. After subtracting the \$52,500 down payment and the \$14,653.85 reimbursement from the \$199,500 purchase price for the CTX 320 Linear CNC, the amount remaining that Predator owed toward that purchase price was \$132,346.15.

13. Predator sent DMG a check for that balance, \$132,346.15, on October 12, 2005, leaving a balance owed to DMG for the CTX 320 Linear CNC of zero dollars.

14. Predator conveyed the CTX 320 Linear CNC to Gortech, and Gortech had discussions with DMG regarding trading in the CTX 320 Linear CNC.

15. DMG sold the CTX 320 Linear CNC that Gortech had to another DMG customer and gave Gortech a used CTX 420 V4, which Gortech presently possesses, in trade for the CTX 320 Linear CNC ("the first trade-in Agreement"). A true and correct copy of the first trade-in Agreement is attached hereto as Exhibit A, along with the fax cover sheet by which York Franke of DMG sent the first trade-in Agreement to Todd Gordon of Gortech.

16. Gortech honored all terms and conditions of the first trade-in Agreement.

17. After discussing it but before agreement was reached on trading it in, DMG had already sold the CTX 320 Linear CNC to another customer.

18. Gortech had decided against doing a trade-in of the CTX 320 Linear CNC by that point, but accepted the first trade-in Agreement as an accommodation to DMG in light of the fact that DMG had made a commitment to another customer in the interim.

19. York Franke referenced that accommodation in the fax cover sheet included in Exhibit A hereto where he stated "THANK YOU AGAIN FOR HELPING ME OUT OF THIS BIND!"

20. As part of that first trade-in Agreement, DMG agreed to provide training on the CTX 420 V4.

21. The CTX 420 V4 had been crashed; possibly more than one collision.
22. DMG expressed disbelief when this was discovered, asserting that the CTX 420 V4 had been used in a laboratory and had a total of 200 hours of use.
23. Gortech requested to know the name of the facility and a contact from where the CTX 420 V4 originated, but this information was not provided.
24. DMG sent Gortech replacement parts for those parts on the CTX 420 V4 that needed to be replaced due to the prior collision(s).
25. Despite Gortech replacing those parts, there were significant vibration problems with the CTX 420 V4.
26. For months, DMG kept promising Gortech that it would send someone to fix the CTX 420 V4 and provide training, but DMG repeatedly failed to send someone when promised and rescheduled numerous times.
27. A DMG technician finally came to Gortech to align the CTX 420 V4 and stop the vibration problems.
28. However, when a subsequent DMG person came to Gortech to provide training for the CTX 420 V4, software problems surfaced with the CTX 420 V4.
29. Thus, time that was supposed to be spent training was instead spent dealing with those software problems.
30. The CTX 420 V4 was delivered in February 2006, and, by May 2006, Gortech still had not received the training necessary to use it.
31. A DMG person came to Gortech and installed new software, to correct the software problems.

32. At that point DMG again promised to send someone to provide training for the CTX 420 V4, but again DMG failed to send anyone.

33. In light of the year of lost production and the problems experienced with the CTX 420 V4 and the prior machine and the delays in receiving training, to its credit, in an apparent effort to make things right, DMG entered into a contract ("the Contract") on June 8, 2006, promising to provide a new CTX 420 V6, along with a new machine warranty, in trade for the CTX 420 V4. A true and correct copy of the Contract is attached hereto as Exhibit B.

34. Mark Henne, Area Sales Manager for DMG, sent the Contract to Todd Gordon of Gortech via fax, and signed it on behalf of DMG.

35. Mark Henne, by email on June 8, 2006, represented that he was authorized to enter into the Contract on behalf of DMG. A true and correct copy of said June 8, 2006 email is attached hereto as Exhibit C.

36. Todd Gordon signed the Contract on behalf of Gortech and hand delivered the fully executed Contract to Mark Henne on June 8, 2006.

37. This was a highly favorable trade-in, in that the new CTX 420 V6 that was promised was substantially more valuable and had a substantially higher market price than the used CTX 420 V4 that Gortech had.

38. DMG did not deliver the CTX 420 V6 as required by the Contract.

39. Instead, DMG reverted back to offering to provide training on the CTX 420 V4.

40. By September 6, 2006, Gortech was fed up waiting for either delivery of the CTX 420 V6 or training on the CTX 420 V4 and Gortech issued an ultimatum, demanding performance as promised within two weeks and threatening legal action.

41. Rather than actually sending someone to provide training within those two weeks, DMG responded by merely offering to send someone to provide training on September 25, 2006, more than two weeks after the date of the ultimatum.

42. Gortech was no longer interested in promise after broken promise of training and responded by insisting that DMG honor the Contract or refund money.

43. Thereafter, DMG has consistently failed and refused to refund money or to honor the Contract.

Count I – Breach of Contract

44. Gortech hereby incorporates the averments contained in the preceding paragraphs 1 through 43 by reference as if fully set forth herein.

45. The Contract was a valid and binding agreement.

46. DMG breached the Contract by failing to deliver the CTX 420 V6.

47. DMG's breach of contract caused damages to Gortech in excess of \$20,000, including but not limited to the difference in value between the used CTX 420 V4 and the new CTX 420 V6 and the loss of profits due to the loss of use of the CTX 420 V6.

48. Gortech intended to use the CTX 420 V6 to produce parts for Gortech's customers.

49. The CTX 420 V6 would have allowed Gortech to perform a greater volume of work without having to do multiple setups to produce one part, and to take on additional customers. In addition, the CTX 420 V6 had an automatic feeder, which helped to speed up the process. The CTX 420 V4 lacked an automatic feeder.

50. Because Gortech did not have the CTX 420 V6, Gortech was unable to obtain certain work from customers that it would have been able to obtain if it had the CTX 420 V6.

51. DMG was aware of how Gortech intended to use the CTX 420 V6, was aware that the CTX 420 V6 would have expanded and improved Gortech's capabilities, and had reason to know and knew that Gortech would suffer lost profits as a result of DMG's failure to deliver the CTX 420 V6.

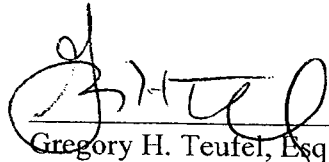
WHEREFORE, Plaintiff Gortech Global Fabrication, LLC respectfully requests that this Court enter judgment in its favor against Defendant DMG Chicago, Inc. in an amount in excess of \$20,000, plus interest, costs, and such other and further relief as this Court deems just and proper.

A JURY TRIAL IS DEMANDED

Plaintiff demands trial by jury on all issues so triable.

Respectfully submitted,

1/26/09



Gregory H. Teufel, Esq.

Amy J. Roy, Esq.

Christopher E. Mohny, Esq.

*Attorneys for Plaintiff,
Gortech Global Fabrication, LLC*

DATE: 02/02/2006

TO: GORTECH GLOBAL FABRICATION
215 BEAVER DRIVE
DUBOIS, PA 15801

PHONE: 1(814)372-5456

FAX: 1(814)375-5455

ATTN: TODD GORDON

FROM: YORK FRANKE

TODD, ATTACHED IS THE SIGNED INVOICE FOR YOUR RECORDS. I WILL ALSO SCAN
AND EMAIL TO YOU.

THANK YOU AGAIN FOR HELPING ME OUT OF THIS BIND!

I LOOK FORWARD TO MEETING YOU IN PERSON IN PA.

02/02/2006 11:55

B477815053

DMG USED MACHINE DIV

PAGE 09/10

DMG
Used Machine Division**INVOICE #2006-5**

Thursday February 2, 2006

A member of the
GILDEMEISTER
group

Sold To:
Mr. Todd Gordon, General Manager
Gortech Global Fabrication
215 Beaver Dr.
Dubois, PA 15801

DMG Chicago Inc.
1665 Perry Lane
Schmiedberg, IL 60123
Phone (847) 781-0777
Fax (847) 781-5033
E-mail info@dmgamericas.com
Internet www.dmgamericas.com

2003 Gildemeister CTX420V4 S/N 02260002561 as equipped per proposal number 164355-056148 dated February 2, 2006.

\$140,000.00 USD 2003 Gildemeister CTX420V4 S/N 02260002561
\$26,717.30 USD WTO tooling package per WTO quote# 06M026Q-03 (see attachment A)

(\$140,000.00 USD) Trade in value for 2005 Gildemeister CTX320V4 S/N 8039937279C
Gortech Global Fabrication guarantees free and clear title to machine and will pay open AR to DMG Chicago, Inc. if applicable

(\$26,717.30 USD) Trade in value for tooling package for CTX320V4 consisting of:

-5 live tool holders

- 1/5: 90 degree long driven unit for drilling/milling
- 2/5: 0 degree driven unit, short, for drilling/milling
- 3/5: 0 degree driven unit, long, for drilling/milling
- 4/5: Special 0 degree driven unit, max turning speed 8000 RPM-8 Nm-for drilling/milling
- 5/5: 90 degree driven unit, universal H=100, Max turning speed 8000 RPM for drill/milling

-1 set of seven (7) collets

-All items listed on Gortech Global Fabrication purchase order number 11979 dated 01/26/06 issued to ITI Tooling Company, Inc. (see attachment B): total of eighteen (18) items

-In House tooling (see attachment C) already at Gortech Global Fabrication consisting of:

- 1 Sauter straight drill/milling unit
- 1 Sauter right angle drill/mill units
- 3 LH turning tool holders-metric
- 3 RH turning tool holders-metric
- 6 32 mm boring bar holders
- 6 32 mm various ID boring bar adaptors
- 6 Boring bars to match adaptors
- 1 32 mm collet chuck for ER25 collet
- 3 Iscar metric LH turning tools
- 1 Sauter straight (2:1) mill unit
- 1 Sauter right angle (2:1) mill unit

John R. White
President
2-2-06

If any of the above listed tooling is not received, Gortech Global Fabrication will pay for the actual cost to replace missing items

DMG Used Machine Division

DECKEL MAHO GILDEMEISTER

EXHIBIT

tabbies

A

02/02/2006 11:55 8477815053

DMG USED MACHINE DIV

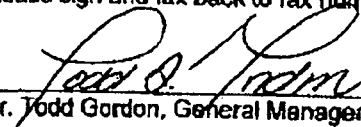
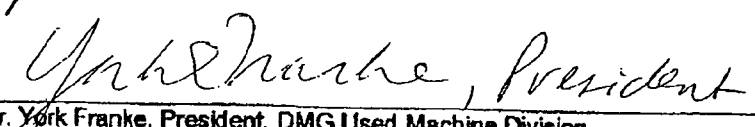
PAGE 10/10

DMG
Used Machine DivisionA member of the
GILDEMEISTER
groupDMG Chicago Inc.
1665 Perry Lane
Schaumburg, IL 60173
Phone (847) 781-0277
Fax (847) 781-5053
E-mail info@ilgomeco.com
Internet www.dugomaco.com**INVOICE #2006-5 continued****TERMS:**

1. 2005 Gildemeister CTX320V4 S/N 8039937278C to be released for pickup immediately upon acceptance of this invoice. Machine to be loaded out onto truck that delivers the CTX420. Date to disconnect CTX320V4 Monday February 6. Removal date CTX320/Delivery date CTX420 Tuesday February 7, 2006.
2. DMG Used Machine Division to pay for engineer to disconnect and prep for shipment CTX320.

Upon acceptance of this invoice ownership of the machine is conveyed, before machine shipment.

Please sign and fax back to fax number 847-781-5053.

AGREED/ACCEPTED:
Mr. Todd Gordon, General Manager, Gortech Global Fabrication2-2-06
Date
Mr. York Franke, President, DMG Used Machine Division2-2-06
Date

Thank you for your order. We sincerely appreciate your business.

Office:
☒ Chicago ☐ Charlotte ☐ Los Angeles

Contract Date	6-8-06	INVOICE #	MIS-Quote #	31030007567
Dealer Name	B	Customer PO #		
Sales Engineer	HENNE	Payment Terms	SEE BELOW	
Customer MIS #	476097	Customer Expected Receipt Date	ASAP	
The undersigned customer certifies he purchases from you the following described goods upon the terms, covenants, and conditions shown below.			F.O.B.	
			DUBOIS, PA	

Customer	GORTCH GLOBAL FABRICATING		Phone	814-315-0829		Fax	814-372-5455	
Address	PO BOX 347		City	DUBOIS		State	PA	Zip 15801
Ship To	215 BEAVER DRIVE		Ship to City	DUBOIS		Ship to State	PA	Ship to Zip 15801
Ship Via	BEST WAY		Customer Shipping Contact		TODD GORDON			

Qty.	Item Number	Description of Goods	Unit \$	Total \$
1	022600003961	CTX 420 V6 With FANUC CONTROL WITH ALL OPTIONS AND ACCESSORIES	\$199,500.00	\$199,500.00
1		T.C. SERVICES Tooling PACKAGE PER ATTACHED DETAIL SHEET	2	2
1		MACHINE INSTALLATION AND TRAINING	2	2
1		TRADE-IN OF CTX 420 V4	\$199,500.00	\$199,500.00
1		NEW MACHINE WARRANTY	2	2

Specify for this machine	Volts	Cycles	Phase	Total
Who will arrange Freight?	☒ DMG	☐ Customer	☐ Other	Sales / Use Tax or Tax Exempt #
Who will pay for Freight?	☒ DMG	☐ Customer/Collect	☐ Other	TRADE-IN Sub-Total
Who will arrange Rigging?	☒ DMG	☐ Customer	☐ Other	Less Deposits
Who will pay for Rigging?	☒ DMG	☐ Customer/Collect	☐ Other	Attached ☐ Need to be invoiced
				Total Due

Any Special Delivery Instructions: (i.e., ship to showroom first)
Acceptance Criteria: (CPK, Cycle Times, Part Programmed)

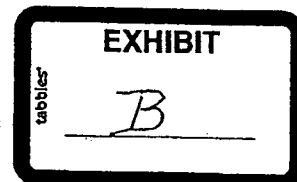
General Remarks/Comments/Financial Institution NO ADDITIONAL CHARGES FOR THIS ORDER
TO GORTCH/PREDATOR.

Contract: The terms and conditions set forth herein and on the reverse side hereof shall govern all sales of materials or equipment (the "Product") described on the front side hereof by DMG, Inc.

**See other side for complete terms
and conditions.**

Signature	<i>Pat B. Tramm</i>	
Print Name		
Title		
Accepted by an officer of DMG this _____ Day of _____ 20____		
By	<i>Pat B. Tramm</i>	
Title	AREA SALES MANAGER.	

White-Customer • Yellow-Office • Pink-ASM



Teufel, Gregory

From: Mark.Henne@dmgamerica.com
Sent: Thursday, June 08, 2006 8:50 AM
To: Todd Gordon
Cc: mhenne8420@aol.com
Subject: Machine switchout
Importance: High

Todd,

I have the OK to move ahead and switch out your machine and replace it with the subspindle machine. Again, you will pay NO ADDITIONAL MONEY. We will rig the old machine out and the new machine in, pay the freight for both machines in both directions, include the new tooling package, chucks and accessories. I do however need to get your signatures asap before someone else sells this new machine.

I can be at your place later this afternoon,,,,,,and yes I'm buying for whoever wants to go.

Please let me know if I should head up or not....

Regards,
Mark A. Henne, CMTSE
Area Sales Manager
DMG-Chicago
(847) 781-0277 (office)
(412) 480-5227 (cell)
(412) 821-2983 (home office/fax)
Mark.Henne@DMGAmerica.com
<http://www.gildemeister.com>

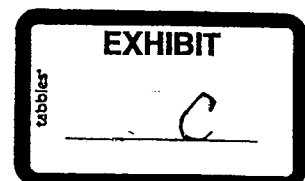
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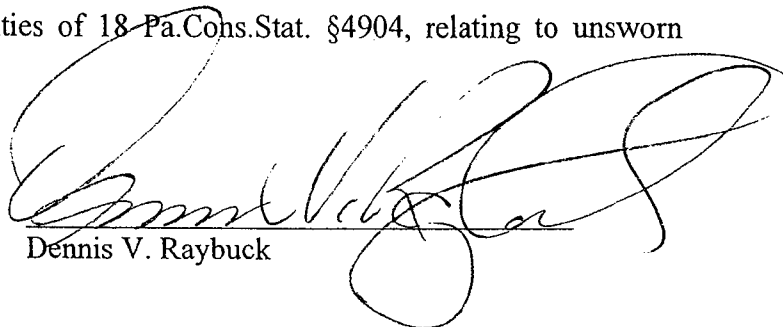
3/21/2007



VERIFICATION

Dennis V. Raybuck, the undersigned individual, as President of Gortech Global Fabrication, LLC, deposes and says that he is authorized to execute this Verification on behalf of Gortech Global Fabrication, LLC, that the averments in the foregoing Complaint in Civil Action are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Dated: January 23, 2009



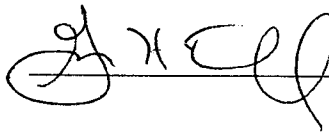
Dennis V. Raybuck

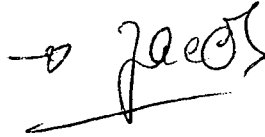
CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing Complaint were served upon the following by deposit in the United States mail, first class postage prepaid, this 26th day of January, 2009.

James Gondeck, President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173

Dr. Christoph Reinkemeier (CEO)
DMG Chicago Inc.
265 Spring Lake Drive
Itasca, IL 60143

A handwritten signature in dark ink, appearing to read "J. Gondeck", is written over a horizontal line.



Gregory H. Teufel
412.566.5977
gteufel@eckertseamans.com
Admitted in PA and WV

February 20, 2009

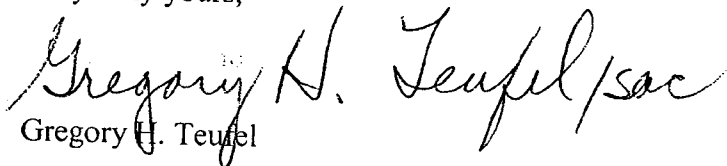
Prothonotary
Court of Common Pleas of Clearfield County, PA
P.O. Box 549
Clearfield, PA 16830

RE: Gortech Global Fabrication, LLC v. DMG Chicago, Inc.
No. 07-754-CD

To Whom It May Concern:

Enclosed for filing are an original and one copy of a Notice of Intent to File Praecipe For Entry of Judgment by Default For Failure to Plead in the above-captioned case. After filing, would you please time/date stamp the copy and return it to me in the enclosed self-addressed, stamped envelope. Thank you for your courtesy.

Very truly yours,



Gregory H. Teufel

GHT/sac

Enclosures

Cc w/encl. James Gondeck
Dr. Christoph Reinkemeier
Christopher E. Mohnhey, Esq.

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

**NOTICE OF INTENT TO FILE
PRAECIPE FOR ENTRY OF JUDGMENT
BY DEFAULT FOR FAILURE TO PLEAD**

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohnhey, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

DMG CHICAGO, INC.,

Defendant.

IMPORTANT NOTICE

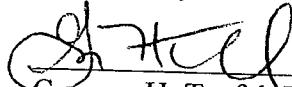
To: DMG Chicago, Inc.

Date: Feb. 20, 2009

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY AN ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTION TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 50-51

Respectfully submitted,



Gregory H. Teufel, Esq.

Amy J. Roy, Esq.

Christopher E. Mohnhey, Esq.

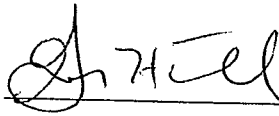
*Attorneys for Plaintiff,
Gortech Global Fabrication, LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing **NOTICE OF INTENT TO FILE PRAECIPE FOR ENTRY OF JUDGMENT BY DEFAULT FOR FAILURE TO PLEAD** were served upon the following by deposit in the United States mail, first class postage prepaid, this 20th day of February, 2009.

James Gondeck, President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173

Dr. Christoph Reinkemeier (CEO)
DMG Chicago Inc.
265 Spring Lake Drive
Itasca, IL 60143



Gregory H. Teufel
412.566.5977
gteufel@eckertseamans.com
Admitted in PA and WV

August 18, 2008

Via First Class U.S. Mail

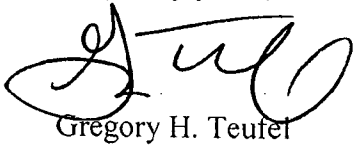
Prothonotary
Court of Common Pleas of Clearfield County, PA
P.O. Box 549
Clearfield, PA 16830

RE: *Gortech Global Fabrication, LLC v. DMG Chicago, Inc.*
No. 07-754-CD

To Whom It May Concern:

Enclosed for filing are an original and one copy of an Affidavit of Service in the above-captioned action. After filing, would you please time/date stamp the copy and return it to me in the enclosed self-addressed, stamped envelope. Thank you for your courtesy.

Very truly yours,



Gregory H. Teufel

GHT/sac

Enclosures

Cc: *Mr. James Gondeck, w/encl.*
Christopher E. Mohny, Esq., w/encl.

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

GORTECH GLOBAL FABRICATION,
LLC

PLAINTIFF

VS.

DMG CHICAGO, INC.,

DEFENDANT

NO. 2007-00754- C.D.

TYPE OF CASE: CIVIL

TYPE OF PLEADING:
AFFIDAVIT OF SERVICE

FILED ON BEHALF OF:
PLAINTIFF

COUNSEL OF RECORD:
CHRISTOPHER E. MOHNEY,
ESQUIRE
SUPREME COURT NO.: 63494

25 EAST PARK AVENUE,
SUITE 6
DUBOIS, PA 15801
(814) 375-1044

GREGORY H. TEUFEL, ESQUIRE
SUPREME COURT NO.: 73062

ECKERT SEAMANS CHERIN &
MELLOT, LLC
U. S. STEEL TOWER
600 GRANT STREET, 44TH FLOOR
PITTSBURGH, PA 15219
(412) 566-6000

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

GORTECH GLOBAL FABRICATION,
LLC

PLAINTIFF

VS.

DMG CHICAGO, INC.

DEFENDANT

NO. 2007 - 00754 - C.D.

TYPE OF CASE: CIVIL

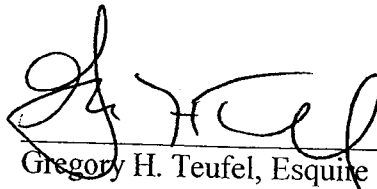
AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA :

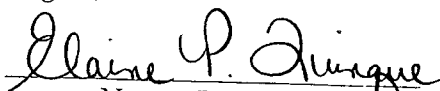
: SS.

COUNTY OF ALLEGHENY :

I, **GREGORY H. TEUFEL, ESQUIRE**, being duly sworn according to law, deposes and says that as attorney for Plaintiff **GORTECH GLOBAL FABRICATION, LLC**, in the above captioned action, he did serve a true and correct copies of Praecipe for Writ of Summons and Summons in the above-captioned case on the Defendant, **DMG CHICAGO, INC.**, by certified mail, return receipt requested, at ILLINOIS CORPORATION SERVICE, 801 Adlai Stevenson Dr., Springfield, IL 62703 and to James Gondeck, President, DMG CHICAGO, INC., 1665 Penny Lane, Schaumburg, IL 60173, both mailings with the return address of Plaintiff's counsel appearing thereon, on May 21, 2007 as to DMG Chicago, Inc. and May 18, 2007 as to James Gondeck, President, DMG Chicago, Inc., as evidenced by the return receipts attached hereto.


Gregory H. Teufel, Esquire

SWORN TO and SUBSCRIBED
before me this 18 day of
August, 2008.


Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Elaine P. Quinque, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires May 17, 2012
Member, Pennsylvania Association of Notaries

May 16, 2007

Gregory H. Teufel
Direct Dial 412-577-5289
Direct Fax 412-765-3858
E-mail: gteufel@schnader.com

VIA CERTIFIED MAIL
VIA FIRST CLASS MAIL

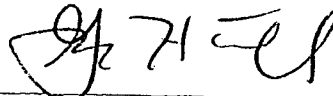
DMG Chicago, Inc.
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, IL 62703

RE: Notice of Civil Action Against DMG Chicago, Inc.

Dear DMG Chicago, Inc. Service Agent:

This is a notice of civil action against DMG Chicago, Inc. in the Court of Common Pleas of Clearfield County, Pennsylvania. Enclosed you will find a Praeipce for Writ of Summons and the Summons.

Sincerely,



Gregory H. Teufel

GHT
Enclosures

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DMG CHICAGO, INC.,
ILLINOIS CORPORATION SERVICE C
801 Adlai Stevenson Dr.
Springfield, IL 62703

2. Article Number
(Transfer from serial)

7007 0220 0004 0971 3239

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Tom Jarvis* ☐ Agent ☐ Address

B. Received by (Printed Name)

C. Date of Delivery
5-21

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service TM

CERTIFIED MAIL TM RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$

Certified Fee

Return Receipt Fee
(Endorsement Required)

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees

\$ 5.72

5-16-07

Postmark
Here

Sent To

DMG Chicago Inc. - Illinois Corporation Service C

Street, Apt. No.,
or PO Box No.

801 Adlai Stevenson Drive

City, State, ZIP+4

Springfield Illinois 62703

PS Form 3800, August 2006

See Reverse for Instructions

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Gregory H. Teufel, Esquire
SCHNADER HARRISON SEGAL & LEWIS LLP
Suite 2700, 120 Fifth Avenue
Fifth Avenue Place
Pittsburgh, PA 15222

3007645.0003

0007



May 16, 2007

Gregory H. Teufel
Direct Dial 412-577-5289
Direct Fax 412-765-3858
E-mail: gteufel@schnader.com

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED
VIA FIRST CLASS MAIL

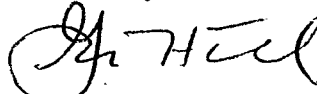
James Gondeck
President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173

RE: Notice of Civil Action

Dear Mr. Gondeck:

This is a notice of civil action against DMG Chicago, Inc. in the Court of Common Pleas of Clearfield County, Pennsylvania. Enclosed you will find a Praecipe for Writ of Summons and the Summons.

Sincerely,



Gregory H. Teufel

GHT
Enclosures

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature  ☐ Agent ☐ Address

B. Received by (Printed Name) _____

C. Date of Delivery 5-18

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

1. Article Addressed to:

James Gondeck, President
DMG CHIACAGO INC.
1665 Penny Lane
Schaumburg, IL 60173

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number

(Transfer from service label)

7007 0220 0004 0971 3222

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15

U.S. Postal Service TM
CERTIFIED MAIL TM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	5.72

5-16-07

Postmark
Here

Sent To
James Gondeck, President DMG Chicago, Inc.
Street, Apt. No.,
or PO Box No. 1665 Penny Lane
City, State, ZIP+4 Schaumburg, IL 60173

PS Form 3800, August 2006

See Reverse for Instructions

UNITED STATES POSTAL SERVICE

19 MAY 2007 PM 1

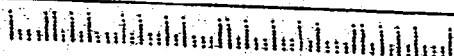
March 15
First-Class Mail
Postage and Fees Paid
USPS
Permit No. 1000

- Sender: Please print your name, address, and ZIP+4 in this box •

Gregory H. Teufel, Esquire
SCHNADER HARRISON SEGAL & LEWIS LLP
Suite 2700, 120 Fifth Avenue
Fifth Avenue Place
Pittsburgh, PA 15222

3007645.0003

13 0034



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION,
LLC,
215 Beaver Drive
Dubois, Pennsylvania 15801

Plaintiff,

vs.

DMG CHICAGO, INC.,
James Gondeck, President
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, Illinois 62703

Defendant.

CIVIL DIVISION

GD No. 07-

Code:

PRACIPE FOR WRIT OF SUMMONS

Filed on Behalf of Plaintiff, Gortech Global
Fabrication, Inc.

Counsel of Record for this Party:

Gregory Teufel, Esquire
Pa. I.D. #73062

Schnader Harrison Segal & Lewis LLP
Pa. Firm I.D. #061
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001
Telephone: (412) 577-5200
Facsimile: (412) 765-3858

Christopher E. Mohny, Esquire
Pa. I.D. #63494

25 East Park Avenue, Suite 6
DuBois, PA 15801
Telephone: (814) 375-1044
Facsimile: (814) 375-1088

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, :
LLC, :

Plaintiff, :

vs. :

DMG CHICAGO, INC. :

Defendant. :

CIVIL DIVISION

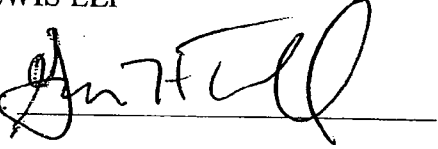
GD No. 07-

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in Civil Action against the within named Defendant.

SCHNADER HARRISON SEGAL &
LEWIS LLP

By 

Gregory H. Teufel
Pa. I.D. #73062

Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001

Christopher E. Mohnery
Pa. I.D. # 63494

25 East Park Avenue, Suite 6
DuBois, PA 15801

Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

Dated: May 11, 2007

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

SUMMONS

Gortech Global Fabrication, LLC

Vs.

NO.: 2007-00754-CD

DMG Chicago, Inc.

TO: DMG CHICAGO, INC.

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 5/14/2007



William A. Shaw

Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

Issuing Attorney:

Gregory H. Teufel, Esq.
Schnader harrison Segal & Lewis LLC
Fifth Ave Place, Suite 2700
Pittsburgh, PA 15222-3010
412-577-5200

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

SUMMONS

Gortech Global Fabrication, LLC

Vs.

NO.: 2007-00754-CD

DMG Chicago, Inc.

TO: DMG CHICAGO, INC.

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 5/14/2007



William A. Shaw
Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

Issuing Attorney:

Gregory H. Teufel, Esq.
Schnader harrison Segal & Lewis LLC
Fifth Ave Place, Suite 2700
Pittsburgh, PA 15222-3010
412-577-5200

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION,
LLC,
215 Beaver Drive
Dubois, Pennsylvania 15801

Plaintiff,

vs.

DMG CHICAGO, INC.,
James Gondeck, President
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, Illinois 62703

Defendant.

CIVIL DIVISION

GD No. 07- 754-CV

Code:

PRACIPE FOR WRIT OF SUMMONS

Filed on Behalf of Plaintiff, Gortech Global
Fabrication, Inc.

Counsel of Record for this Party:

Gregory Teufel, Esquire
Pa. I.D. #73062

Schnader Harrison Segal & Lewis LLP
Pa. Firm I.D. #061
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001
Telephone: (412) 577-5200
Facsimile: (412) 765-3858

Christopher E. Mohnney, Esquire
Pa. I.D. #63494

25 East Park Avenue, Suite 6
DuBois, PA 15801
Telephone: (814) 375-1044
Facsimile: (814) 375-1088

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

MAY 14 2007

Attest.

William A. [Signature]
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, :
LLC, :

Plaintiff, :

vs. :

DMG CHICAGO, INC. :

Defendant. :

CIVIL DIVISION

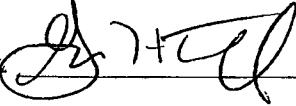
GD No. 07-

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in Civil Action against the within named Defendant.

SCHNADER HARRISON SEGAL &
LEWIS LLP

By 

Gregory H. Teufel
Pa. I.D. #73062

Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001

Christopher E. Mohnery
Pa. I.D. # 63494

25 East Park Avenue, Suite 6
DuBois, PA 15801

Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

Dated: May 11, 2007



Chicago Inc.

1665 Penny Lane · Schaumburg, Illinois 60194
Phone: 847-781-0277
Fax: 847-781-0388

08-OCT-06

To: Jens Hardenacke

Predator Performance Case History

DMG received an order for two machines from Predator in February 2005. After delivery of the mill, it was determined that the machine could not do the range of parts as originally determined. A change in fixturing techniques was not acceptable by the operator and it was decided that a machine exchange be taken. DMG removed the machine and offered two alternative machines to do the scope of work presented by Predator. The DMF 250 was demonstrated in Detroit for personnel from Predator. The design of this machine was not acceptable by Predator. Personnel from Predator indicated they preferred a HMC. We again showed them a machine in Chicago to do this work. At this point they agreed to this design of machine. a DMC 125H. It was agreed that this machine could do the range of engine blocks and the additional scope of parts Predator was investigating. During this time the CTX 320V4 was delivered, installed AND trained on at the Predator facility. The machine was not run after installation and training was performed and was transferred to the Gortech division of Predator. Although smaller than originally intended, the machine was acceptable to Gortech. It was the desire of Gortech to have a larger multi-axis lathe for their scope of parts. During the conversations for the larger mill DMG presented a stock GMX 400 to Gortech for consideration. This machine was acceptable to Gortech and was verbally committed to in November of 2005 during an open house at DMG.

The value of this order was 1.2MM. The downpayment agreed to was \$200,000.00. Gortech was to lease the balance. Contact was made with DMG's leasing partner National City. Papers exchanged hands and approval was made in December 2005. A formal purchase order was never received from the customer. It was also agreed to that Gortech would trade in the CTX 320V4 and pay the balance from the receivable of the mill along with the difference to reach \$200,000.00.

During this time the used division of DMG sold the CTX 320 V4 to one of their customers. With conversations between Gortech and DMG Used it was agreed to exchange the CTX 320V4 for a larger version CTX 420 used machine with more capabilities.

Several issues arose with the exchanged machine and training was not performed to the promised standards of the used division. The new division intervened and provided additional training to the customer at their expense. The used division also repaired the machine and provided additional training. None of this was acceptable to Gortech and no additional machines were ordered as promised in December.

In early summer of 2006 DMG new attempted to exchange the machine for a demo CTX 420V6 stock machine. A signed document was received from Gortech and submitted to DMG Senior Management for approval. However, no formal paperwork from Gortech was received. When asked for this paperwork Gortech's response was we do not normally issue paper purchase orders but instead issued a verbal number of 12860 for tracking purposes.

Mark Henne still attempted to have the order placed and the exchange made. After much discussion, it was decided by DMG Senior Management to decline the exchange. This was relayed to Gortech. It

● Page 2

was also explained that DMG new would still take the used machine in on trade and continue with the two machine deal agreed to in December. Several phone calls to Gortech went unanswered to try and resolve this issue. Signed documents from Gortech show acceptance of the used machine as well as a commitment to pay the outstanding receivable.

There have been some instances when DMG could have responded quicker to Gortech's requests for sure. Overall both divisions of DMG performed and offered to perform services when prompted by Gortech. Gortech/Predator have failed to honor verbal commitments to additional machines. The machine in place is in good operation condition and DMG offered additional training when e-mails from Predator threatened return of equipment and possible legal action. Predator/Gortech has refused this service although no additional costs would be incurred by them.

It is my opinion that the outstanding receivable is valid, and that DMG should refuse return of the machine.

Regards,

Mark A. Henne

York
Franke/SV/DMGCC/GILDEM
EISTER

06/05/2007 04:21 PM

To Phil Rugari/MG/DMGCC/GILDEMEISTER@GILDEMEISTER

cc Christoph
Reinkemeier/MG/DMGCC/GILDEMEISTER@GILDEMEISTER,
Gerald

bcc

Subject Re: Fw: Gortech Global Fabrication 

Phil, DMG did not misrepresent the machine for the following reasons:

1. We explained the history of the machine-on quote. Came out of Magna R&D Lab in Canada.
2. Exact hour count was given.
3. Photo of hour meter was emailed to Todd Gordon (attached).
4. Machine was used/non current. Year and SN were on quote. It was sold in 2006 and machine is/was a



2003. QUOTE AND INVOICE.pdf

Attached is the original quote and invoice. Let me know if I can provide further info.



APPROX 248 HOURS I.jpg

York Franke
President
DMG Used Machine Division
1665 Penny Lane
Schaumburg, IL 60173
USA

Phone: +847-781-0277 x 262
Cell Phone: +224-622-5376
Fax: +847-781-5053
Email: york.franke@dmgamerica.com
Website: www.dmgamerica.com



Used Machine Division

PROPOSAL

A member of the
GILDEMEISTER
group

PROPOSAL NO: 164363-056150

FEB 2 06

STOCK # ----- 064154

CUSTOMER PHONE --- (814) 375-5660

CUSTOMER FAX ----- (814) 372-5455

DMG Chicago Inc.

1665 Penny Lane

Schaumburg, IL 60193

Phone (847) 781-0277

Fax (847) 781-5053

E-mail info@dmgamerica.com

Internet www.dmgamerica.com

MR TODD GORDON
GORTech GLOBAL FABRICATION
215 BEAVER DR
DUBOIS, PA 15801

DEAR MR GORDON:

RE: YOUR RECENT INQUIRY

SUBJECT TO AVAILABILITY, PRIOR SALE, AND TERMS AND CONDITIONS BELOW,
WE OFFER FOR YOUR CONSIDERATION:

2003 GILDEMEISTER CTX 420 V4 TURN MILL CENTER W/Y & C-AXIS & TOOL DRIVE:

SERIAL NUMBER ---- 02260002561

>>MACHINE CAME OUT OF A RESEARCH & DEVELOPMENT LABORATORY AND HAS ONLY
248 ACTUAL HOURS USE!<<

HEIDENHAIN IT DINPLUS CONTROL

MACHINE HAS Y-AXIS, C-AXIS, TOOL DRIVE, AND CHIP CONVEYOR

-WORKING AREA

MAX SWING DIAMETER	26.8"
SWING DIAMETER OVER X-GUIDEWAY	22.2"
TRANSVERSE TRAVEL (X)	7.3"
LONGITUDINAL TRAVEL (Z)	25"
VERTICAL TRAVEL (Y-AXIS)	+/- 1.6"

-INTEGRATED SPINDLE MOTOR

FLAT FLANGE SPINDLE NOSE	170 h5
BAR CAPACITY	2.6"
SPINDLE DIAMETER IN FRONT BEARING	4.7"

(CONTINUED NEXT PAGE)



Used Machine Division

A member of the
GILDEMEISTER
group

(PROPOSAL NO. 164363-056150 CONTINUED)

GORTECH GLOBAL FABRICATION

Page 2

DMG Chicago Inc.
1665 Penny Lane
Schaumburg, IL 60173
Phone (847) 781-0277
Fax (847) 781-5053
E-mail info@dmgameica.com
Internet www.dmgamerica.com

CHUCK SMW AUTOBLOK BHD 250-66 10" 3-JAW POWER CHUCK
DRIVE POWER 40% DC 46.9 HP
DRIVE POWER CONTINUOUS DUTY 33.5 HP
MAX TORQUE 40% DC 270.1 FT/LBS
MAX TORQUE CONTINUOUS DUTY 197.1 FT/LBS
SPINDLE SPEED RANGE 20-5,000 RPM
RAPID TRAVERSE X/Z 2,362 IPM/1,771 IPM

-TOOL TURRET

NUMBER OF TOOL STATIONS 12
SHANK DIAMETER TO DIN 69880 1.6" VDI 40
NUMBER OF DRIVEN TOOL STATIONS 12
DRIVE POWER (40% DC) 17.7 HP
MAX TORQUE 20.4 FT/LBS
MAX SPEED 4,500 RPM
MAX CLAMP DIAMETER OF DRIVEN TOOLS 0.8"

-CHIP CONVEYOR

-TAILSTOCK

AUTOMATIC TAILSTOCK STROKE 22.8"
QUILL RECEPTION 5 MK
MAX TAILSTOCK FORCE 800 daN

-BAR MACHINING PACKAGE CONSISTING OF

HOLLOW CLAMPING ATTACHMENT, 68 MM DIAMETER (2.677")

PARTS CATCHER, PNEUMATIC OPERATED, WITH CONVEYOR BELT FOR FINISHED PARTS
UP TO 65 MM DIAMETER X 200 MM LENGTH (2.56" DIAMETER X 7.87" LENGTH)

INTERFACE FOR BAR FEEDER OR BAR LOADING MAGAZINE

(CONTINUED NEXT PAGE)



Used Machine Division

A member of the
GILDEMEISTER
group

(PROPOSAL NO. 164363-056150 CONTINUED)

GORTECH GLOBAL FABRICATION

Page 3

DMG Chicago Inc.

1665 Penny Lane

Schaumburg, IL 60173

Phone (847) 781-0277

Fax (847) 781-5053

E-mail info@dmgamerica.com

Internet www.dmgamerica.com

INDICATOR LAMP

MACHINE ELECTRICS 60 CYCLE, 400 VOLT INPUT, COMES WITH TRANSFORMER

PRICE QUOTED IS IN UNITED STATES DOLLARS

TERMS:

1. PAYMENT IN FULL VIA WIRE TRANSFER PRIOR TO REMOVAL.
2. PRICE INCLUDES DELIVERY TO PREDATOR PERFORMANCE, RIGGING INTO BUILDING, ONE DAY INSTALL TO ANCHOR, LEVEL, AND CALIBRATE MACHINE.
3. MACHINE IS COVERED BY FULL FACTORY WARRANTY PARTS AND LABOR UNTIL DECEMBER 2, 2006.
4. DMG USED MACHINE DIVISION TO SELL WTO TOOLING TO GORTECH GLOBAL FAB. AT COST FOR A PERIOD OF ONE YEAR FROM DATE OF INVOICE.

APPROXIMATE WEIGHT 13200#

PRICE: \$140,000.00

PLUS STATE & LOCAL TAXES, IF APPLICABLE

PREPARED BY: YORK FRANKE

York Franke
President DMG Used
Machine Division

02/02/2006 11:55

B477815053

DMG USED MACHINE DIV

PAGE 89/18

DMG

Used Machine Division

INVOICE #2006-5

Thursday February 2, 2006

Sold To:
Mr. Todd Gordon, General Manager
Gortech Global Fabrication
215 Beaver Dr.
Dubois, PA 15801

A member of the
GILDEMEISTER
 group

DMG Chicago Inc.
 1605 Perry Ave
 Schaumburg, IL 60193
Phone (847) 781-0777
Fax (847) 781-3053
E-mail info@dmgamerica.com
Internet www.dmgamerica.com

2003 Gildemeister CTX420V4 S/N 02260002561 as equipped per proposal number 164355-056148 dated February 2, 2006.

\$140,000.00 USD 2003 Gildemeister CTX420V4 S/N 02260002561

\$26,717.30 USD WTO tooling package per WTO quote# 06M026Q-03 (see attachment A)

(\$140,000.00 USD) Trade in value for 2005 Gildemeister CTX320V4 S/N 8039937279C
 Gortech Global Fabrication guarantees free and clear title to machine and will pay open AR to DMG Chicago, Inc. if applicable

(\$26,717.30 USD) Trade in value for tooling package for CTX320V4 consisting of:

-5 live tool holders

1/5: 90 degree long driven unit for drilling/milling

2/5: 0 degree driven unit, short, for drilling/milling

3/5: 0 degree driven unit, long, for drilling/milling

4/5: Special 0 degree driven unit, max turning speed 8000 RPM-8 Nm-for drilling/milling

5/5: 90 degree driven unit, universal H=100, Max turning speed 8000 RPM for drill/milling

-1 set of seven (7) collets

-All items listed on Gortech Global Fabrication purchase order number 11979 dated 01/26/06 issued to ITI Tooling Company, Inc. (see attachment B); total of eighteen (18) items

-In House tooling (see attachment C) already at Gortech Global Fabrication consisting of:

1 Sauter straight drill/milling unit

1 Sauter right angle drill/mill units

3 LH turning tool holders-metric

3 RH turning tool holders-metric

6 32 mm boring bar holders

6 32 mm various ID boring bar adaptors

6 Boring bars to match adaptors

1 32 mm collet chuck for ER25 collet

3 Iscar metric LH turning tools

1 Sauter straight (2:1) mill unit

1 Sauter right angle (2:1) mill unit

John Rube
President
 2-2-06

If any of the above listed tooling is not received, Gortech Global Fabrication will pay for the actual cost to replace missing items

DMG Used Machine Division

DECKEL MAHO GILDEMEISTER

02/02/2006 11:55 8477815053

DMG USED MACHINE DIV

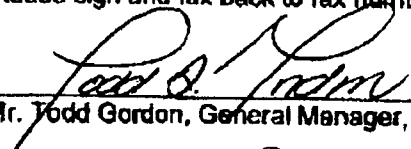
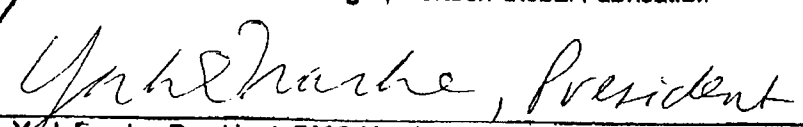
PAGE 10/10

DMG
Used Machine DivisionA member of the
GILDEMEISTER
groupDMG Chicago Inc.
1603 Peoria Lane
Schkaling, IL 60173
Phone (847) 201-0277
Fax (847) 781-5053
E-mail info@dmgamerica.com
Internet www.dmgamerica.com**INVOICE #2006-5 continued****TERMS:**

1. 2005 Gildemeister CTX320V4 S/N 8039937279C to be released for pickup immediately upon acceptance of this invoice. Machine to be loaded out onto truck that delivers the CTX420. Date to disconnect CTX320V4 Monday February 6. Removal date CTX320/Delivery date CTX420 Tuesday February 7, 2006.
2. DMG Used Machine Division to pay for engineer to disconnect and prep for shipment CTX320.

Upon acceptance of this invoice ownership of the machine is conveyed, before machine shipment.

Please sign and fax back to fax number 847-781-5053.

AGREED/ACCEPTED:
Mr. Todd Gordon, General Manager, Gortech Global Fabrication2-2-06
Date
Mr. York Franke, President, DMG Used Machine Division2-2-06
Date

Thank you for your order. We sincerely appreciate your business.

October 13, 2006

Mr. Todd Gordon
Gortech Global Fabricating
215 Beaver Drive
Du Bois, PA 15801

RE: Offer of Settlement

Dear Mr. Gordon,

In 2005, Gortech purchased a CTX320 lathe from DMG at a price of \$199,500.00. This was part of a two-machine order. Subsequently, this machine was traded for a CTX420 with the DMG Used Machines Division using a trade value of \$140,000.00.

DMG would like to resolve this issue, and make the following offer of settlement:

Option 1: Gortech pays the balance due of \$47,203.85 and keeps the CTX420 lathe. We will keep the \$32,550.00 deposit made on the milling machine for you to use toward the purchase of your next machine.

Option 2: DMG will buy back the CTX420 lathe for \$140,000.00, less the balance owing of \$47,203.85. We will keep the \$32,550.00 deposit made on the milling machine for you to use toward the purchase of your next machine.

Please call me to discuss this offer of settlement.

Best regards,

Dr. Jens Hardenacke

DMG America
Summary of Amount Due from Predator Performance

Purchase Price of CTX 320	199,500.00
Less 10% Deposit	(19,950.00)
Less Check #245 dated 10/12/05	<u>(132,346.15)</u>
Balance Due	<u>47,203.85</u>



CORPORATION SERVICE COMPANY

Notice of Service of Process

LMH / ALL
Transmittal Number: 5156396
Date Processed: 05/22/2007

Primary Contact: Mr. Robert J Willson Jr.
Baker & McKenzie
One Prudential Plaza
Suite 3500 130 E Randolph Drive
Chicago, IL 60601

Entity:	DMG Chicago Inc. Entity ID Number 1959737
Entity Served:	DMG Chicago Inc.
Title of Action:	Gortech Global Fabrication, LLC vs. DMG Chicago, Inc.
Document(s) Type:	Summons
Nature of Action:	Other
Court:	Clearfield Common Pleas Court, Pennsylvania
Case Number:	07-754-CD
Jurisdiction Served:	Illinois
Date Served on CSC:	05/21/2007
Answer or Appearance Due:	Other/NA
Originally Served On:	CSC
How Served:	Certified Mail
Plaintiff's Attorney:	Gregory H. Teufel 412-577-5200

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

Schnader
ATTORNEYS AT LAW

FIFTH AVENUE PLACE
120 FIFTH AVENUE SUITE 2700 PITTSBURGH, PA 15222-3001
412.577.5200 FAX 412.765.3858 schnader.com

May 16, 2007

Gregory H. Teufel
Direct Dial 412-577-5289
Direct Fax 412-765-3858
E-mail: gteufel@schnader.com

VIA CERTIFIED MAIL
VIA FIRST CLASS MAIL

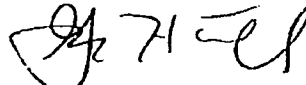
DMG Chicago, Inc.
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, IL 62703

RE: Notice of Civil Action Against DMG Chicago, Inc.

Dear DMG Chicago, Inc. Service Agent:

This is a notice of civil action against DMG Chicago, Inc. in the Court of Common Pleas of Clearfield County, Pennsylvania. Enclosed you will find a Praecipe for Writ of Summons and the Summons.

Sincerely,



Gregory H. Teufel

GHT
Enclosures

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

SUMMONS

Gortech Global Fabrication, LLC

Vs.

NO.: 2007-00754-CD

DMG Chicago, Inc.

TO: DMG CHICAGO, INC.

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 5/14/2007



William A. Shaw
Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

Issuing Attorney:

Gregory H. Teufel, Esq.
Schnader Harrison Segal & Lewis LLC
Fifth Ave Place, Suite 2700
Pittsburgh, PA 15222-3010
412-577-5200

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION,
LLC,
215 Beaver Drive
Dubois, Pennsylvania 15801

Plaintiff,

vs.

DMG CHICAGO, INC.,
James Gondeck, President
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, Illinois 62703

Defendant.

CIVIL DIVISION

GD No. 07- 754-C0

Code:

PRACIPE FOR WRIT OF SUMMONS

Filed on Behalf of Plaintiff, Gortech Global
Fabrication, Inc.

Counsel of Record for this Party:

Gregory Teufel, Esquire
Pa. I.D. #73062

Schnader Harrison Segal & Lewis LLP
Pa. Firm I.D. #061
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001
Telephone: (412) 577-5200
Facsimile: (412) 765-3858

Christopher E. Mohnhey, Esquire
Pa. I.D. #63494

25 East Park Avenue, Suite 6
DuBois, PA 15801
Telephone: (814) 375-1044
Facsimile: (814) 375-1088

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

MAY 14 2007

Attest.

William A. Blum
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, :
LLC, :

Plaintiff, :

vs. :

DMG CHICAGO, INC. :

Defendant. :

CIVIL DIVISION

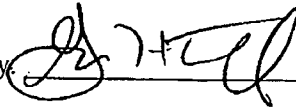
GD No. 07-

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in Civil Action against the within named Defendant.

SCHNADER HARRISON SEGAL &
LEWIS LLP

By 

Gregory H. Teufel
Pa. I.D. #73062

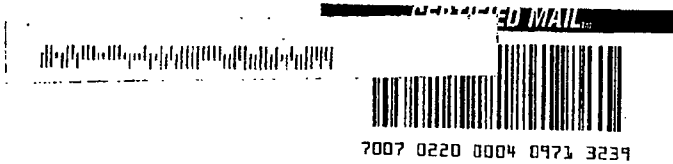
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001

Christopher E. Mohnney
Pa. I.D. # 63494

25 East Park Avenue, Suite 6
DuBois, PA 15801

Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

Dated: May 11, 2007



Schnader
ATTORNEYS AT LAW

Schnader Harrison Segal & Lewis LLP
FIFTH AVENUE PLACE
120 FIFTH AVENUE SUITE 2700
PITTSBURGH, PA 15222-3001

VIA CERTIFIED MAIL/
RETURN RECEIPT REQUESTED

DMG CHICAGO INC.
Illinois Corporation Service C
801 Adlai Stevenson Drive
Springfield, IL 62703



3007645.0003/30342/GHT

PLEASE FOLD THIS SHIPPING DOCUMENT IN HALF AND PLACE IT IN A WAYBILL POUCH AFFIXED TO YOUR SHIPMENT SO THAT THE BAR-CODE PORTION OF THE LABEL CAN BE READ AND SCANNED. ***WARNING: USE ONLY THE PRINTED ORIGINAL LABEL FOR SHIPPING. USING A PHOTOCOPY OF THIS LABEL FOR SHIPPING PURPOSES IS FRAUDULENT AND COULD RESULT IN ADDITIONAL BILLING CHARGES, ALONG WITH THE CANCELLATION OF YOUR FEDEX ACCOUNT NUMBER.

From: Origin ID: ARGA (888) 690 2882
Mary Drummond
Corporation Service Company
2711 Centerville Road
Suite 400
Wilmington, DE 19808



CL806130509/15

Ship Date: 22MAY07
Actual Wgt: 1LB
System#: 108202/FXRS0766
Account#: S 322544685

REF:

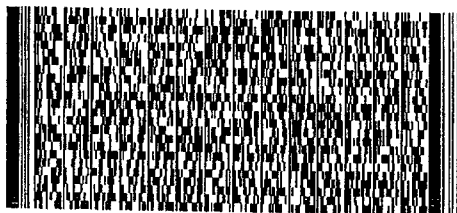


Delivery Address Bar Code

SHIP TO: (312) 861 6585

BILL THIRD PARTY

Baker & McKenzie
Mr. Robert J Willson Jr.
One Prudential Plaza
Suite 3500 130 E Randolph Drive
Chicago, IL 60601



STANDARD OVERNIGHT

WED

TRK# 9447 6186 7213

FORM
0201

Deliver By:
23MAY07

ORD A1

60601 -IL-US

XH JLHA



LMS Packing Slip

Package ID: 771816

Tracking Number: 944761867213
Package Recipient: Mr. Robert Willson Jr.
Receipient Company: Baker & McKenzie
Receipient Address: One Prudential Plaza Suite 3500 130 E
Randolph Drive Chicago IL 60601 USA
Phone Number: 3128616585

Package Contents:

Transmittal Number	Case Number	Title of Action
5156396	07-754-CD	Gortech Global Fabrication, LLC vs. DMG Chicago, Inc.

Phil
Rugari/MG/DMGCC/GILDEM
EISTER

05/18/2007 04:00 PM

To "Gerald Fitzpatrick" <gerald.fitzpatrick@gildemeister.com>

cc

bcc

Subject Fw: Gortech Global Fabrication

----- Original Message -----

From: "Teufel, Gregory" [GTeufel@Schnader.com]

Sent: 18.05.2007 16:20 AST

To: Phil Rugari

Subject: RE: Gortech Global Fabrication

Phil:

Thanks again for the below and for following up with sending the standard terms and conditions you referenced. First, I want to let you know that we filed on Gortech's behalf a praecipe for writ of summons against DMG Chicago, Inc. ("DMG"). A copy of what we filed is attached for your reference. I do not want you to think it means we have given up on hopefully resolving the matter without litigation. As you can confirm with your counsel, a writ of summons simply commences an action to stop the running of any statutes of limitations. I do not want Gortech's rights waived or prejudiced by any delay during settlement negotiations. I will discuss each of your points below in the same order you presented them. I appreciate your fresh perspective and it gives us hope of getting this thing resolved without too much difficulty.

1. The signed invoice you sent indicates "Gortech Global Fabrication guarantees free and clear title to machine and will pay open AR to DMG Chicago, Inc. if applicable." For the reasons outlined in my March 27 letter to you, there was no open AR applicable on February 2, 2006. Gortech had free and clear title to the CTX 320 and obtained free and clear title to the CTX 420 V4 by honoring all terms and conditions of the first trade-in agreement.

Notice, incidentally, York Franke's note on the fax cover sheet "THANK YOU FOR HELPING ME OUT OF THIS BIND!" As indicated in my March 27 letter in the first full paragraph on page 2, the bind referenced was that DMG had sold the CTX 320 to another company before even reaching agreement with Gortech regarding trading it in.

Any dispute over whether there was any applicable open AR owed to DMG would not have affected whether Gortech had free and clear title to the CTX 420 V4. At worst, any such dispute could have given rise to rights to sue for breach of contract or to file a lien, but no such action was taken and there were no clouds on Gortech's title to the CTX 420 V4 at the time it entered into the June 8, 2006 agreement at issue. Moreover, any dispute over whether Gortech continued to owe DMG any money related to the CTX 420 V4 would not have invalidated the June 8, 2006 agreement. DMG entered into a valid and binding agreement to provide a CTX 420 V6 in even trade for the CTX 420 V4.

2. The terms and conditions you provided with your April 18 letter to me were never previously provided to Gortech and were not made part of the June 8, 2006 agreement at issue. The June 8, 2006 contract came via fax, already signed by Mark Henne on behalf of DMG. Because it was faxed, there was nothing on the reverse side. Todd Gordon was asked to sign the agreement and give it to Mark Henne, which he did. The June 8, 2006 contract references at the bottom left "Contract: The terms and conditions set forth herein and on the reverse side hereof shall govern all sales of materials or equipment (the "Product")

described on the front side hereof by DMG, Inc. **See other side for complete terms and conditions.**" Because there were no terms and conditions provided on the reverse side or ever provided, they simply never became part of the agreement.

Moreover, I do not know what terms or conditions on the reverse side you are referring to that would render the June 8, 2006 contract invalid absent some further written acceptance of the contract from DMG. Mark Henne had already signed the contract on behalf of DMG.

3. I have attached the original contract documents regarding the DMU 100T/5 (see the December 17, 2004 quote (offer) and the December 31, 2004 purchase order (acceptance). It does not appear these documents have been previously provided to you. I am hopeful they will resolve the confusion. The relevant drawings (also attached hereto) were provide to DMG in advance of the proposal and purchase order. There was also a more detailed proposal document (dated January 2, 2005) that DMG provided to Predator after the purchase order was faxed to DMG.

Mr. Henne expressly warranted, in writing (in the December 17, 2004 quote), that "our DMU100T 5 axis milling machine will meet the manufacturing requirements that you have stated including completing an approximate 2 3/8" crankshaft bore in a 33" 12 cylinder aluminum engine block." There also arose implied warranties of fitness for particular purpose, in addition to the express written warranties. The DMU100T/5 would not perform as warranted, which was readily conceded by DMG at the time. Predator properly rejected the DMU 100T/5 and was entitled to a full refund of the purchase price.

I hope these documents clear up that DMG had no right to insist on applying the purchase monies from the DMU 100T/5 to a future purchase. Do you have any documentation or other information indicating that DMG even attempted to condition its acceptance of the return of the DMU 100T/5 upon application of its purchase price toward future purchases rather than a refund or application of those monies to amounts owed on the CTX 320 Linear CNC? The issue of whether Predator was entitled to a refund or only a credit against future purchases would not affect the enforceability of the June 8, 2006 agreement in any event. That was a valid agreement regardless of whether DMG was or was not owed any money as of that date by Predator or Gortech.

4. I appreciate your bringing the attached invoice to my attention, but for the reasons stated above I do not believe it has any impact on the enforceability of the June 8, 2006 agreement.

I certainly ask that you confirm and discuss all of this with DMG's own attorneys and do not take my word on it for any of this legal analysis. We both want to avoid the expense of litigation, but I do not mean to suggest you should avoid the expense of advice. Here I think it could be of some value in getting the issues resolved. I hope their advice will confirm the situation for you. There are always things creative lawyers can come up with to argue about, but I hope with respect to any such issues you will ask them to tell you the probability that a court would accept such arguments and the probability of a verdict in DMG's favor if this were forced to litigate through trial. We do not wish to see either DMG or Gortech waste money debating legal arguments that would in all likelihood only wind up being rejected by a court. Moreover, we are hopeful that DMG will simply do the right thing here and treat its customer as well as my clients treat their customers.

I am sorry we won't be able to agree to a settlement with Gortech paying additional monies, to be applied to a future equipment purchase. Gortech has lost confidence in DMG's service and support. The perception is that DMG gives its attention to its larger customers to the virtual exclusion of all others. Standing behind the June 8, 2006 agreement would go a long way toward repairing Gortech's perception of DMG however.

I do not know for sure which option is preferable to DMG, but my clients remain willing to settle along the lines of either option outlined in paragraph 2 of my March 17, 2007 letter. At this point, my clients have paid roughly \$185,000 to DMG in 2005 and have yet to see any actual benefit out of it. They either want

the CTX 420 V6 that was promised to be delivered or they want all their money back and expenses reimbursed. They are not being greedy or unreasonable. They are not looking to profit from the situation. They are not even asking for interest on their money for all the time they have been deprived of it (though interest would be an item of damages if it were forced to litigate). They are just asking for DMG to live up to its promises and treat them fairly. We are hopeful we can continue to make progress toward getting this resolved without litigation. I look forward to discussing this further with you or with DMG's counsel at your earliest convenience.

Best regards,
Greg

Schnader Harrison Segal & Lewis LLP
Suite 2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010
(412)577-5289 (work)
(412)596-6316 (cell)
(412)421-7123 (home)
(412)765-3858 (fax)
<mailto:gteufel@schnader.com>

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From: phil.rugari@dmgamerica.com [mailto:phil.rugari@dmgamerica.com]
Sent: Wednesday, April 04, 2007 10:50 AM
To: Teufel, Gregory
Subject: Gortech Global Fabrication

Mr. Teufel,

We are in receipt of your correspondence dated March 27, 2007 explaining the circumstances as understood by your client and yourself. Coming into this situation late I may see things a little more objectively than some in the past. First let me respond to a couple of points made in your letter:

1. It is the contention of DMG that the "Contract" you refer to in your letter and further copied, is not valid. Gortech Global never had free title to the machine since it failed to pay for it in full and never actually fulfilled its "Trade in" responsibility in the contract, thus rendering this contract unfulfilled and invalid.

2. DMG never sent a written acceptance of this contract / order thus rendering this agreement invalid per the terms and conditions on the reverse side.

3. Your clients unilateral decision to apply monies to transactions without the consent of DMG may be at the core of the problems. Regarding the statement concerning the return of the DMU 100T/5, where is it written that DMG "Warranted" the machine's applicability for a particular use? The DMU 100T obviously performed to all stated specification. I can find nothing stating in the original order paperwork where DMG warranted this machine for an intended use beyond obvious implied standard usage warranties. With no endorsement from DMG for the machine's use for the machining of a particular component, Gortech has no justification for its return, hence, no cause to unilaterally decide on money disbursements without DMG's agreement. In the interest of furthering our business relationship with your client, we agreed to allow them to apply money to a future purchase. Without acceptance of this application of funds to a future purchase, DMG would never had authorized the return.

4. Your client appears to have failed to inform you of its written agreement to pay DMG Chicago of this debt. This was noted on the original order form for the Used CTX 420 V4, signed by Mr. Todd Gordon on 2/8/06 (Attached). Here it includes an agreement by Gortech to pay all outstanding invoices owed to DMG Chicago. Obviously an agreed acceptance that the money was owed.

Mr. Teufel, we are legally represented by the Baker & McKenzie Law Group in Chicago. They would like nothing better than to get a hold of this problem and resolve it for us, at great expense I might add. I agree with your client however, let's try to resolve it otherwise. Ask your client to fulfill its responsibilities regarding the misapplication of DMG funds and we can then discuss the trade in of the used CTX 420 for a new CTX. I am willing to discuss some of the added expenses incurred by Gortech regarding the DMU 100T but first must have their assurance they will accept the original deposit to remain with DMG as a credit towards a future purchase. It is in our mutual best interest to resolve this matter. Lets work together to achieve same.

Regards,

Phil Rugari
President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, Illinois 60173
Tel: (847) 781-0277
Cell: (847) 312-3013

<http://www.gildemeister.com>

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internet is insecure because third parties may have the possibility



to access and manipulate emails. SIGNED INVOICE.pdf Praecepta for Writ of Summons and Writ of Summons.pdf



DMU100T 5 Agreement.pdf

DATE: 02/02/2006

TO: GORTECH GLOBAL FABRICATION
215 BEAVER DRIVE
DUBOIS, PA 15801

PHONE: 1(814)372-5456

FAX: 1(814)375-5455

ATTN: TODD GORDON

FROM: YORK FRANKE

TODD, ATTACHED IS THE SIGNED INVOICE FOR YOUR RECORDS. I WILL ALSO SCAN
AND EMAIL TO YOU.

THANK YOU AGAIN FOR HELPING ME OUT OF THIS BIND!

I LOOK FORWARD TO MEETING YOU IN PERSON IN PA.

02/02/2006 11:55 B477815053

DMG USED MACHINE DIV

PAGE 09/10

DMG

Used Machine Division

INVOICE #2006-5

Thursday February 2, 2006

A member of the
GILDEMEISTER
group

Sold To:
Mr. Todd Gordon, General Manager
Gortech Global Fabrication
215 Beaver Dr.
Dubois, PA 15801

DMG Chicago Inc.
1605 Perry Lane
Schmieding, IL 60173
Phone (847) 781-0777
Fax (847) 781-5033
E-mail info@dmgamerica.com
Internet www.dmgamerica.com

2003 Gildemeister CTX420V4 S/N 02260002581 as equipped per proposal number 164353-056148 dated February 2, 2006.

\$140,000.00 USD 2003 Gildemeister CTX420V4 S/N 02260002561

\$26,717.30 USD WTO tooling package per WTO quote# 06M026Q-03 (see attachment A)

(\$140,000.00 USD) Trade in value for 2005 Gildemeister CTX320V4 S/N 8039937279C
Gortech Global Fabrication guarantees free and clear title to machine and will pay open AR to DMG Chicago, Inc. if applicable

(\$26,717.30 USD) Trade in value for tooling package for CTX320V4 consisting of:

-5 live tool holders

1/5: 90 degree long driven unit for drilling/milling

2/5: 0 degree driven unit, short, for drilling/milling

3/5: 0 degree driven unit, long, for drilling/milling

4/5: Special 0 degree driven unit, max turning speed 8000 RPM-8 Nm-for drilling/milling

5/5: 90 degree driven unit, universal H=100, Max turning speed 8000 RPM for drill/milling

-1 set of seven (7) collets

-All items listed on Gortech Global Fabrication purchase order number 11979 dated 01/26/06 issued to ITI Tooling Company, Inc. (see attachment B): total of eighteen (18) items

-In House tooling (see attachment C) already at Gortech Global Fabrication consisting of:

1 Sauter straight drill/milling unit

1 Sauter right angle drill/mill units

3 LH turning tool holders-metric

3 RH turning tool holders-metric

6 32 mm boring bar holders

6 Boring bars to match adaptors

6 Boring bars to match adaptors

1 32 mm collet chuck for ER25 collet

3 Iscar metric LH turning tools

1 Sauter straight (2:1) mill unit

1 Sauter right angle (2:1) mill unit

[Signature]
President
2-2-06

If any of the above listed tooling is not received, Gortech Global Fabrication will pay for the actual cost to replace missing items

DMG Used Machine Division

DECKEL MAHO GILDEMEISTER

02/02/2006 11:55 8477815053

DMG USED MACHINE DIV

PAGE 10/10

DMG
Used Machine DivisionA member of the
GILDEMEISTER
groupDMG Chicago Inc.
1665 Perry Lane
Schweitzburg, IL 62173
Phone (647) 781-0277
Fax (647) 781-2043
E-mail usa@ildemeister.com
Internet www.ildemeister.com**INVOICE #2006-5 continued****TERMS:**

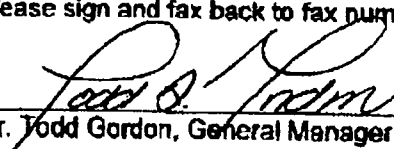
1. 2005 Gildemeister CTX320V4 S/N 8039937278C to be released for pickup immediately upon acceptance of this invoice. Machine to be loaded out onto truck that delivers the CTX420. Date to disconnect CTX320V4 Monday February 6. Removal date CTX320/Delivery date CTX420 Tuesday February 7, 2006.

2. DMG Used Machine Division to pay for engineer to disconnect and prep for shipment CTX320.

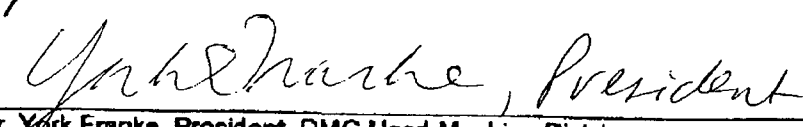
Upon acceptance of this invoice ownership of the machine is conveyed, before machine shipment.

Please sign and fax back to fax number 847-781-5053.

AGREED/ACCEPTED:


Mr. Todd Gordon, General Manager, Gortech Global Fabrication

2-2-06
Date


Mr. York Franke, President, DMG Used Machine Division

2-2-06
Date

Thank you for your order. We sincerely appreciate your business.



A member of the
GILDEMEISTER
group

December 17, 2004

DMG Chicago Inc.

1665 Penny Lane

Schaumburg, IL 60173

Phone (847) 781-0277

Fax (847) 781-0388

E-mail info@gildemeister.com

Internet www.gildemeister.com

Dennis Raybuck
Predator Performance
2572 Oklahoma-Salem Road
DuBois, PA. 15801

Dear Mr. Raybuck,

Thank you for the opportunity to quote your machining requirements at Predator Performance. We are confident that our DMU100T 5 axis milling machine will meet the manufacturing requirements that you have stated including completing an approximate 2 3/8" crankshaft bore in a 33" 12 cylinder aluminum engine block. We are also confident that our CTX 320 V4 CNC lathe will meet your turning requirements.

I have attached a summary for the machines and our offer for your approval. Please feel free to contact me if you have any questions.

Regards,

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

Mark A. Henne, CMTSE
Area Sales Manager
DMG-Chicago
(412) 480-5227

DMG

Chicago

A member of the
GILDEMEISTER
group

December 17th 2004

DMG Chicago Inc.

1665 Penny Lane

Schaumburg, IL 60173

Phone (847) 781-0277

Fax (847) 781-0388

E-mail info@gildemeister.com

Internet www.gildemeister.com

Summary for proposal 1-613-132522-1 dated December 13th 2004 regarding our DMG Model DMU 100T 5 axis universal milling machine with/Heidenhain iTNC 530 3D contouring control and 3D contouring control MillPlus IT and the following options as specified in proposal.

- (1) P-C0100 NC rotary table
- (1) P-W0190 NC swivel milling head
- (1) P-W0076 b-axis cooling
- (1) P-M0043 CAT 40 taper
- (1) P-M0042 tool clamping
- (1) P-K0145 SK 40 probe
- (1) P-K0114 blum laser probe
- (1) P-K0157 production package
- (1) additional subplate for table

SUBTOTAL: machine and options \$370,000.00

Summary for proposal 8-688-132733-1 dated December 13th 2004 regarding our DMG Model CTX 320 linear CNC turning center Version 4 with Heidenhain iT Plus control and software version V7 and the following options as specified in proposal.

- (1) T-B2028 cylinder group
- (1) T-Z2250 footswitch
- (1) T-H2671 tool pre-setting probe
- (1) T-S2003 autoblok chuck
- (1) T-M2702 toolholders
- (1) T-N2700 driven tool
- (1) T-N2704 driven tool
- (1) T-N2705 driven tool
- (1) T-N2720 driven tool
- (1) T-N2722 driven tool
- (1) T-N2003 driven tool
- (1) T-Z2301 LED lamp



Chicago

SUBTOTAL: machine and options \$222,480.00

TOTAL: (2) machines \$592,480.00

Discount: (\$ 67,480.00)

Net price (2) machines \$525,000.00

Net price includes an 18month warranty for each machine as stated in corresponding proposals.

FOB: port of entry (New York, NY).

One (1) of the following downpayment options is required with your purchase order.

10% of purchase price:	\$ 52,500.00
20% of purchase price:	\$ 105,000.00
30% of purchase price:	\$ 157,500.00

Delivery of machines: Six to eight weeks ARO (after receipt of order).

All other terms and conditions remain the same as stated in corresponding proposals.

Thank you for your continued interest.

Regards,

Mark A. Henne, CMTSE
Area Sales Manager
DMG Chicago, Inc.



VENDOR

DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173
(847)781-0277
(847)781-0388 Fax

PAGE NO.	P.O. NO.	ORDER DATE	VEND NO.
1	EQ-0058B	12/31/2004	

PURCHASE ORDER

SHIP TO

Predator Performance, LLC
2574 Oklahoma-Salem Road
DuBois, PA 15801
(814)375-5660

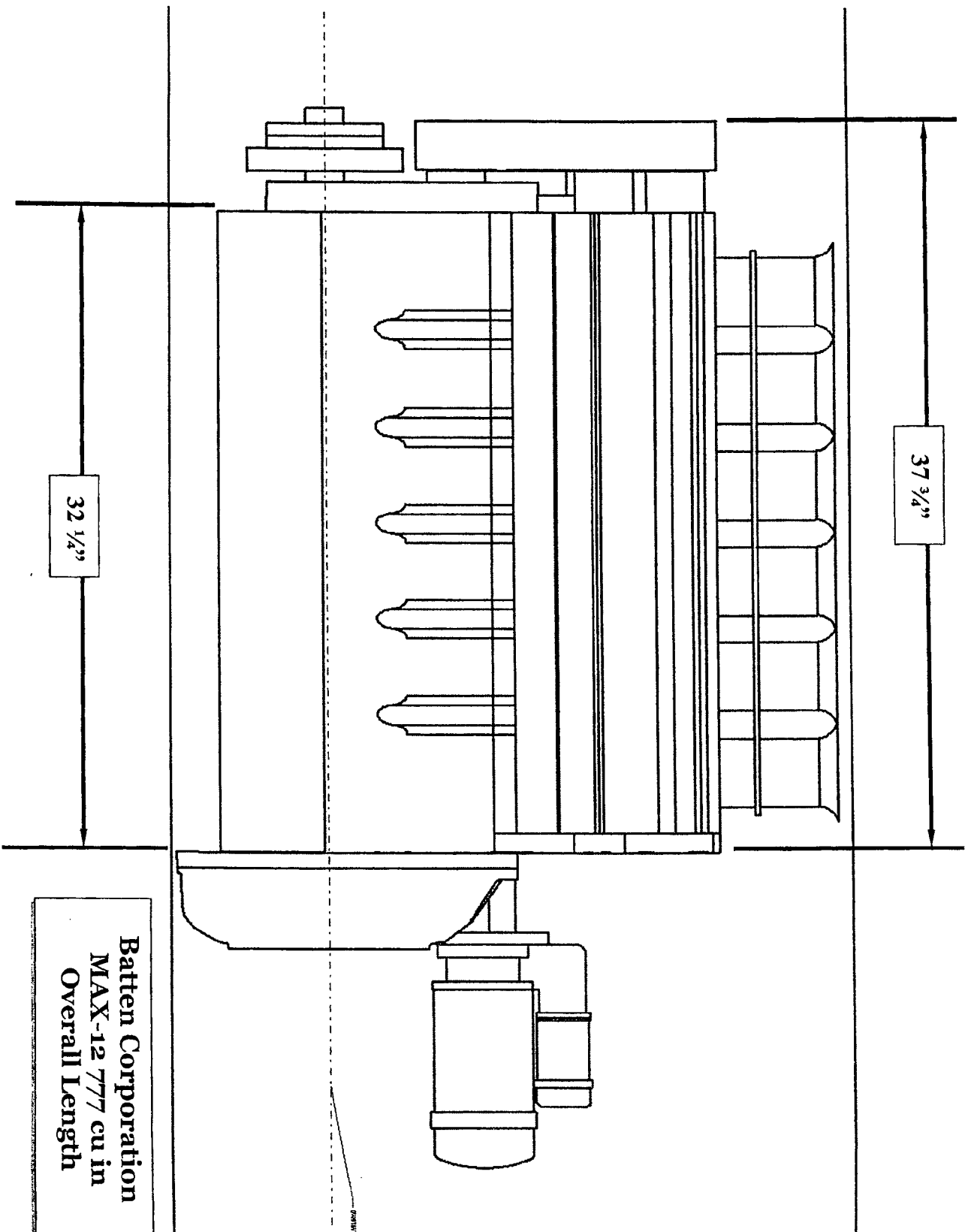
ORDER DATE 12/31/2004		CANCELLATION DATE		SHIP VIA		F.O.B. New York, NY		TERMS 10%Down;Balance on Install.	
RESALE NO.				RESPONSIBILITY Dennis Raybuck			BRANCH PREDATOR		
ITEM NO. MFG NO.	DESCRIPTION	REQ. DATE LOCATION	QUANTITY ORDERED	QUANTITY BACK ORD	QTY REC	UNIT PRICE	EXTENSION		
	DMG Model DMU 100T 5 w/ Heidenhain iTNC 530 3D contouring control (Proposal 1-613-132522)		1			370000	\$370,000.00		
	DMG Model CTX 320 Linear CNC turning Ctr Version 4 w/Heidenhain iT Plus control and Software version V7 (Proposal 8-688-132733)		1			222480	\$222,480.00		
	Discount		1			-67480	-\$67,480.00		
*Down payment check to be sent by 2/10/05 *Delivery Date 6 weeks from 2/11/05									
SUBTOTAL							\$525,000.00		
TAX									
SHIPPING									
TOTAL							\$525,000.00		

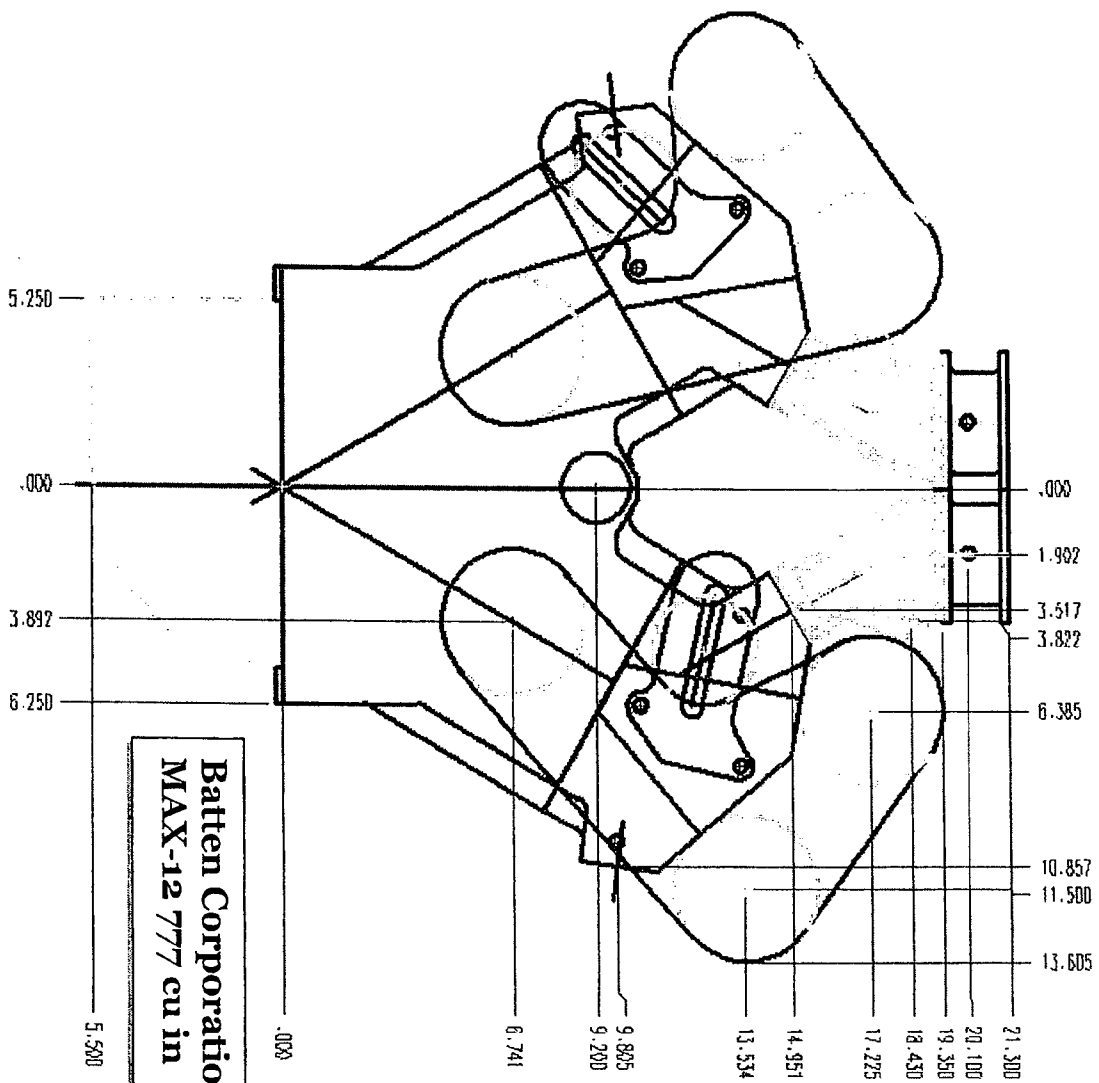
AUTHORIZED SIGNATURE

ORDER TERMS AND CONDITIONS

1. INVOICES must bear exact same prices and terms or authorization for changes must be received from our company in writing prior to shipping
2. Goods not in accordance with specifications will be rejected and held at vendor's risk awaiting disposal. Vendor must pay freight on all rejected material.
3. The right is reserved, to cancel all or part of this order if not delivered within the time specified.
4. Packing slips must accompany all shipments.
5. By acceptance of this order, vendor warrants that all merchandise shipped under this order does comply with all laws and regulations of Federal and State governments.
6. Back orders must be prepaid when less than a minimum freight shipment.
7. In the event of interruption of our business in whole or in part by reason of fire, flood, windstorm, earthquake, war, strike, embargo, acts of God, government action, or any cause beyond our control, we shall have the option of canceling undelivered orders in whole or part.
8. Acceptance of this purchase order, or shipment of any part of it will constitute an agreement to all of its specifications as to terms, delivery and price.

*Down
Pmt \$52,500.00
made 2/10/05
Asset mgt.
#1680*





Batten Corporation
MAX-12 777 cu in - Widths

May 16, 2007

Gregory H. Teufel
Direct Dial 412-577-5289
Direct Fax 412-765-3858
E-mail: gteufel@schnader.com

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED
VIA FIRST CLASS MAIL

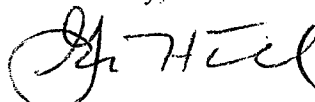
James Gondeck
President
DMG Chicago, Inc.
1665 Penny Lane
Schaumburg, IL 60173

RE: Notice of Civil Action

Dear Mr. Gondeck:

This is a notice of civil action against DMG Chicago, Inc. in the Court of Common Pleas of Clearfield County, Pennsylvania. Enclosed you will find a Praecipe for Writ of Summons and the Summons.

Sincerely,



Gregory H. Teufel

GHT
Enclosures

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

SUMMONS

Gortech Global Fabrication, LLC

Vs.

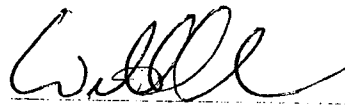
NO.: 2007-00754-CD

DMG Chicago, Inc.

TO: DMG CHICAGO, INC.

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 5/14/2007



William A. Shaw

Prothonotary

Issuing Attorney:

Gregory H. Teufel, Esq.
Schnader harrison Segal & Lewis LLC
Fifth Ave Place, Suite 2700
Pittsburgh, PA 15222-3010
412-577-5200

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, :
LLC, :
215 Beaver Drive :
Dubois, Pennsylvania 15801 :

Plaintiff, :

vs. :

DMG CHICAGO, INC., :
James Gondeck, President :
Illinois Corporation Service C :
801 Adlai Stevenson Drive :
Springfield, Illinois 62703 :

Defendant. :

CIVIL DIVISION

GD No. 07- 754-CD

Code:

PRACIPE FOR WRIT OF SUMMONS

Filed on Behalf of Plaintiff, Gortech Global
Fabrication, Inc.

Counsel of Record for this Party:

Gregory Teufel, Esquire
Pa. I.D. #73062

Schnader Harrison Segal & Lewis LLP
Pa. Firm I.D. #061
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001
Telephone: (412) 577-5200
Facsimile: (412) 765-3858

Christopher E. Mohny, Esquire
Pa. I.D. #63494

25 East Park Avenue, Suite 6
DuBois, PA 15801
Telephone: (814) 375-1044
Facsimile: (814) 375-1088

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

MAY 14 2007

Attest.

William A. Allen
**Prothonotary/
Clerk of Courts**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, :
LLC, :

Plaintiff, :

vs. :

DMG CHICAGO, INC. :

Defendant. :

CIVIL DIVISION

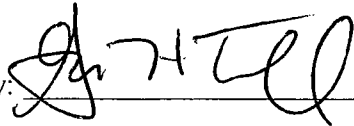
GD No. 07-

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in Civil Action against the within named Defendant.

SCHNADER HARRISON SEGAL &
LEWIS LLP

By: 

Dated: May 11, 2007

Gregory H. Teufel
Pa. I.D. #73062

Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001

Christopher E. Mohney
Pa. I.D. # 63494

25 East Park Avenue, Suite 6
DuBois, PA 15801

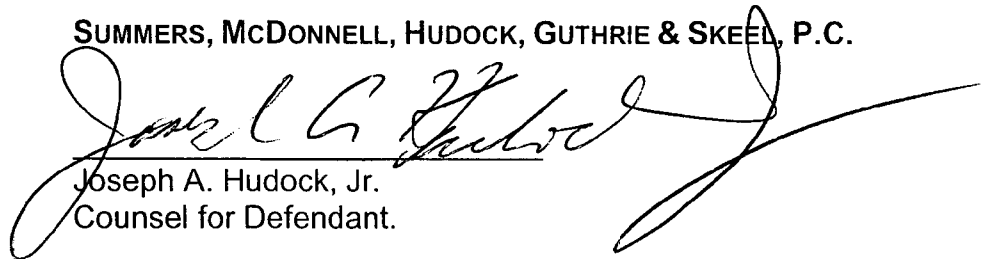
Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Answers to Interrogatories, Response to Request for Production of Documents and Response to Request for Admissions was served upon counsel of record by mailing the same via first class mail, postage pre-paid, this 10th day of March, 2010, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.



Joseph A. Hudock, Jr.
Counsel for Defendant.

1 IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
 2 COMMONWEALTH OF PENNSYLVANIA
 3 CIVIL DIVISION

4 - - -

5 GORTECH GLOBAL FABRICATION,)
 6 LLC,)
 7 Plaintiff,)
 8)
 9)
 10 Defendants.)
 11 - - -

vs.) No. 07-754 CD

11 THURSDAY, NOVEMBER 11, 2010

12 - - -

13 The deposition of MARK HENNE, called as a witness
 14 by the Plaintiff, pursuant to notice and the
 15 Pennsylvania Rules of Civil Procedure pertaining to the
 16 taking of depositions, taken before me, the
 17 undersigned, Rebecca L. Schnur, Notary Public in and
 18 for the Commonwealth of Pennsylvania, at the offices of
 19 Eckert Seamans Cherin & Mellott, LLC, 44th Floor, U.S.
 20 Steel Tower, 600 Grant Street, Pittsburgh,
 21 Pennsylvania, 15219, commencing at 9:28 o'clock a.m.,
 22 the day and date above set forth.

18 - - -

19 - - -
 20 - - -
 21 - - -
 22 - - -
 23 - - -
 24 - - -
 25 - - -

NETWORK DEPOSITION SERVICES
 1101 GULF TOWER
 707 GRANT STREET
 PITTSBURGH, PENNSYLVANIA 15219

EXHIBIT

G

1 Q You've never seen it before?

2 A No.

3 Q Do you see the date on there of February 2,
4 2006?

5 A Yes.

6 Q Okay. Does that seem to be roughly the
7 correct date of when that occurred in your
8 recollection?

9 A I guess.

10 Q Then I just offer that to help refresh your
11 recollection on dates.

12 So in between the time period then of the
13 Exhibit 1 document and the document I just handed you
14 what can you recall transpiring?

15 A Between this and this?

16 Q Yeah, you know, between the time they took
17 the trade-in of the V4 --

18 A From the time they took the trade-in of the
19 V4 to the installation of the V6?

20 Q Right. Right.

21 A That's when the machine came in, delivered,
22 had problems with it. It was wrecked. It was --

23 Q Right. You were just describing that. Then
24 what happened next?

25 A I would say that at that point -- Todd and I

1 kept in communication at different times about this.

2 He said: Could we do something? I don't want this
3 thing anymore.

4 And I believe this to be the case. Again,
5 it's hard to recall everything. But the sales manager
6 at the time, his name was Darren. What the heck is his
7 name?

8 MR. RAYBUCK: McCarthy.

9 A McCarthy.

10 Q Darren McCarthy was the sales manager?

11 A Right. Right. Darren McCarthy was the vice
12 president of sales, and the CEO was Peter Riehle.

13 Q Can you spell --

14 A R-e-i-h-l-e or R-i-e-h-l-e. I'm not exactly
15 sure.

16 I made them aware of the problems. And we
17 had a CTX 420V6 in stock. And this machine represented
18 an upgrade of the machine on Exhibit 2. So we were
19 going to swap out the 420V4 for the 420V6 at no
20 additional cost to the customer. That was the
21 pre-arranged agreement. At that point I was told to go
22 ahead and make the deal happen, make the customer
23 happy.

24 That's when I went back to them -- "them"
25 being Gortech -- and said: This is what we can do. We

1 have a machine. Executed the sales agreement and
2 turned it in. Customer agreed. Turned it in to
3 Chicago.

4 I really don't know what happened from that
5 point. That was above my pay grade. I believe the
6 fact was, there was a loss to be incurred on that
7 internally and it was too much of a loss, and there
8 were some things -- dynamics happening at the time with
9 Peter and I believe Germany didn't allow him to make
10 that deal, so they said, no good.

11 I could tell you that we were going to
12 execute it for -- I guess in good faith because we had
13 an agreement that we had -- In the meantime and during
14 this time as well we did have an agreement that we were
15 going to be selling some additional machines to them,
16 and then we had put them in safekeeping for them. And
17 then everything -- the wheels came off, so I don't
18 remember everything from that point. Probably could be
19 refreshed if you know something.

20 Q Sure. Sure.

21 And so what do you recall after that in terms
22 of discussions you had about the dispute developing
23 between Gortech and DMG over this agreement in
24 Exhibit 1?

25 A In the meantime, when this happened -- In

1 recitation. That's extremely helpful. Your memory is
2 pretty impressive, this being years later. I do just
3 want to go back and ask a few specific questions on
4 some specific issues and make sure we cover them
5 thoroughly, but that was very helpful.

6 In your role as area sales manager at DMG did
7 you have authority to enter into the contract at
8 Exhibit 1?

9 A Yes -- Let me back up a minute. By
10 definition, it's my understanding that only officers
11 were allowed to do that when this was originally
12 drafted, but our president said: Yes, you can sign it.
13 If you need to get the deal -- If they require a
14 signature to close it, go ahead, sign it.

15 Now, we were told to do that verbally, but I
16 don't know the legal ramifications.

17 Q Okay. You were specifically told by the
18 president --

19 A Yeah, I could do that. Yeah.

20 Q -- by the president of DMG Chicago, Inc.,
21 that you had authority to enter into this agreement on
22 behalf of DMG?

23 A Yeah. There were other documents I'm sure
24 you'll find, other orders that I signed.

25 Q Okay. You conveyed the fact that you had

1 that authority to Gortech; you told them you had
2 authority to enter into the agreement?

3 A I don't recall that coming up.

4 Q Okay. Maybe this will refresh your
5 recollection. I have a document we'll mark Exhibit 3.

6 (Whereupon, Deposition Exhibit 3 was marked
7 for identification.)

8 Q Can you identify the document I just handed
9 you as Exhibit 3. Just, for the record, state what it
10 is.

11 A Yes. E-mail to Todd from me.

12 Q June 8, 2006 e-mail from you to Todd Gordon?

13 A Right.

14 Q And in that e-mail where you say "I have the
15 okay to move ahead and switch out your machine and
16 replace it with the subspindle machine," are you
17 referring to the authority you were given to switch out
18 the CTX 420V4 and switch it out for the CTX 420V6?

19 A Correct.

20 Q And you said you did sign other contracts
21 like Exhibit 1 for DMG?

22 A Similar.

23 Let me elaborate a little bit. I wasn't --
24 There are other area sales managers in the company at
25 the time that did the same thing, so I wasn't the only

1 one that did that.

2 Q "Did the same thing" in terms of sign similar
3 agreements on behalf of DMG?

4 A Correct.

5 Q So did you understand that the document that
6 I've shown you marked as Exhibit 1 to be a binding
7 agreement?

8 A I do.

9 Q Let's look at that document a little bit, if
10 you wouldn't mind.

11 DMG has given us information that the CTX
12 420V6 was priced at \$232,900. Does that sound about
13 right?

14 A I guess.

15 Q Okay.

16 A That sounds about right.

17 Q Do you have any idea of the price of all
18 options and accessories for V6?

19 A I do not, not at this time.

20 Q Do you have like a ballpark understanding of
21 what it would cost to buy all the options and
22 accessories for a machine like that?

23 A I do not.

24 Q I mean, would it be tens of thousands of
25 dollars or hundreds of dollars or --

1 IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

2 COMMONWEALTH OF PENNSYLVANIA

3 CIVIL DIVISION

4 - - -

5 GORTECH GLOBAL FABRICATION,)
 6 LLC,)

7 Plaintiff,)

8 vs.)

9 No. 07-754 CD

10 DMG CHICAGO, INC.,)

11 Defendants.)

12 - - -

13 THURSDAY, NOVEMBER 11, 2010

14 - - -

15 The deposition of GERALD FITZPATRICK, called as a

16 witness by the Plaintiff, pursuant to notice and the

17 Pennsylvania Rules of Civil Procedure pertaining to the

18 taking of depositions, taken before me, the

19 undersigned, Rebecca L. Schnur, Notary Public in and

20 for the Commonwealth of Pennsylvania, at the offices of

21 Eckert Seamans Cherin & Mellott, LLC, 44th Floor, U.S.

22 Steel Tower, 600 Grant Street, Pittsburgh,

23 Pennsylvania, 15219, commencing at 11:09 o'clock a.m.,

24 the day and date above set forth.

25 - - -

NETWORK DEPOSITION SERVICES

1101 GULF TOWER

707 GRANT STREET

PITTSBURGH, PENNSYLVANIA 15219

- - -

EXHIBIT

H

1 Q Okay. Fair enough.

2 So other than the conversations you've
3 already described, can you remember any other
4 conversations you've had other than with the lawyer
5 about this case or about Gortech or about the contract?

6 A Yeah. The only other person that I would
7 have talked to at some point would have been York
8 Franke, who is the one that made the offer to trade the
9 CTX 320 for the 420.

10 I think I had the numbers right.

11 Q Correct.

12 What did you discuss with York Franke?

13 A I would have asked him about the transaction.
14 Again, it was when we realized that there was a problem
15 or I first realized that there was a problem and
16 something was happening with this customer and this
17 machine. I would have at some point talked to him
18 about his involvement in it. And when I asked him
19 about it, I'm sure he would have given me these
20 documents that you show as Exhibit 2, which is
21 basically his invoice to Gortech.

22 Q Did Mr. Henne, in his role as area sales
23 manager at DMG, have the authority to enter into the
24 contract at Exhibit 1?

25 A No.

1 Q Why do you say that?

2 A I say that because it's a very -- First of
3 all, it says that it has to be signed by an officer of
4 DMG, but the second reason is, it's an unusual
5 transaction. It's not a normal transaction.

6 Q When you say it says that it has to be signed
7 by an officer of DMG, where does it say that?

8 A It says, "Accepted by an officer of DMG," on
9 the very bottom, "this" blank "day of" blank two
10 thousand blank.

11 (Discussion off the record.)

12 Q We're back on the record.

13 Did you hear Mr. Henne's testimony that he
14 had signed similar agreements to this in the past as
15 area sales manager on behalf of DMG?

16 A Yes. I think he signed documents that were
17 for machine sales, where a customer is buying a
18 machine, you know, for cash. But I don't think that he
19 ever signed -- or I never saw another document signed
20 by a salesman where they take an old small machine and
21 exchange it evenly for a new larger machine. That's
22 why I said it was an unusual transaction.

23 Q So when Mr. Henne signs an agreement like
24 Exhibit 1, hands it to a customer, is it your
25 understanding that a customer's supposed to understand,

1 because it says "Accepted by an officer of DMG," that
2 Mark Henne's not an officer and he's not authorized to
3 sign this document?

4 A I'm not saying that the customer should know
5 that.

6 Q Okay. So from DMG's perspective, what else
7 would have had to happen after Mark Henne signed and
8 gave this to the customer for it to become an
9 authorized, binding agreement? What else would DMG
10 have required?

11 A For a transaction like this, swapping a used
12 old machine for a newer bigger machine, it would have
13 had to have been authorized by the president of the
14 company. And I don't know if we have a specific rule,
15 but an unusual transaction like this we do have a
16 four-eye principle where two managers have to approve
17 it.

18 Q A what principle?

19 A They call it the "four eyes," where two sets
20 of people have to sign an agreement.

21 Q Four eyeballs?

22 A Four eyeballs.

23 Q Gotcha. I didn't know if you meant four I's
24 as in the letter I.

25 But, again, that's not necessarily something

1 that the customer should know or be aware of?

2 A From the customer's point of view, I cannot
3 assume that they would know that.

4 Q .Do you happen to know, in looking at
5 Exhibit 1, the values of the various listed -- For
6 example, the options and accessories for the CTX 420V6,
7 without looking at a price list, off the top of your
8 head, are you able to say what the value of all options
9 and accessories would be?

10 A When it's referred to "all options and
11 accessories" and referring to a serial number, that
12 means the options and accessories that that machine is
13 equipped with. It doesn't mean every single option
14 available --

15 Q Gotcha.

16 A -- because that would mean you could have a
17 machine in three different colors with three different
18 controls. It doesn't make sense to have --

19 Q Okay. A hundred options wouldn't make any
20 sense?

21 A Yeah, because they overlap. You can't
22 have --

23 Q What options did the machine with that serial
24 number have?

25 A I don't specifically know.

1 ". . .to provide the machine provided for in the
2 contract but was rebuffed by plaintiff."

3 You don't recall, ever, a situation, do you,
4 where DMG attempted to provide the CTX 420V6 and was
5 rebuffed; do you?

6 A The V6 was never delivered, so --

7 Q Okay. All right. And, then, interrogatory
8 number 9 we asked: "If you contend that the contract
9 is not a valid and binding contract, identify all the
10 facts and documents related to this contention and all
11 persons with knowledge of facts related to this
12 contention and explain why the contract is not valid
13 and binding."

14 Now, just tell me, if you will, all the
15 reasons you are aware of -- I understand you're not a
16 lawyer, but any reasons you're aware of why this would
17 not be a valid and binding contract.

18 A You are referring to Exhibit 1?

19 Q Exhibit 1, yes.

20 A The main reason is that Mark Henne was not
21 authorized to approve, by himself, an unusual
22 transaction where you're swapping out one machine for
23 another machine.

24 Q Okay.

25 A I found out today in his testimony that he

1 had verbal approval, but I still have not seen anything
2 more.

3 Q Did he need written approval, or was verbal
4 approval sufficient?

5 A Again, if you go to the four-eye principle
6 for a transaction that's unusual like this, for sure
7 you would need at least two people agreeing on DMG's
8 side.

9 Q And he mentioned two people; didn't he? The
10 president and vice president both gave him verbal
11 approval, so that would satisfy your four-eye
12 principle?

13 A It would if I knew what that was about. I
14 mean, I don't know -- I wasn't party to the
15 conversation. I don't know if the facts were presented
16 accurately. I don't know that they were. I do not
17 know that they weren't.

18 Q Okay.

19 A It's hard for me to say one way or the other.

20 Q Okay. But, I mean, if both the vice
21 president and the president provided verbal approval,
22 would that have been sufficient approval for it to be a
23 binding contract as far as you know?

24 A In my opinion, no, because you would need to
25 have something signed.

1 Maybe that's just my training as an
2 accounting guy, and I like to have things documented.
3 But if we had verbal agreements and nothing written
4 down or backed up, then we end up in a room like this
5 where we're discussing whether something's valid or
6 not, so --

7 Q Is the four-eye principle written down
8 anywhere at DMG? Is that a written policy?

9 A Yes. We have numerous policies, but there
10 is -- I don't remember the name of the document, but
11 there is a policies and procedures manual.

12 Q Is that a policies and procedures manual that
13 Mark Henne would have had?

14 A I don't know.

15 (Discussion off the record.)

16 Q When was the four-eye principle written down?

17 A I don't know.

18 Q Was it written down as of June 2006?

19 A I don't exactly know. I don't exactly know.

20 Q Did it exist even just in unwritten form as a
21 policy, to your knowledge, as of June 2006, the
22 four-eye principle?

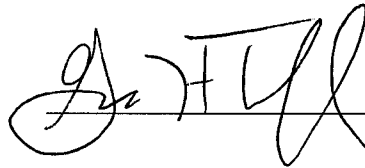
23 A I don't know.

24 Q Would DMG have documents relating to the
25 performance features of the CTX 420V6 and the

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Plaintiff's Motion to Compel Discovery Responses was served upon the following by deposit in the United States mail, first class postage prepaid, this 19th day of August, 2011.

Joseph A. Hudock, Jr.
Summers, McDonnell, Hudock, Guthrie & Skeel, P.C.
707 Grant Street,
Suite 2400, Gulf Tower
Pittsburgh, PA 15219



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

SCHEDULING ORDER

AND NOW, this 22nd day of August, 2011, upon consideration of the Motion for Partial Summary Judgment, filed by Plaintiff Gortech Global Fabrication, LLC, it is hereby Ordered that:

1. a rule is issued upon the respondent to show cause why the movant is not entitled to the relief requested;
2. the respondent shall file an answer to the motion within 15 days of the date of the this Order;
3. argument shall be held on September 12, 2011 at 2:30 pm in ^{Hearing Room} Courtroom No. 3 of the Clearfield County Courthouse;
4. notice of entry of this Order shall be provided to all parties by the moving party.

Frederick J. Zimmerman J.

9 **FILED** 100
014:00001
AUG 22 2011 Amy Teefer
W.A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

5
MAY 20 2016
M19-2016
William A. Shaw
Prothonotary/Clerk of Courts
M09C

GORTECH GLOBAL FABRICATION, LLC

Plaintiff,

v.

DMG CHICAGO, INC.,

Defendant.

: CIVIL DIVISION

:
: No. 07-754-CD

:
: **CONSENT MOTION FOR**
: **TELEPHONIC HEARING AND**
: **CHANGE OF ARGUMENT DATE**

:
: Filed on behalf of Plaintiff

:
: Counsel of Record for this Party:

:
: Gregory H. Teufel, Esq.

:
: Pa. Id. No. 73062

:
: Amy J. Roy, Esq.

:
: Pa. Id. No. 86584

:
: Jeremy L.S. Samek, Esq.

:
: Pa. Id. No. 205060

:
: Eckert Seamans Cherin & Mellott, LLC

:
: U.S. Steel Tower

:
: 600 Grant Street, 44th Floor

:
: Pittsburgh, PA 15219

:
: 412.566.6000 telephone

:
: 412.566.6099 fax

:
: Christopher E. Mohnney, Esq.

:
: PA I.D. 63494

:
: 25 East Park Avenue, Suite 6

:
: DuBois, PA 15801

:
: 814.375.1044 telephone

:
: 814.375.1088 fax

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

**CONSENT MOTION FOR TELEPHONIC HEARING AND CHANGE OF ARGUMENT
DATE**

Plaintiff, Gortech Global Fabrication, LLC ("Gortech" or "Plaintiff"), by its undersigned attorneys, hereby files the following Consent Motion for Telephonic Hearing and Change of Argument Date:

1. Plaintiff's motion for partial summary judgment is scheduled for oral argument before the Honorable Judge Brown at the Clearfield County Courthouse on September 12, 2011.
2. The trial in this matter is scheduled to take place on October 19, 2011.
3. Plaintiff's counsel and Defendant's counsel have conferred and determined that the scheduled oral argument date of September 12, 2011 conflicts with the schedules of counsel for both parties.
4. Counsel for both parties are located in Allegheny County, Pennsylvania.
5. Counsel for both parties agree that the nature of the Summary Judgment motion is such that a telephonic oral argument would be sufficient to adequately address the Summary Judgment Motion.

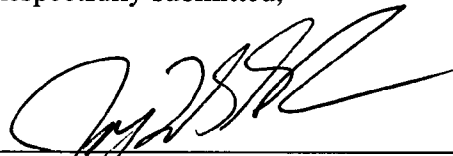
6. As such, Counsel for both parties request that the oral argument be moved to either Friday, September 23, 2011 or Friday, September 30, 2011 and that on either date as the Honorable Judge Brown determines, counsel for the parties be permitted to attend via telephone.

7. Gortech's counsel has conferred with counsel for Defendant, who consents to this Motion.

8. No prejudice will result to any party from granting this order.

WHEREFORE, Plaintiff respectfully requests permission from this Court for its attorney and counsel for defendant to attend the Summary Judgment oral argument by telephone and that the Court enter the attached proposed Order changing the date of the argument to September 23, 2011 or September 30, 2011.

Respectfully submitted,



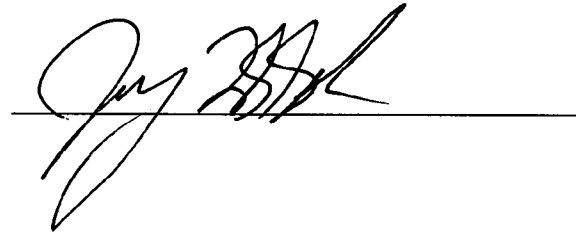
Gregory H. Teufel, Esq.
Jeremy L.S. Samek, Esq.
Christopher E. Mohny, Esq.
Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

Dated: August 26, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion was served upon the following by deposit in the United States mail, first class postage prepaid, this 26 day of August, 2011.

Joseph A. Hudock, Jr.
Summers, McDonnell, Hudock, Guthrie & Skeel, P.C.
707 Grant Street,
Suite 2400, Gulf Tower
Pittsburgh, PA 15219



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

FILED
JUN 20 2011
William A. Shaw
Prothonotary/Clerk of Courts
No. C/C

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

**AFFIDAVIT IN OPPOSITION TO
MOTION TO COMPEL**

DMG CHICAGO, INC.,

Defendant.

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Jeremy L.S. Samek, Esq.
Pa. Id. No. 205060
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohny, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)

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

GORTECH GLOBAL FABRICATION,
LLC

CIVIL DIVISION

No. 07-754-CD

Plaintiff,

v.

DMG CHICAGO, INC.,

Defendant.

AFFIDAVIT IN OPPOSITION TO MOTION TO COMPEL

NOW COMES Plaintiff Gortech Global Fabrication, LLC (“Gortech”), by and through its undersigned attorneys, and files the following Affidavit in Opposition to Motion to Compel:

1. Attached hereto is an affidavit of Michael H. Bronder, CPA, offered in opposition to Defendant DMG Chicago, Inc.’s (“DMG’s”) Motion to Compel production of tax returns.

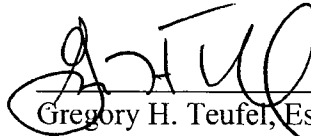
2. Mr. Bronder’s affidavit explains why the tax returns at issue are not relevant and responds to the affidavit of James S. Fellin, CPA, CFE, CFF as to issues of the relevance of the tax returns.

3. Mr. Bronder’s affidavit is also offered in support of an anticipated motion in limine on the same issue, and to supplement his expert report if DMG is permitted to confuse the jury with arguments about tax returns.

WHEREFORE, Defendant respectfully requests that this Honorable Court deny Defendant's Motion to Compel, or grant such other or further relief as this Court may deem proper.

Respectfully submitted,

Dated: August 25, 2011

A handwritten signature in black ink, appearing to read 'G. Teufel', written over a horizontal line.

Gregory H. Teufel, Esq.

Jeremy L.S. Samek, Esq.

Christopher E. Mohnhey, Esq.

Attorneys for Plaintiff,

Gortech Global Fabrication, LLC

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	AFFIDAVIT OF MICHAEL H.
	:	BRONDER, CPA
DMG CHICAGO, INC.,	:	
	:	Filed on behalf of Plaintiff
Defendant.	::	

AFFIDAVIT OF MICHAEL H. BRONDER, CPA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	SS;
COUNTY OF CLEARFIELD	:	

Before me, the undersigned authority, personally appeared Michael H. Bronder, who, after being first duly sworn, did depose and say:

1. Gortech's income tax returns provide no information that would assist an expert in calculating lost profits related to the loss of a specific machine shop contract. The appropriate measure of Gortech's lost profits is the difference between its lost revenues and its incremental costs related to those revenues. Gortech's income tax returns provide no such information.
2. Income tax returns are prepared on a basis of accounting that is not in accordance with generally accepted accounting principles.
3. Income tax returns reflect the lowest possible level of profit allowed by law.
4. Income tax returns are summary level documents that do not provide detail on the various revenue-producing activities of an entity. All revenues are combined and reported on one line on the returns. Costs are likewise lumped together with no regard to individual revenue-producing activities.

5. Gortech, itself, does not file an income tax return. Gortech's operations are included with several other entities on a consolidated basis.

6. Gortech's machine shop operations were an extremely small portion of its overall business. From October 2007 through April 2009, manufacturing represented about 1 percent of Gortech's total revenues (and a far lesser percentage of total consolidated revenues). Therefore, virtually all of the revenues and expenses reported on Gortech's income tax returns were unrelated to its profits from machine shop operations.

7. The actions of the defendant in this matter are the primary cause of Gortech's lack of machine shop revenues.

8. Because Gortech's machine shop revenues were so miniscule in relation to its overall operations, Gortech's tax returns showed losses despite the fact that its machine shop operations were profitable.

9. Gortech's spreadsheet that provides detail of its profits from its machine shop operations is the best information available that would allow an expert to calculate the company's historical profits from its machine shop operations.

10. Income tax returns filed on a consolidated basis showing significant losses will serve to confuse a jury because such losses were caused by activities other than Gortech's machine shop operations that form the basis of its lost profits claim.

11. A significant portion of the losses reported on Gortech's income tax returns could have been avoided absent the actions of the defendant in this matter. It would be disingenuous for the defendant to use the losses that it caused to refute Gortech's claim for lost profits.

12. In his affidavit, James S. Fellin stated "The reasons that tax returns are essential in this case include, but are not limited to, the following:

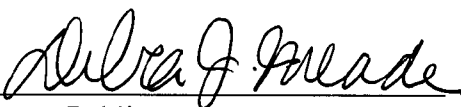
- To assess the overall profitability of the company,
- To identify specific expense line items that were incurred in order to generate revenues,
- To determine overall gross margin achieved by the company on a historical basis
- To determine trends, patterns and anomalies of the financial data,
- To evaluate the overall manufacturing capacity of the entity,
- To identify and determining (sic) the magnitude of fixed and variable costs, and perhaps most importantly,
- To corroborate the limited financial information that has been provided in a support of a claim for lost profits.”

13. My response to these bullet points is as follows:

- Overall profitability of the company is not relevant to Gortech’s claim for lost profits, because the profit that would have been earned on one specific contract relates to a very small portion of the company’s overall operations. The historical profits from this very small portion are not ascertainable from the tax returns.
- For the same reason, specific expense items on tax returns will provide no useful information, because those line items encompass far more operations than Gortech’s machine shop.
- Overall gross margin of the company is irrelevant, and gross margin from the machine shop operations is not ascertainable from the tax returns.
- Trends, patterns and anomalies that are apparent on the tax returns could not have been caused by operations in the machine shop due to their insignificance in relation to overall, consolidated operations of the companies.
- Income tax returns provide no information regarding the manufacturing capacity of an entity.
- The magnitude of fixed and variable costs as shown on the tax returns are meaningless for the same reasons.
- The tax returns cannot possibly be used to corroborate the information on the machine shop gross profit study.


 Michael H. Bronder

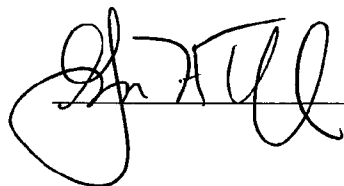
Sworn to and subscribed
 before me this 23rd day
 of AUGUST, 2011.


 Notary Public
 COMMONWEALTH OF PENNSYLVANIA
 Notarial Seal
 Debra J. Meade, Notary Public
 O'Hara Twp., Allegheny County
 My Commission Expires Feb. 18, 2014
 Member, Pennsylvania Association of Notaries

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Affidavit in Opposition to Motion to Compel was served upon the following by deposit in the United States mail, first class postage prepaid, this 25th day of August, 2011.

Joseph A. Hudock, Jr., Esq.
Summers, McDonnell, Hudock, Guthrie & Skeel, L.L.P.
Suite 2400, Gulf Tower
707 Grant Street
Pittsburgh, PA 15219



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

GORTECH GLOBAL FABRICATION, LLC

Plaintiff

vs.

DMG CHICAGO, INC.,

Defendant

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*
*
*
*

NO. 07-754-CD

ORDER

NOW, this 30th day of August, 2011, upon review and consideration of the Consent Motion for Telephonic Hearing and Change of Argument Date filed August 29, 2011 by Senior Judge Charles C. Brown, Jr., Specially Presiding; it is the ORDER of this Court as follows:

- 1) The request for change of argument date from September 12, 2011 at Clearfield County Courthouse is GRANTED;
- 2) The request for telephonic hearing is GRANTED;
- 3) Argument on the Plaintiff's Motion for Partial Summary Judgment is hereby rescheduled to **September 23, 2011 at 1:15 p.m** at Luzerne County Courthouse in the Chambers of Senior Judge Charles C. Brown with counsel for both parties participating via telephone.
- 4) Plaintiff's counsel is to initiate the conference call with Defendant's counsel and then contact Senior Judge Brown at 570-823-4181.

FILED

3cc

AUG 31 2011

William A. Shaw
Prothonotary/Clerk of Courts

BY THE COURT,

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

**REPLY TO PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

Counsel of Record for this Party:

Joseph A. Hudock, Jr.
PA I.D. #66064

SUMMERS, McDONNELL HUDOCK,
GUTHRIE & SKEEL, P.C.
Firm #911

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

FILED
SEP 16 2011
m/2:00/2
William A. Shaw
Prothonotary/Clerk of Courts
no c/c.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

REPLY TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

AND NOW comes the Defendant, DMG Chicago, Inc., by and through its attorneys, Summers, McDennell, Hudock, Guthrie & Skeel, and sets forth the following Reply to Motion for Partial Summary Judgment and in support thereof avers as follows:

1. It is admitted that this action seeks to recover damages for breach of contract. It is denied that Exhibit "A" constitutes a valid and binding contract.

2. Denied. It was apparent from DMG's Answer and New Matter, discovery responses, deposition testimony and original Pre-Trial Statement that DMG was claiming invalidity of the contract.

3. It is denied that DMG has waived any defenses in this matter or that any defenses lack evidentiary support. To the contrary, DMG has not waived any defenses.

4. Admitted.

5. Admitted.

6. It is denied that the machine in question had serious problems. To the contrary, any problems with the machine were *de minimis*. It is further specifically denied that

defendant made any misrepresentations to the plaintiff.

7. Denied. DMG attempted to send someone to provide training but plaintiff rebuffed the defendant's offers.

8. Admitted.

9. Denied. The document which plaintiff deems "the contract" is incomplete and references additional terms and conditions on the reverse side which plaintiff knew or should have known were lacking. Thus, no valid binding contract was formed. Furthermore, plaintiff has been aware since at least April 4, 2007 that DMG denied the existence of a valid contract. (See e-mail of Phil Rugari to plaintiff's counsel dated April 4, 2007 which is attached to plaintiff's Motion for Partial Summary Judgment.)

10. Admitted.

11. It is admitted that Gortech did not deliver the machine in question. It is specifically denied that the parties entered into a valid and binding contract.

12. Admitted. By way of further responses, defendant's original Pre-Trial Statement filed on July 12, 2011 contained the identical language.

13. Denied. The defense asserted in the original Pre-Trial Statement and Amended Pre-Trial Statement is a denial of a legal conclusion asserted by the plaintiff and is therefore not an affirmative defense which is required to be pled in New Matter.

14. Denied.

15. Defendant's New Matter speaks for itself.

16. Admitted.

17. Denied. To the contrary, the document in question specifically references additional terms and conditions which plaintiff knew or should have known were to be

incorporated.

18. Denied. The plaintiff knew or should have known that there were various additional terms and conditions on the reverse of what it terms the "contract."

19. Denied. At no time did defendant admit that there was a valid and binding contract. To the contrary, defendant merely admits that the document in question is authentic.

20. Admitted.

21. Denied. To the contrary, defendant set forth in its Answer and New Matter that the "contract" was a document which spoke for itself. According to the terms of the document, there were other terms and conditions incorporated on the reverse, and plaintiff knew or should have known of these terms. By way of further response, plaintiff alleged in Paragraph 45 of the Complaint that "the contract was a valid and binding agreement." Defendant responded to this allegation by noting that it was a legal conclusion to which no response is required.

22. Admitted.

23. Admitted. By way of further response, defendant was not required to respond with such specificity.

24. Denied. To the contrary, defendant responded to plaintiff's Request for Admissions and specifically stated in Response to Request No. 6 that it denied the "contract" was a valid and binding agreement. Defendant further indicated in its Response to Request for Admissions that its salesman, Mark Henne, was not authorized to enter into the transaction in question.

25. Admitted.

26. Admitted. By way of further response, plaintiff could have filed a motion to obtain more specific responses but failed to do so.

27. Denied. The "contract" is a document which speaks for itself, and plaintiff knew or should have known that the face of the document referenced additional terms and conditions on the reverse which were not included. Therefore, the plaintiff was on notice that the contract was not a valid and binding agreement. Furthermore, defendant denied in its Answer and Response to Request for Admissions that the contract was a valid and binding agreement.

28. Admitted in part and denied in part. It is admitted that defendant did not produce other material terms involved in the alleged contract. However, it is believed that plaintiff is fully aware based on other dealings with the defendant involving similar contracts that the contract is a two-page document containing language on the reverse indicating all deals had to be approved by the home office in Chicago. It is denied that the defendant first pled any such defense in its Amended Pre-Trial Statement. To the contrary, the defense was specifically referenced in defendant's original Pre-Trial Statement filed on July 12, 2011.

29. Admitted in part and denied in part. It is admitted that the defendant stated in response to plaintiff's Interrogatory No. 20 that the sales manager, Mark Henne, had no authority to enter into the deal in question. It is denied that defendant did not put forth a defense of contract invalidity. To the contrary, the defendant specifically responded to plaintiff's Request for Admission No. 6 and denied that there was a valid and binding contract. Furthermore, plaintiff knew or should have known from the face of the "contract" as well as from the previous course of dealings that there were additional terms and

conditions.

30. Admitted.

31. Admitted.

32. Admitted.

33. Admitted.

34. Admitted. By way of further response, defendant produced all documents in its possession responsive to plaintiff's discovery requests.

35. Admitted. By way of further response, defendant produced all of the documents in its possession responsive to the request.

36. Admitted. By way of further response, under the local rules, defendant is not required to produce trial exhibits until the filing of the Pre-Trial Statement.

37. Admitted. By way of further response, the plaintiff itself has produced documents between plaintiff's counsel and the former president of the defendant corporation wherein the president as early as April 4, 2007 set forth a defense of invalidity of contract.

38. Admitted. By way of further response, defendant produced all of the discoverable documents in its possession.

39. Admitted. By way of further response, the document itself references additional terms and conditions of which plaintiff was fully aware.

40. Admitted. By way of further response, had plaintiff wished to challenge defendant's response, it was free to file a motion seeking to compel more specific responses.

41. Admitted. By way of further responses, "the contract" itself references

additional terms and conditions on the reverse side, and the plaintiff knew or should have known based on a course of dealing that such terms were part of the contract.

42. Admitted in part and denied in part. It is admitted that additional terms were not present on "the contract." It is specifically denied that defendant has waived any defense based on contract invalidity. To the contrary, the contract itself references additional terms and conditions, and plaintiff knew or should have known based on a course of dealings that any deal had to be approved by the home office in Chicago. Furthermore, plaintiff knew as early as April 4, 2007 that defendant was contesting the validity of the contract.

43. Denied. To the contrary, the fact that the "contract" itself references additional terms on the reverse, and those terms were omitted, would cause a reasonable person to question the validity of the contract especially where, as here, the parties had a prior course of dealing and the plaintiff knew that other contracts contained the same or similar provisions.

44. It is specifically denied that defendant is suddenly asserting a defense of contract invalidity. Defendant asserted as early as April 4, 2007 that it was asserting a defense of contract invalidity and plaintiff's counsel was fully aware of this as he was the recipient of an e-mail to that effect. Moreover, the contract itself references additional terms and conditions on the reverse which, if lacking, would put a reasonable person on notice that the contract was invalid without them. Gortech has not been prejudiced in any manner by any of defendant's actions. At any time over the past several years, plaintiff was free to seek more specific answers to any discovery responses it deemed were deficient. Plaintiff chose not to do so and now asks this Court to relieve it of its burden of

proving its case.

45. Denied. The "contract" itself, the parties' course of dealings, the parties' subsequent communication, the defendant's Answer and New Matter, as well as discovery responses and deposition testimony have all put the plaintiff on notice that defendant was denying the existence of a valid contract.

46. Denied. To the contrary, plaintiff was aware as early as April 4, 2007 that there were other material terms to the alleged agreement. In addition, defendant's discovery responses and Mr. Fitzpatrick's testimony were to a similar effect.

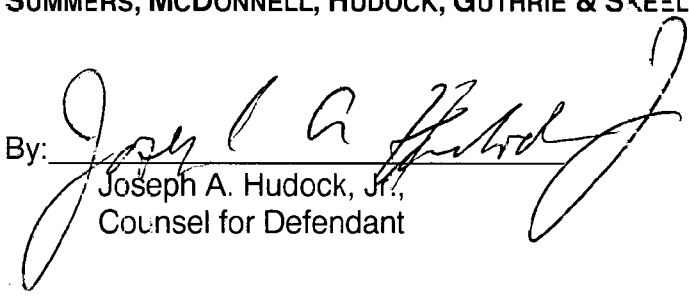
47. Denied. As more fully set forth in the Brief, plaintiff is not entitled to a grant of partial summary judgment, and defendant should be permitted to assert a defense of invalidity of contract.

WHEREFORE, defendant respectfully requests that this Honorable Court enter an order denying plaintiff's Motion for Partial Summary Judgment.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.

By:



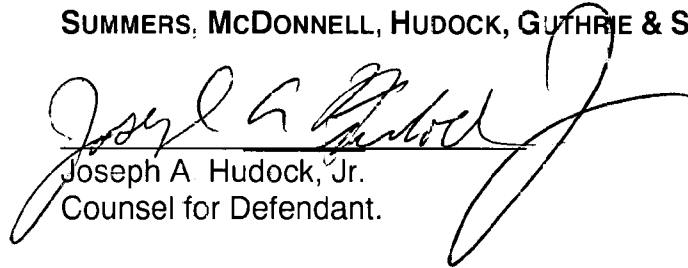
Joseph A. Hudock, Jr.,
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Reply to Plaintiff's Motion for Partial Summary Judgment was served upon counsel of record by mailing the same via first class mail, postage pre-paid, this 19 day of September, 2011, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.



Joseph A. Hudock, Jr.
Counsel for Defendant.

FILED No CC
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SEP 21 2011 Gil
William A. Shaw
Prothonotary/Clerk of Courts

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

GORTECH GLOBAL FABRICATION, LLC : **CIVIL DIVISION**
:
Plaintiff, : No. 07-754-CD
:
v. : **PLAINTIFF'S FIRST MOTION IN**
: **LIMINE**
DMG CHICAGO, INC., :
:
Defendant. :
: Filed on behalf of Plaintiff
:
: Counsel of Record for this Party:
:
: Gregory H. Teufel, Esq.
: Pa. Id. No. 73062
: Amy J. Roy, Esq.
: Pa. Id. No. 86584
: Jeremy L.S. Samek, Esq.
: Pa. Id. No. 205060
: Eckert Seamans Cherin & Mellott, LLC
: U.S. Steel Tower
: 600 Grant Street, 44th Floor
: Pittsburgh, PA 15219
: 412.566.6000 telephone
: 412.566.6099 fax
:
: Christopher E. Mohnhey, Esq.
: PA I.D. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814.375.1044 telephone
814.375.1088 fax

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

PLAINTIFF'S FIRST MOTION IN LIMINE

Plaintiff, Gortech Global Fabrication, LLC ("Gortech" or "Plaintiff"), by its undersigned attorneys, hereby files the following Motion in Limine pursuant to Pa. R. Civ. P. 1029(b), 1032, and 4019, and Pa. R. Evid. 403:

1. Gortech incorporates by reference its Motion for Partial Summary Judgment in this matter, and the supporting Brief, both filed on August 22, 2011.
2. For the reasons stated in that Motion for Partial Summary Judgment and supporting Brief, and in the alternative to the relief requested therein, Defendant DMG Chicago, Inc. ("DMG" or "Defendant") should be precluded at trial from presenting any asserted defense to liability that the Contract at issue is invalid because there was no "approval in writing by the corporate headquarters in Chicago," which DMG asserts was required by terms and conditions on the reverse side of the Contract, as stated in DMG's First Amended Pre-Trial Statement. (attached to the Motion for Partial Summary Judgment as Exhibit B).
3. As explained in the Motion for Partial Summary Judgment and supporting Brief, this asserted defense was waived by not being properly pled or disclosed, and it lacks any evidentiary support whatsoever.

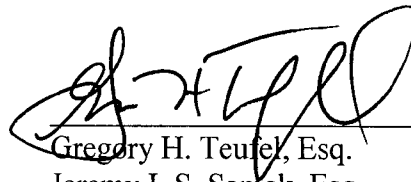
4. For the reasons stated in the Motion for Partial Summary Judgment and supporting Brief, it would be unfairly prejudicial, in violation of Pa. R. Evid. 403, to permit DMG to present this asserted defense at trial.

5. Furthermore, for the reasons state in the Motion for Partial Summary Judgment and supporting Brief, the Court should deem it admitted for purposes of trial that the document attached to the Complaint in this matter as Exhibit B is a true and correct copy of the entire Contract at issue in this matter. It would be unfairly prejudicial to allow DMG to assert additional terms to the Contract after failing to plead or disclose any such additional terms in the pleadings or in discovery.

WHEREFORE, Plaintiff Gortech requests that this Court enter the attached proposed Order or grant such other and further relief as this Court may deem proper.

Respectfully submitted,

Dated: September 19, 2011

A handwritten signature in black ink, appearing to read 'G. H. Teufel', is written over a horizontal line.

Gregory H. Teufel, Esq.
Jeremy L.S. Samek, Esq.
Christopher E. Mohny, Esq.
Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Plaintiff's First Motion in Limine was served upon the following by deposit in the United States mail, first class postage prepaid, this 19th day of September, 2011.

Joseph A. Hudock, Jr.
Summers, McDonnell, Hudock, Guthrie & Skeel, P.C.
707 Grant Street,
Suite 2400, Gulf Tower
Pittsburgh, PA 15219



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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this ____ day of _____, 2011, upon consideration of the First Motion in Limine filed by Plaintiff Gortech Global Fabrication, LLC, and any responses thereto, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is Granted. It is hereby ORDERED that the Defendant may not present at trial any asserted defense to liability that the Contract at issue is invalid because there was no “approval in writing by the corporate headquarters in Chicago,” or based upon any requirements allegedly imposed by alleged terms and conditions on the reverse side of the Contract at issue.

It is further ORDERED that, for purposes of trial, it is deemed admitted that the document attached to the Complaint in this matter as Exhibit B is a true and correct copy of the entire Contract at issue in this matter.

-

_____.J.

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

SCHEDULING ORDER

AND NOW, this _____ day of September, 2011, upon consideration of the First Motion in Limine, filed by Plaintiff Gortech Global Fabrication, LLC, it is hereby Ordered that:

1. argument shall be held on _____ at _____ in Courtroom No. _____ of the Clearfield County Courthouse;
2. notice of entry of this Order shall be provided to all parties by the moving party.

_____. J.

34

FILED

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SEP 21 2011

William A. Shaw
Prothonotary/Clerk of Courts

NO
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**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

GORTECH GLOBAL FABRICATION, LLC

Plaintiff,

v.

DMG CHICAGO, INC.,

Defendant.

: **CIVIL DIVISION**

:
: No. 07-754-CD

:
: **PLAINTIFF'S SECOND MOTION IN**
: **LIMINE**

:
: Filed on behalf of Plaintiff

:
: Counsel of Record for this Party:

:
: Gregory H. Teufel, Esq.

: Pa. Id. No. 73062

: Amy J. Roy, Esq.

: Pa. Id. No. 86584

: Jeremy L.S. Samek, Esq.

: Pa. Id. No. 205060

: Eckert Seamans Cherin & Mellott, LLC

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: 600 Grant Street, 44th Floor

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: 412.566.6000 telephone

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:
: Christopher E. Mohny, Esq.

: PA I.D. 63494

: 25 East Park Avenue, Suite 6

: DuBois, PA 15801

: 814.375.1044 telephone

: 814.375.1088 fax

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

PLAINTIFF'S SECOND MOTION IN LIMINE

Plaintiff, Gortech Global Fabrication, LLC ("Gortech" or "Plaintiff"), by its undersigned attorneys, hereby files the following Motion in Limine pursuant to Pa. R. Evid. 402 and 403:

1. Gortech incorporates by reference its Affidavit in Opposition to Motion to Compel (Bronder Affidavit), filed on August 29, 2011, a true and correct copy of which is attached hereto as Exhibit A for the Court's convenience.

2. For the reasons stated in that Bronder Affidavit, and for the additional reasons set forth here, Defendant DMG Chicago, Inc. ("DMG" or "Defendant") should be precluded at trial from presenting any evidence or arguments concerning Gortech's tax returns.

3. As explained in the Bronder Affidavit, Gortech's tax returns are not relevant and it would only serve to confuse the jury and cause unfair prejudice to Gortech, in violation of Pa. R. Evid. 402 and 403, if DMG were permitted to submit tax returns into evidence or make arguments based on Gortech's tax returns.

4. Relevant evidence is defined as "[e]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Pa. R. Evid. 401.

5. Evidence that is not relevant to a fact in issue is inadmissible at trial. See Pa. R. Evid. 402.

6. Notwithstanding the fact that evidence may be relevant, it may still be excluded where its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues and/or the risk of misleading the jury. See Pa. R. Evid. 403.

7. Prejudice, in this context, means the “undue tendency to suggest a decision on an improper basis.” Daset Mining Co. v. Industrial Fuels Corp., 473 A.2d 584, 588 (Pa.Super. 1984) (citation omitted).

8. The court in Daset Mining Co. also noted that “the trial judge has broad discretion regarding the admission of potentially misleading and confusing evidence.” Id.

9. For example, in Ariondo v. Munsey, 553 A.2d. 94, 97 (Pa.Commw. 1989), the trial court granted a motion in limine and prohibited the Commonwealth of Pennsylvania, Department of Transportation (“DOT”) from attempting to introduce evidence at trial regarding economic limitations which prevented DOT from erecting a median barrier at the site of an accident on the basis that it was irrelevant. The court found DOT’s argument fallacious that its budgetary limitations were relevant to whether DOT failed in its duty of care.

10. Here too, this Court has broad discretion to preclude the introduction of irrelevant evidence intended solely to support fallacious arguments, sure to cause confusion and unfair prejudice.

11. Gortech's income tax returns provide no information that would assist an expert in calculating lost profits related to the loss of a specific machine shop contract. The appropriate measure of Gortech's lost profits is the difference between its lost revenues and its incremental

costs related to those revenues. Gortech's income tax returns provide no such information. Bronder Affidavit, ¶ 1.

12. Income tax returns are prepared on a basis of accounting that is not in accordance with generally accepted accounting principles. Bronder Affidavit, ¶ 2

13. Income tax returns reflect the lowest possible level of profit allowed by law. Bronder Affidavit, ¶ 3.

14. Income tax returns are summary level documents that do not provide detail on the various revenue-producing activities of an entity. All revenues are combined and reported on one line on the returns. Costs are likewise lumped together with no regard to individual revenue-producing activities. Bronder Affidavit, ¶ 4.

15. Gortech, itself, a limited liability company with “pass through” tax status, does not file an income tax return. Gortech's operations are included with several other entities on a consolidated basis. See Bronder Affidavit, ¶ 5.

16. Gortech's machine shop operations were an extremely small portion of its overall business. From October 2007 through April 2009, manufacturing represented about 1 percent of Gortech's total revenues (and a far lesser percentage of total consolidated revenues). Therefore, virtually all of the revenues and expenses reported on Gortech's income tax returns were unrelated to its profits from machine shop operations. Bronder Affidavit, ¶ 6

17. Gortech's machine shop revenues were substantially lower than they would have been if DMG had not breached the Contract at issue in this case.

18. Because Gortech's machine shop revenues were so miniscule in relation to its overall operations, Gortech's tax returns showed losses despite the fact that its machine shop operations were profitable. Bronder Affidavit, ¶ 8

19. Gortech's spreadsheet that provides detail of its profits from its machine shop operations, and the underlying documents that form the basis of that summary spreadsheet, are the best information available that would allow an expert to calculate the company's historical profits from its machine shop operations. See Bronder Affidavit, ¶ 9

20. Income tax returns filed on a consolidated basis showing significant losses will serve to confuse a jury because such losses were caused by activities other than Gortech's machine shop operations that form the basis of its lost profits claim. Bronder Affidavit, ¶ 10

21. A significant portion of the losses reported on Gortech's income tax returns could have been avoided absent the actions of the defendant in this matter. It would be unfairly prejudicial for DMG to be allowed to use the very losses that it caused as a basis to limit Gortech's recovery of lost profits.

22. DMG, in effect, apparently intends to use the tax returns to make the argument that Gortech was not profitable overall, and that therefore, Gortech would not have profitably performed the particular machine shop jobs at issue in this case.

23. It is fallacious to argue that a business that has a taxable loss on the whole in a given tax year therefore would not have earned profit on a specific contract.

24. In his affidavit, James S. Fellin stated "The reasons that tax returns are essential in this case include, but are not limited to, the following:

- To assess the overall profitability of the company,
- To identify specific expense line items that were incurred in order to generate revenues,
- To determine overall gross margin achieved by the company on a historical basis
- To determine trends, patterns and anomalies of the financial data,
- To evaluate the overall manufacturing capacity of the entity,
- To identify and determining (sic) the magnitude of fixed and variable costs, and perhaps most importantly,
- To corroborate the limited financial information that has been provided in a support of a claim for lost profits."

25. However, overall profitability of the company is not relevant to Gortech's claim for lost profits, because the profit that would have been earned on one specific contract relates to a very small portion of the company's overall operations. The historical profits from this very small portion are not ascertainable from the tax returns. Bronder Affidavit, ¶ 13.

26. For the same reason, specific expense items on tax returns will provide no useful information, because those line items encompass far more operations than Gortech's machine shop. Bronder Affidavit, ¶ 13.

27. Overall gross margin of the company is irrelevant, and gross margin from the machine shop operations is not ascertainable from the tax returns. Bronder Affidavit, ¶ 13.

28. Trends, patterns and anomalies that are apparent on the tax returns could not have been caused by operations in the machine shop due to their insignificance in relation to overall, consolidated operations of the companies. Bronder Affidavit, ¶ 13.

29. Income tax returns provide no information regarding the manufacturing capacity of an entity. Bronder Affidavit, ¶ 13.

30. The magnitude of fixed and variable costs as shown on the tax returns are meaningless for the same reasons. Bronder Affidavit, ¶ 13.

31. The tax returns cannot possibly be used to corroborate or contradict the information on Gortech's machine shop gross profit study. See Bronder Affidavit, ¶ 13.

32. If DMG is permitted to present the tax returns at trial, along with its misleading, fallacious arguments based on the tax returns, then Gortech would need to explain all of the above to the jury in an effort to cure the confusion and unfair prejudice caused thereby.

33. In addition, to combat the confusion and prejudice created by the tax returns, Gortech would need to explain to the jury about the millions of dollars in losses incurred by

Gortech due to the bankruptcy of an ethanol plant for which Gortech performed a tremendous amount of work, including erecting large tanks in the field, which dramatically impacted the overall taxable income of the company.

34. Explaining that particular very large taxable income loss alone could add days to the trial, all to combat the false impression that DMG wishes to create that the overall taxable income of Gortech somehow impacts how much profit Gortech would have likely earned on one specific set of machine shop jobs from one particular customer.

35. The jury would have little real hope of understanding all of these issues, but that is just what DMG wants to do with the tax returns, to sow confusion in the jury so that they become uncertain what to make of it all, throw up their hands, and decline to award lost profits.

36. Rather than attack the actual basis for Gortech's lost profits claim, the actual costs and revenues related to the specific contracts at issues, DMG would prefer to bring up a red herring. Gortech's overall taxable income is a tangential issue that sounds like it could be relevant at first blush, but anything more than a cursory review would reveal that overall taxable income is not at all relevant.

37. Furthermore, allowing the introduction of Gortech's tax returns and arguments based thereon would circumvent the Frye standard for expert testimony, allowing DMG's expert to present information that was prepared on a basis of accounting that is not in accordance with generally accepted accounting principles.

38. If DMG is allowed to present data from the tax returns based on accounting that is not in accordance with generally accepted accounting principles, the differences between tax accounting methods and generally accepted accounting principles would also have to be explained to a woefully confused jury.

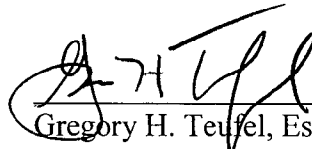
39. Pennsylvania employs the standard in Frye v. United States, 293 F. 1013 (D.C. Cir. 1923), which requires scientific evidence to have “general acceptance” in the relevant scientific community. See Commonwealth v. Dunkle, 602 A.2d 830 (Pa. 1992).

40. For all of these reasons, arguments and evidence concerning Gortech’s tax returns should be excluded at trial.

WHEREFORE, Plaintiff Gortech requests that this Court enter the attached proposed Order or grant such other and further relief as this Court may deem proper.

Respectfully submitted,

Dated: September 19, 2011

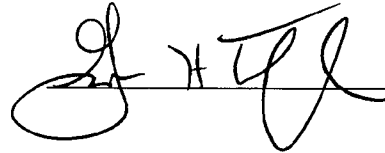
A handwritten signature in black ink, appearing to read 'G. H. Teufel', is written over a horizontal line.

Gregory H. Teufel, Esq.
Jeremy L.S. Samek, Esq.
Christopher E. Mohney, Esq.
Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Plaintiff's Second Motion in Limine was served upon the following by deposit in the United States mail, first class postage prepaid, this 19th day of September, 2011.

Joseph A. Hudock, Jr.
Summers, McDonnell, Hudock, Guthrie & Skeel, P.C.
707 Grant Street,
Suite 2400, Gulf Tower
Pittsburgh, PA 15219



AUG 29 2011

William A. Shaw
Prothonotary/Clerk of Courts

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

GORTECH GLOBAL FABRICATION, LLC CIVIL DIVISION

Plaintiff,

No. 07-754-CD

v.

**AFFIDAVIT IN OPPOSITION TO
MOTION TO COMPEL**

DMG CHICAGO, INC.,

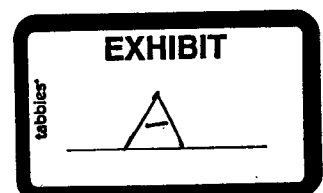
Defendant.

Filed on Behalf of Plaintiff
Gortech Global Fabrication, LLC.

Counsel of Record for Plaintiff:

Gregory H. Teufel, Esq.
PA I.D. No. 73062
Amy J. Roy, Esq.
PA I.D. No. 86584
Jeremy L.S. Samek, Esq.
Pa. Id. No. 205060
Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohnhey, Esq.
PA I.D. No. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814-375-1044
814-375-1088 (facsimile)



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

GORTECH GLOBAL FABRICATION,
LLC

CIVIL DIVISION

No. 07-754-CD

Plaintiff,

v.

DMG CHICAGO, INC.,

Defendant.

AFFIDAVIT IN OPPOSITION TO MOTION TO COMPEL

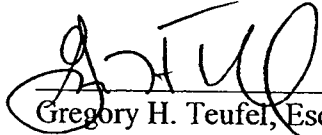
NOW COMES Plaintiff Gortech Global Fabrication, LLC ("Gortech"), by and through its undersigned attorneys, and files the following Affidavit in Opposition to Motion to Compel:

1. Attached hereto is an affidavit of Michael H. Bronder, CPA, offered in opposition to Defendant DMG Chicago, Inc.'s ("DMG's") Motion to Compel production of tax returns.
2. Mr. Bronder's affidavit explains why the tax returns at issue are not relevant and responds to the affidavit of James S. Fellin, CPA, CFE, CFF as to issues of the relevance of the tax returns.
3. Mr. Bronder's affidavit is also offered in support of an anticipated motion in limine on the same issue, and to supplement his expert report if DMG is permitted to confuse the jury with arguments about tax returns.

WHEREFORE, Defendant respectfully requests that this Honorable Court deny Defendant's Motion to Compel, or grant such other or further relief as this Court may deem proper.

Respectfully submitted,

Dated: August 25, 2011

A handwritten signature in black ink, appearing to read 'G. Teufel', written over a horizontal line.

Gregory H. Teufel, Esq.

Jeremy L.S. Samek, Esq.

Christopher E. Mohnhey, Esq.

Attorneys for Plaintiff,

Gortech Global Fabrication, LLC

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	AFFIDAVIT OF MICHAEL H.
	:	BRONDER, CPA
DMG CHICAGO, INC.,	:	
	:	Filed on behalf of Plaintiff
Defendant.	::	

AFFIDAVIT OF MICHAEL H. BRONDER, CPA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	SS;
COUNTY OF CLEARFIELD	:	

Before me, the undersigned authority, personally appeared Michael H. Bronder, who, after being first duly sworn, did depose and say:

1. Gortech's income tax returns provide no information that would assist an expert in calculating lost profits related to the loss of a specific machine shop contract. The appropriate measure of Gortech's lost profits is the difference between its lost revenues and its incremental costs related to those revenues. Gortech's income tax returns provide no such information.

2. Income tax returns are prepared on a basis of accounting that is not in accordance with generally accepted accounting principles.

3. Income tax returns reflect the lowest possible level of profit allowed by law.

4. Income tax returns are summary level documents that do not provide detail on the various revenue-producing activities of an entity. All revenues are combined and reported on one line on the returns. Costs are likewise lumped together with no regard to individual revenue-producing activities.

5. Gortech, itself, does not file an income tax return. Gortech's operations are included with several other entities on a consolidated basis.

6. Gortech's machine shop operations were an extremely small portion of its overall business. From October 2007 through April 2009, manufacturing represented about 1 percent of Gortech's total revenues (and a far lesser percentage of total consolidated revenues). Therefore, virtually all of the revenues and expenses reported on Gortech's income tax returns were unrelated to its profits from machine shop operations.

7. The actions of the defendant in this matter are the primary cause of Gortech's lack of machine shop revenues.

8. Because Gortech's machine shop revenues were so miniscule in relation to its overall operations, Gortech's tax returns showed losses despite the fact that its machine shop operations were profitable.

9. Gortech's spreadsheet that provides detail of its profits from its machine shop operations is the best information available that would allow an expert to calculate the company's historical profits from its machine shop operations.

10. Income tax returns filed on a consolidated basis showing significant losses will serve to confuse a jury because such losses were caused by activities other than Gortech's machine shop operations that form the basis of its lost profits claim.

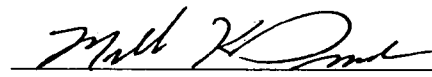
11. A significant portion of the losses reported on Gortech's income tax returns could have been avoided absent the actions of the defendant in this matter. It would be disingenuous for the defendant to use the losses that it caused to refute Gortech's claim for lost profits.

12. In his affidavit, James S. Fellin stated "The reasons that tax returns are essential in this case include, but are not limited to, the following:

- To assess the overall profitability of the company,
- To identify specific expense line items that were incurred in order to generate revenues,
- To determine overall gross margin achieved by the company on a historical basis
- To determine trends, patterns and anomalies of the financial data,
- To evaluate the overall manufacturing capacity of the entity,
- To identify and determining (sic) the magnitude of fixed and variable costs, and perhaps most importantly,
- To corroborate the limited financial information that has been provided in a support of a claim for lost profits.”

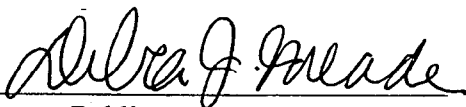
13. My response to these bullet points is as follows:

- Overall profitability of the company is not relevant to Gortech’s claim for lost profits, because the profit that would have been earned on one specific contract relates to a very small portion of the company’s overall operations. The historical profits from this very small portion are not ascertainable from the tax returns.
- For the same reason, specific expense items on tax returns will provide no useful information, because those line items encompass far more operations than Gortech’s machine shop.
- Overall gross margin of the company is irrelevant, and gross margin from the machine shop operations is not ascertainable from the tax returns.
- Trends, patterns and anomalies that are apparent on the tax returns could not have been caused by operations in the machine shop due to their insignificance in relation to overall, consolidated operations of the companies.
- Income tax returns provide no information regarding the manufacturing capacity of an entity.
- The magnitude of fixed and variable costs as shown on the tax returns are meaningless for the same reasons.
- The tax returns cannot possibly be used to corroborate the information on the machine shop gross profit study.

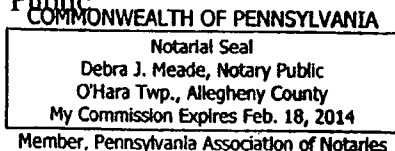


Michael H. Bronder

Sworn to and subscribed
before me this 23rd day
of AUGUST, 2011.



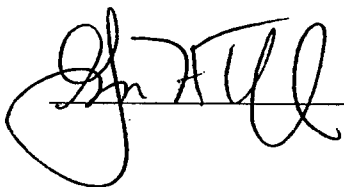
Notary Public



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Affidavit in Opposition to Motion to Compel was served upon the following by deposit in the United States mail, first class postage prepaid, this 25th day of August, 2011.

Joseph A. Hudock, Jr., Esq.
Summers, McDonnell, Hudock, Guthrie & Skeel, L.L.P.
Suite 2400, Gulf Tower
707 Grant Street
Pittsburgh, PA 15219

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

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

SCHEDULING ORDER

AND NOW, this ____ day of September, 2011, upon consideration of the Second Motion in Limine, filed by Plaintiff Gortech Global Fabrication, LLC, it is hereby Ordered that:

1. argument shall be held on _____ at _____ in Courtroom No. ____ of the Clearfield County Courthouse;
2. notice of entry of this Order shall be provided to all parties by the moving party.

_____. J.

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of _____, 2011, upon consideration of the Second Motion in Limine filed by Plaintiff Gortech Global Fabrication, LLC, and any responses thereto, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is Granted. It is hereby ORDERED that the Defendant may not present at trial Gortech's tax returns or arguments based thereon.

_____. J.



FILED No
M110:4264 CC
SEP 21 2011 Col
William A. Shaw
Prothonotary/Clerk of Courts

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	PLAINTIFF'S THIRD MOTION IN
	:	LIMINE
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	
	:	Filed on behalf of Plaintiff
	:	
	:	Counsel of Record for this Party:
	:	
	:	Gregory H. Teufel, Esq.
	:	Pa. Id. No. 73062
	:	Amy J. Roy, Esq.
	:	Pa. Id. No. 86584
	:	Jeremy L.S. Samek, Esq.
	:	Pa. Id. No. 205060
	:	Eckert Seamans Cherin & Mellott, LLC
	:	U.S. Steel Tower
	:	600 Grant Street, 44 th Floor
	:	Pittsburgh, PA 15219
	:	412.566.6000 telephone
	:	412.566.6099 fax
	:	
	:	Christopher E. Mohnhey, Esq.
	:	PA I.D. 63494
	:	25 East Park Avenue, Suite 6
	:	DuBois, PA 15801
	:	814.375.1044 telephone
	:	814.375.1088 fax

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

PLAINTIFF’S THIRD MOTION IN LIMINE

Plaintiff, Gortech Global Fabrication, LLC (“Gortech” or “Plaintiff”), by its undersigned attorneys, hereby files the following Motion in Limine pursuant to Pa. R. Evid. 402, 403, and 702:

1. This Motion in Limine seeks to preclude the expert proffered by Defendant DMG Chicago, Inc. (“DMG” or “Defendant”) from making the kinds of improper, unfairly prejudicial, inflammatory, insulting, and uncivil editorial remarks and legal opinions at trial that are contained in his expert report.

2. Attached hereto as Exhibits A and B, respectively, are the expert reports of James S. Fellin, CPA, CFF, CFE (DMG’s expert, in “DRAFT” form) and Michael H. Bronder, CPA (Gortech’s expert).

3. Notwithstanding the fact that evidence or testimony may be relevant, it may still be excluded where its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues and/or the risk of misleading the jury. See Pa. R. Evid. 403.

4. Prejudice, in this context, means the “undue tendency to suggest a decision on an improper basis. Daset Mining Co. v. Industrial Fuels Corp., 473 A.2d 584, 588 (Pa.Super. 1984) (citation omitted).

5. In addition, pursuant to Pa. R. Evid. 702, expert testimony is only permitted as to “scientific, technical or other specialized knowledge beyond that possessed by a layperson” and experts must confine their expert testimony to those areas in which they are “qualified as an expert by knowledge, skill, experience, training or education.” See also Christiansen v. Silfies, 667 A.2d 396, 403-404 (Pa.Super. 1995) (court upheld exclusion of expert testimony that was “outside the scope of the witness’s area of expertise”).

Mr. Fellin offers legal opinions as to discovery matters.

6. In his expert report, DMG’s forensic accounting expert Mr. Fellin offers many opinions, including some legal opinions, well outside his area of expertise.

7. The first opinion offered by Mr. Fellin, on page three of his report, is a legal opinion, and an incorrect one at that: “A proper claim for lost profits should be adequately supported by the evidence that has been produced in the case.”

8. In any given case involving a claim for lost profits, the evidence supporting the claim may or may not have been “produced in the case.” That would depend on whether thorough discovery was conducted, for example. If there is evidence that was not “produced in the case” because the opposing party never asked for it in discovery, such evidence nevertheless may properly be considered at trial in support of a claim for lost profits. But whether this legal opinion as to what should or should not have been “produced in the case” is correct or incorrect, it is well outside the scope of a forensic accountant’s expertise.

9. Also on page 3 of his report, Mr. Fellin offers this critique of the amount of information that Gortech produced in discovery: “The deficient level of information that was produced by Gortech in support of its claim is highly unusual and not consistent with common practice in this area.”

10. It is not for a forensic accounting expert to comment on whether a party's production of information in discovery was or was not "deficient." Such matters are completely outside his area of expertise, and constitute improper, prejudicial legal argument.

11. Not even the lawyers in closing argument should be making prejudicial comments about "deficiencies" in the other party's production efforts in discovery.

12. In point of fact, Gortech produced everything requested by DMG in discovery, and then some, including thousands of pages of documents, only objecting to the production of irrelevant tax returns. DMG, in contrast, produced only a small folder full of documents until after a motion compel was granted in this case, and then was compelled to unredact documents after *in camera* review by the Court determined that privilege was incorrectly asserted. There was nothing "deficient" about Gortech's production of information in this case.

13. If the discovery conducted by DMG was not as exhaustive as Mr. Fellin is accustomed to seeing, that is no basis for accusing Gortech of "deficient" production.

14. Mr. Fellin can testify as to the adequacy of the information he has been given to determine lost profits, based on generally accepted accounting principles, without commenting on what should or should not have been produced in discovery or casting any blame on Gortech for "deficient" production.

15. Mr. Fellin's legal opinions as to what should have transpired in discovery in this case continue on page 3 of his report as follows: "It would be Bronder's responsibility to obtain the requisite level of documentation in this case, which should then have been produced in this litigation." (underlining added).

16. The latter half of the above-quoted sentence is clearly not a forensic accounting opinion. It is a legal opinion as to what production should have occurred in discovery in this case. Mr. Fellin would have no business offering such an opinion during his testimony at trial.

17. Later in his report, at page 8, Mr. Fellin offers further criticism of the amount of information produced by Gortech: “We are unable, however to construct a comprehensive and thorough analysis of loss in this matter, due to insufficient information made available by Gortech.” (underlining added).

18. Mr. Fellin is in no position to determine whether the information he has is insufficient (in his opinion) because Gortech failed to make sufficient information available or because DMG failed to request sufficient information in discovery.

19. Mr. Fellin’s opinions casting blame on Gortech for what was or was not made available in discovery are not forensic accounting opinions, whatever they are.

20. Finally, also on page 8, Mr. Fellin offers his unbridled assessment of Gortech’s discovery conduct in this case: “Gortech has fought to withhold critical information.”

21. If Mr. Fellin is referencing Gortech’s position as to the relevance of tax returns, Gortech strongly disagrees with his characterization.

22. In any event, criticizing discovery conduct, even if the criticisms were valid, has no place in a forensic accountant’s testimony, because the opinions offered, once again, are far outside the scope of his expertise and amount to prejudicial editorial remarks or legal opinions.

23. Discovery conduct matters are to be addressed to the Court in discovery motions, not to be complained about at trial, and certainly not to be addressed by any expert witness. Hearing criticisms of discovery conduct could only serve to prejudice and distract a jury from the real issues at trial.

**Mr. Fellin's insulting language and
criticism of use of assumptions as to liability and causation.**

24. According to the Comment to Pa. R. Evid. 705, Pennsylvania law requires disclosure of the facts used by the expert in forming an opinion and the disclosure can be accomplished in several ways. "One way is to ask the expert to assume the truth of testimony the expert has heard or read." (for this proposition the Comment cites: *The Kroeger Co. v. W.C.A.B.*, 101 Pa. Cmwlth. 629, 516 A.2d 1335 (1986); *Tobash v. Jones*, 419 Pa. 205, 213 A.2d 588 (1965)). "Another option is to pose a hypothetical question to the expert." (for this proposition the Comment cites *Dietrich v. J.I. Case Co.*, 390 Pa. Super. 475, 568 A.2d 1272 (1990); *Hussy v. May Department Stores, Inc.*, 238 Pa. Super. 431, 357 A.2d 635 (1976)).

25. "[An expert's] assumptions must be based upon such facts as the jury would be warranted in finding from the evidence." *Viener v. Jacobs*, 2003 PA Super 324, 834 A.2d 546, 558 (2003).

26. Thus, the use of assumptions and hypotheticals to focus the expert's testimony within the expert's area of expertise is commonplace at trial.

27. Confined to testifying only about subjects within his or her area of expertise, an expert witness has no choice but to make assumptions as to issues outside his or her area of expertise, so as to be able to offer opinions within his or her area of expertise, based on those explicit assumptions.

28. Mr. Fellin apparently feels otherwise, and views it as part of his role at trial to criticize not only the substance of the accounting opinions offered by Gortech's expert, but also to attempt to scandalize the use of assumptions and to offer opinions, outside his own area of expertise, as to the likely validity of those assumptions.

29. Not only does Mr. Fellin improperly criticize the use of assumptions by Gortech's expert, he does so in exaggerated and insulting language that is excessively derisive, uncivil, and inflammatory. Mr. Fellin should be admonished against using such language at trial, to avoid unduly prejudicing and inflaming the jurors.

30. On page 3 of his report, Mr. Fellin characterizes an assumption that Gortech's expert "did not test" as "speculative."

31. It is improper for an accounting expert to characterize an assumption having nothing to do with accounting made by another accounting expert as "speculative." It is not clear what assumption Mr. Fellin is referencing, but an expert witness is not obliged to test all of his assumptions. Indeed, once tested, they are no longer assumptions. So, in effect, Mr. Fellin is arguing that making any assumptions at all is improper (or, in Mr. Fellin's words, "cavalier," "naive," "irresponsible," "simplistic," "haphazard," "unsophisticated," etc.).

32. Gortech's expert made assumptions as to matters outside his expertise that it would not make sense for him to try to test. That is why Mr. Bronder made assumptions; because, as to certain issues, he had no special expertise. He is a damages expert only, and the same is true of Mr. Fellin. Neither of them have any expertise as to liability and causation in this case.

33. Neither DMG's expert nor Gortech's expert has expertise sufficient to offer opinions on anything other than the damages calculations at issue. And because they lack any expertise on the issues of liability and causation, the Court should not allow either expert to attempt to offer opinions on the validity or invalidity or "speculative" or nonspeculative nature of assumptions as to issues outside their areas of expertise.

34. Mr. Fellin offers more criticism of assumptions as to issues outside his area of expertise on page 4 of his report: “There is not enough substantiation in this case for Bronder to cavalierly assume that Gortech would have obtained these various projects with Sensus.” (underlining added).

35. Mr. Fellin has no expertise to offer any opinion as to whether Gortech would or would not have obtained the Sensus work or not, nor to be characterizing an assumption that Gortech would have obtained the Sensus work, but for the breach of contract at issue, as “cavalier.”

36. Mr. Fellin may not believe or expect that the assumption that Gortech would have obtained the Sensus work is based upon such facts as the jury would be warranted in finding from the evidence, but that is for the jury to decide, and not for him to comment on.

37. Use of terms like “cavalierly” and other such terms sprinkled throughout Mr. Fellin’s report are unnecessary, uncivil, and insulting. There is no need to accuse Mr. Bronder of being “cavalier.” Mr. Fellin should be admonished to stick to the substance of his opinions and keep the insults to himself.

38. Also on page 4 of Mr. Fellin’s report, we find: “It is important to note that the work, that Bronder simplistically assumed would be obtained by Gortech, had not commenced in any way.” (underlining added). From there proceeds an entire paragraph of opinions having nothing to do with accounting.

39. Once again Mr. Fellin used an unnecessarily insulting adverb. Mr. Bronder did not only make an unwarranted assumption, in Mr. Fellin’s view, but also, he did so “simplistically.”

40. Later on in that same paragraph on page 4, Mr. Fellin characterized the assumption that Gortech would have obtained and performed the Sensus work as “highly speculative.” Again, this opinion has nothing to do with accounting. Mr. Fellin has no special knowledge as to how likely it was that Gortech would or would not have obtained and performed the Sensus work if DMG had delivered the equipment at issue as promised and provided timely training.

41. In the last two paragraphs of page 4 of his report, Mr. Fellin goes on to offer more opinions having nothing to do with accounting, on the subject of how strong the evidence is that Gortech would have obtained the Sensus work, and therefore, he concludes, that the assumption that Gortech would have obtained the Sensus work is, once again, “speculative.” Ironically, Mr. Fellin’s opinions on whether Gortech would or would not have obtained the Sensus work are what is speculative, in that he has no special expertise on evaluating such matters.

42. It certainly does not take an expert to make the point that, if Gortech would not have obtained the Sensus work even if DMG had not breached the Contract at issue, then Gortech would not be entitled to lost profits on the Sensus work.

43. Mr. Fellin continues on page 5 of his report: “It is irresponsible of Bronder to merely rely on one piece of evidence as the basis for his entire analysis.” (underlining added).

44. Again, Mr. Fellin resorts to insulting language; Mr. Bronder is not just wrong, apparently, he is also “irresponsible.”

45. Furthermore, it is not for Mr. Fellin to criticize the amount of evidence supporting an assumption that has nothing to do with accounting.

46. Amazingly, on page 5, Mr. Fellin goes on to criticize Mr. Bronder for failing to conduct his own discovery on the non-accounting issue of whether Gortech would or would not

have obtained the Sensus work: "It does not appear that Bronder made any attempt to speak with Stephanie Radaker or any other party to determine whether his foundational premise was valid."

47. Again, there is absolutely nothing wrong with an expert making assumptions on issues outside of his area of expertise so as to focus his testimony on issues he is specially qualified to discuss. Mr. Fellin's efforts to suggest otherwise are unfairly prejudicial and improper advocacy on his part, and stray beyond his own areas of expertise.

48. It is not the accounting expert's job to interview witnesses as to issues having nothing to do with accounting. It is for the jury to judge the credibility of those witnesses at trial.

49. Similarly, on page 4, Mr. Fellin criticizes Mr. Bronder for not analyzing the machines at issue to determine if Gortech could have made the parts Sensus wanted without the machine that DMG had promised to provide: "However, it is apparent from his report that Bronder failed to conduct any analysis or inquiry into how the DMG machinery would have been utilized in performing these specific contracts for Sensus. Once again, this failure to test his assumptions points to the insufficient and/or inadequate nature of Bronder's analysis in this case."

50. Once again, it is improper for Mr. Fellin to criticize assumptions made having nothing to do with accounting. Mr. Fellin has no expertise as to what machines can produce what parts, so he should not be permitted to offer any opinions about assumptions in that regard.

51. Also on page 5, Mr. Fellin insists: "it would be imperative to this case to determine how these specific DMG machines would have been utilized in the hypothetical work, if at all."

52. It might be imperative to the case for the jury to make such a determination, but it is certainly not imperative for an accounting expert to attempt to make such a determination.

53. Mr. Fellin goes on to do some speculating of his own in the same paragraph on page 5: “it is quite possible that the DMG machines were not imperative to performing the work for Sensus that forms the basis for the lost profits claims here.”

54. It is also “quite possible” that there is no need for an accounting expert to offer an opinion on that issue, as it is quite outside the scope of his expertise.

55. Mr. Fellin goes on to conclude on page 5 that Mr. Bronder’s analysis is not merely wrong, but is “haphazard and unsophisticated.”

56. Mr. Fellin should be precluded from lobbing such unnecessary, inflammatory insults at trial.

57. On page 6, Mr. Fellin accuses Mr. Bronder of “blindly” accepting notions and being “irresponsible” to assume all projects are equal.

58. On page 7, Mr. Fellin offers the final two unnecessary, insulting adverbs in his report: “naively” and “imprudently.”

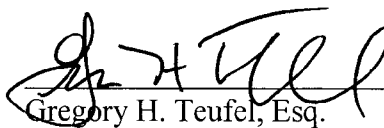
59. It seems safe to assume Mr. Fellin would use similar insulting inflammatory language at trial if he is not admonished against doing so in advance of trial by the Court.

60. For all the foregoing reasons, Gortech requests that the Court preclude Mr. Fellin from commenting on discovery issues, using unnecessarily insulting, inflammatory language, and criticizing assumptions on issues such as liability and causation, which have nothing to do with accounting.

WHEREFORE, Plaintiff Gortech requests that this Court enter the attached proposed Order or grant such other and further relief as this Court may deem proper.

Respectfully submitted,

Dated: September 19, 2011

A handwritten signature in black ink, appearing to read 'G. H. Teufel', is written over a horizontal line.

Gregory H. Teufel, Esq.

Jeremy L.S. Samek, Esq.

Christopher E. Mohny, Esq.

Attorneys for Plaintiff,

Gortech Global Fabrication, LLC

DRAFT

August 29, 2011

Joseph A. Hudock, Esquire
Summers, McDonnell, Hudock, Guthrie & Skeel, L.L.P.
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

Re: Gortech Global Fabrication, LLC v. DMG Chicago, Inc.

Dear Mr. Hudock:

In connection with the above-captioned matter, you have asked us to review and evaluate Gortech Global Fabrication's ("Gortech") claim for potential economic damages in this matter. The Plaintiff's claim is summarized in a report of Michael H. Bronder ("Bronder") dated July 20, 2011.

This report represents our findings to date. We anticipate obtaining additional information in this matter and therefore, reserve the right to amend, revise or supplement our report, when additional information become available or if we are asked to perform additional analysis. This report is limited in scope to economic damages in this matter and does not address or presuppose the liability aspects of the matter. This report is intended for the sole and exclusive use of the parties in the above captioned litigation. It may not be disseminated or utilized for any other purpose without the written consent of The Nottingham Group, LLC.

Executive Summary

Based upon the analysis that we performed in this matter, it is our determination that Bronder's analysis of the damages in this case is superficial, flawed and is not the result of a thorough analysis of the facts and circumstances in this case. Bronder merely took a set of assumptions that were provided to him at face value and performed a simple mathematical exercise. Notwithstanding this fact, there are a number of other errors that Bronder committed that render his analysis useless as a measure of damages in this case.

We have also reviewed the information that Gortech has produced in this case. It is our strong opinion that Gortech has not produced financial and other information that would be sufficient to render an opinion on the alleged lost profits that it suffered in this matter. Gortech has vigorously fought efforts to produce the necessary information that would be required to properly construct or evaluate the claim, which casts further doubt on the legitimacy of its claim for lost profits. As such, we (or any other responsible analyst for that matter) are unable to properly analyze and evaluate Gortech's claim for damages in this matter.

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I. Background

It is our understanding that in or around February, 2005, Predator Performance, LLC ("Predator"), a company related to Gortech, agreed to purchase two machines from DMG Chicago, Inc. ("DMG"). These machines were intended to be utilized, in conjunction with other machinery, in its overall manufacturing process whereby it made machined parts for outside customers.

Gortech alleges that there were defects with the machinery supplied by DMG. Gortech also alleged that DMG failed to provide adequate training in the use of the machinery. Despite the fact that Gortech never ceased operating as a result of the alleged problems with the DMG machinery and the fact that it had produced product for customers prior to the delivery of this machinery, Gortech contends that it lost a valuable contract which resulted in substantial lost profits to company

As a result of the above events, Gortech filed suit in Clearfield County Court, alleging, among other things, breach of contract. In connection with its lawsuit, counsel for Gortech retained the services of Michael H. Bronder to conduct an analysis and to render an opinion of the alleged economic loss suffered by Gortech. The Nottingham Group, LLC has been retained on behalf of DMG to evaluate Gortech's claim for damages prepared by Bronder.

II. Procedures Performed

In conducting our work on this engagement, we performed a variety of testing and analytical procedures. These included the following, among others.

- Met with Counsel for DMG to gain an understanding of the case and our expected role in it;
- Reviewed various background documents in this case including pleadings;
- Conducted a comprehensive review and analysis of the Bronder Report;
- Reviewed documents that were produced by Gortech in support of its damage claim;
- Conducted industry and economic research on Gortech and its customers; and
- Summarized our findings in this narrative report.

III. Information Relied Upon

In the course of performing our work on this engagement, we have reviewed and/or relied upon a number of documents and sources of information. These are detailed on **Attachment I** to this report.

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IV. Adequacy of the Information Produced By Gortech In Support of Its Claim

Part of our assignment in this matter was to review the information that was produced by Gortech in this matter in support of its claim for lost profits. A proper claim for lost profits should be adequately supported by the evidence that has been produced in the case. It is clear from our review of the information produced by Gortech in support for its claim for lost profits that it is not the type of information that is typically relied upon, nor does it provide a reasonable basis for the claim.

It is our understanding that Gortech has only produced two types of documents in support of its claim for lost profits. The first is a summary spreadsheet that purports to summarize the gross profit that was realized on other projects that Gortech worked on in the past. The second document grouping is allegedly the documents that underlie the summary spreadsheet. It should be pointed out that Gortech did not produce any income tax returns or financial statements whatsoever.

The deficient level of information that was produced by Gortech in support of its claim is highly unusual and not consistent with common practice in this area. In order to properly evaluate a company's gross profit, it is essential to evaluate all of a company's fixed, variable and semi-variable costs. In most cases, the information required for this type of analysis would include but not be limited to detailed financial statements, income tax returns, job cost reports, projections and bid documents, among others. Clearly the information that Gortech produced in this matter in support of its claim is not consistent with common practice in this area.

One of the most fundamental documents that Gortech could have provided, would have been the bid documents for the Sensus projects that Gortech contends that it would definitely have received, but for the problems with the machinery from DMG. This documentation would have been prepared by Gortech at the time it had supposedly submitted its bid to Sensus. As indicated in the Radaker affidavit, Gortech would have allegedly gotten the work if they had proven that they could do so cost effectively and within the Sensus quality limits.

We found it highly unusual and peculiar that Bronder would agree to render an opinion on damages in this case, given the inadequate and deficient level of information made available in this case. It would be Bronder's responsibility to obtain the requisite level of documentation in this case, which should then have been produced in this litigation. However, given the fact that there was clearly an inadequate amount of information to support a reasonable estimate of lost profits, Bronder should have provided no opinion in this regard, or at least qualified that his opinion was based upon a speculative assumption that he did not test.

V. Overview of Bronder Report

Bronder conducted an analysis in this case whereby he determined that Gortech suffered a significant economic loss in connection with the events that are the subject of this litigation. Specifically Bronder determined that Gortech suffered damages in two distinct areas; a loss on the value of the different machines and lost profits. He also determined

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that Gortech is due interest on the alleged damages it suffered. The damages that Bronder quantified in this matter are summarized in the following table.

Area of Damage	Amount
Difference in Value of Machines	\$354,151
Lost Profits	1,118,803
Interest	283,877
Total Damages	\$1,756,831

VI. Critical Analysis of the Bronder Report

We conducted a comprehensive analysis of the Bronder Report. Our analysis revealed that Bronder's work in this matter is fatally flawed, not the product of a sufficient analysis and contains many methodological errors. As a result, Bronder's work should not be considered as a possible measure of potential damages in this matter.

In conducting our work in this case, we identified numerous and egregious deficiencies and errors in Bronder's work and the information that he based his entire analysis on. Set forth below are some of the more significant errors that we identified with Bronder's work in this case.

Bronder's Entire Analysis is Founded upon a Single, Highly Speculative Assumption

The foundation of Bronder's entire lost profits analysis is the assumption that Gortech would have obtained a long term contract to supply Sensus with a variety of manufactured parts. While this scenario presents one possibility, it is a fact that Gortech did not, in fact, have a contract with Sensus. There is not enough substantiation in this case for Bronder to cavalierly assume that Gortech would have obtained these various projects with Sensus.

It is important to note that the work, that Bronder simplistically assumed would be obtained by Gortech, had not commenced in any way. Based upon the evidence in this case, Gortech's bid had not been accepted (the evidence suggests that there was not even a bid prepared in connection with this work). As such, there was no contract. There were no negotiations of terms or pricing. Without further information, it is highly speculative on Bronder's part to assume that Gortech would have obtained and performed the Sensus work.

The only document that has been supplied by Gortech in support of its claim that it would have received this work was a request for quote from Sensus. A request for quote is a bit different than having a signed contract. Manufacturers and contractors routinely get requests for quotes that are either not bid upon or their bid is not the lowest and therefore they do not get the work that underlies the request for quote.

Therefore, it is speculative to assume that Gortech would have submitted the lowest bid for the contract and would have produced at the levels indicated in the Bronder Report. It does not appear that Bronder performed any analysis whatsoever to determine that the speculative assumption that is fundamental to his entire analysis was in fact, valid.

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It is irresponsible of Bronder to merely rely on one piece of evidence as the basis for his entire analysis. Although there was a possibility that Gortech may have obtained this business, there was also a possibility that Sensus would have produced these products in-house or utilized another manufacturer to produce them. It does not appear that Bronder made any attempt to speak with Stephanie Radaker or any other party to determine whether his foundational premise was valid.

Bronder Never Performed Any Analysis to Draw a Connection With the Machine Provided By DMG and the Sensus Work

As indicated above, Bronder's entire analysis is founded upon the assumption that there were problems with the machinery supplied by DMG, and that these problems were the sole and exclusive reason for Gortech not obtaining these various pieces of the Sensus business. However, it is apparent from his report that Bronder failed to conduct any analysis or inquiry into how the DMG machinery would have been utilized in performing these specific contracts for Sensus. Once again, this failure to test his assumptions points to the insufficient and/or inadequate nature of Bronder's analysis in this case.

Gortech had worked on many fabricating jobs before the prospect of bidding on the Sensus work came into being. Obviously these jobs were completed without the machinery supplied by DMG. As such, it would be imperative to this case to determine how these specific DMG machines would have been utilized in the hypothetical work, if at all. Given the operating history of Gortech, it is quite possible that the DMG machines were not imperative to performing the work for Sensus that forms the basis for the lost profits claims here.

Nowhere in his report does Bronder acknowledge or even address this salient fact. He just implicitly assumes that this machinery was critical to the work and it could not have been completed without the use of the DMG machinery. This is just another example of the haphazard and unsophisticated analysis that was performed by Bronder in providing his estimate of damages in this case.

The Size and Scope of the Projects that Bronder Based His Comparative Analysis on Are not Comparative to the Hypothetical Sensus Work

Bronder utilized the spreadsheet provided by his client as the sole basis for his lost profits analysis. This spreadsheet contains summary level information for approximately 50 jobs, which Bronder then utilized to project margins on the hypothetical Sensus work. However, an examination of each of the individual projects listed on the spreadsheet reveals that none are directly comparable to the Sensus work.

A detailed review of the Gortech supplied spreadsheet indicates that many of the jobs listed on the document are extremely small in nature, with most being less than \$1,000 in scope. The hypothetical work for Sensus, however, would have been millions of dollars. This piece of work would have been larger than all the jobs that Gortech had performed in the past combined. As such, it is invalid to assume that these other jobs are directly relevant and highly comparable to the alleged Sensus work.

It is a fact that as the size and scope of projects increase, the margins tend to go down. For example, on small projects, a job shop would likely require a larger profit and bid a higher

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amount over gross margin to ensure a profit. For a large project, there would be a larger gross margin and thus, a lower profit would be acceptable. It is interesting to note that almost all of the projects that were contained in the spreadsheet that formed the sole basis for Bronder's were very small, relative to the Sensus work. In fact, the hypothetical Sensus work was larger than all of the other projects combined. Clearly it is not valid for Bronder to have imprudently assumed that the margins for the hypothetical work would be the same as other projects that were less than 1% in size and scope.

Bronder Inappropriately Assumed that All Projects are the Same

Bronder based his lost profits analysis solely on the document provided by Gortech. This document lists approximately 50 different projects that Sensus had worked on in the past. These include discrete and unique projects of all sizes for various end customers. Bronder blindly accepted the notion that all projects were equal and took a simple average of all projects, rather than analyzing the individual projects to determine which, if any, would have been comparative to the Sensus work.

Our review of the document provided by Gortech revealed that there was a wide variety of gross margins for the various projects. The margins ranged from a low of 42% to a high of 96%. With this high level of variability and standard deviation, it is invalid to just assume that all projects are the same and take a simple average of all projects. Yet, that is exactly what Bronder did.

The only way that a comparative gross profit analysis would have relevance in this case would be to evaluate each individual project and determine which, if any, were comparable to the work that hypothetically would have been performed for Sensus. In a job shop such as Gortech, there are a wide variety of projects performed, and has with different margins. In this type of manufacturing operation, it is irresponsible of the evaluator to just assume that all projects are equal.

Bronder Failed to Test the Allocation of Overhead Provided by Gortech

Even if one were to ignore the fact that Bronder did not properly analyze his foundational assumption that Gortech would have been the recipient of all of this work provided by Sensus, there are other significant deficiencies in his analysis. Namely, Bronder completely failed to perform any analysis whatsoever of the unsupported overhead numbers that were supplied by Gortech to support a large claim for damages in this case.

It is astonishing that Bronder would not seek and analyze the detailed overhead costs incurred by Gortech. Rather, his only analysis consisted of taking an unsupported overhead number supplied by his client and allocating it on a different basis than Gortech did. While we don't disagree with Bronder's adjustment (which appears to be his sole piece of analysis in this case), a much more relevant analysis would have been more appropriate to evaluate allocable overhead.

There are a number of overhead related costs that likely would have increased, some significantly, if Gortech had actually received the Sensus work. These may include but not be limited to payroll taxes, insurance, utilities, sales commissions and employee bonuses, just to name a few. One cannot do a sufficient analysis in this case without a thorough analysis of any and all of Gortech's overhead expenses.

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It should also be pointed out that in addition to the Gortech overhead analysis there should have been an analysis of the overhead at all levels of the company to determine how overhead at other related entities may have been affected by performing work for Sensus.

Bronder Could Not Have Arrived at His Conclusions with the Information Produced by Gortech

As the sole support for his estimate of loss in this matter, Bronder naively utilized a spoon-fed summary-level document that was prepared by the Plaintiff in this case after the commencement of the litigation. Namely, Bronder relied wholly on this document, which appears to be prepared by Gortech after the commencement of this litigation and for the sole purpose of computing damages in this litigation. It is a fact, however, that Bronder could not have made the adjustments indicated in his report without access to additional information that was not produced in this case.

Bronder claims that he analyzed this document and then made certain adjustments to overhead costs. However, it appears that no breakdown of these costs was provided. As such, it is not possible for Bronder to have rendered this opinion without additional information.

Bronder's Methodology for Calculating Difference in Value of Machines is Flawed

As summarized in his report, Bronder determined that Gortech suffered damages in the amount of \$354,141 which represented the alleged difference between the CTX 420 V4 and the CTX 420 V6 machines. To calculate this, Bronder utilized rough estimates and tax depreciation to determine the fair market value of the CTX 420 V4 as of June 8, 2006. This methodology is improper and does not serve to adequately capture the actual value of the machine as of this date.

As a CPA, Bronder should be aware of the fact that depreciation and fair market value are two entirely separate concepts. While depreciation is an accounting convention for generally accepted accounting principles, it oftentimes has no relationship whatsoever to fair market value. Some assets may be depreciated while their fair market value actually increases (an example of this would be a residential rental property). In other cases, the value of an asset may decline more precipitously than the depreciated value. It is for this reason that a proper analysis of this potential area of damages would have been limited to an analysis of the used and secondary market prices for these products.

As with many other areas of his analysis, Bronder imprudently utilized a methodology that is improper and failed to conduct the necessary analysis or obtain the relevant data in order to determine if there are, in fact damages in this area and if so, to what extent. Based upon this, Bronder's estimate of the difference in the value of these machines is invalid and cannot be utilized as a measure of damages in this area.

VII. Alternative Estimate of Economic Damages

As part of our assignment on this matter, we were asked, if we determined that Bronder's analysis of potential damages was not reliable, to construct an alternative analysis of

Joseph A. Hudock, Esquire
August 29, 2011
Page 8

DRAFT

potential economic loss in this matter. As indicated above, we take great exception to the superficial and fatally flawed analysis that Bronder performed in this matter.

We are unable, however to construct a comprehensive and thorough analysis of loss in his matter, due to insufficient information made available by Gortech.

VII. Summary of Opinions and Conclusions

Based upon our analysis in this matter, we have concluded the following:

- Plaintiff Gortech has not supplied sufficient financial and other information that would support a reasonable claim for lost profits in this case. Rather, Gortech has fought to withhold critical information.
- The damage analysis conducted by Michael H. Bronder is highly speculative and appears to be little more than a mathematical exercise which is highly superficial and lacks any substantive analysis. As such, it should not be relied upon in any manner as a reliable estimate of economic damages in this matter.
- We are not in a position to provide a reliable and supported estimate of the potential damages in this matter, due to the overall lack of credible evidence supplied by the Plaintiffs in this matter.

The opinions and conclusions contained in this report are those of James S. Fellin, CPA, CFF, CFE and are provided within a reasonable degree of accounting certainty. A copy of Mr. Fellin's curriculum vitae is included as **Attachment II** to this report.

Very truly yours,

The Nottingham Group, LLC

By:

James S. Fellin, CPA, CFF, CFE

**Gortech v. DMG Chicago
Information Relied Upon**

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During the course of our investigation we have relied upon the following sources of information, among others:

- Complaint filed on behalf of Plaintiff Gortech Global Fabrication, LLC.
- Affidavit of Stephanie Radaker and attachments dated February 15, 2011.
- Transcript from the deposition of Dennis V. Raybuck, taken June 24, 2009.
- Transcript from the deposition of Todd D. Gordon, taken June 24, 2009.
- Price lists and brochures related to various CTX series machines at issue in this case.
- Assignment and Safekeeping Contract between DMG America and ICP/Gortech regarding a GMX 400 and a DMU80P machine, signed December 30, 2005.
- Summary of Gortech gross profit by job for the time period from July 2005 through March 2009.
- Report of Bronder & Company, P.C., dated July 20, 2011.

JAMES S. FELLIN, CPA, CFF, CFE

Mr. Fellin is the Managing Principal of The Nottingham Group LLC, a boutique consulting firm specializing in economic damage analysis, forensic accounting investigations and providing litigation support services. He has over twenty-five years of experience in performing financial and economic damage analysis and conducting forensic accounting investigations for legal counsel, public and private businesses, not for profits and governmental entities. Prior to the working with the Nottingham Group, Mr. Fellin gained experience with large national consulting and forensic accounting firms.

Mr. Fellin is a Certified Public Accountant licensed in the State of Pennsylvania and a Certified Fraud Examiner. He has also obtained the CFF (Certified in Financial Forensics) designation from the AICPA.

Mr. Fellin currently serves as an adjunct professor of Forensic Accounting at Carlow University located in Pittsburgh, Pennsylvania where he teaches two classes in the forensic accounting major. In 2005, he was nominated and was appointed by the Agent-In-Charge of the Pittsburgh office of the Federal Bureau of Investigation to attend its Citizen's Academy in Pittsburgh. Mr. Fellin completed the academy training and graduated in May of 2006.

Mr. Fellin has extensive experience analyzing and calculating economic damages and business losses, conducting forensic accounting investigations and performing financial and statistical analysis in a wide range of matters. Over his career, he has assisted counsel and clients on matters involving a myriad of issues including commercial and economic damages, earnings losses, business valuation, and fraud and impropriety, among others. The results of his analyses have been used as evidence in various legal forums, and have served as the basis for settlement and determination of damages.

Mr. Fellin is very involved with the Association of Certified Fraud Examiners (ACFE), the most widely recognized organization governing the discipline of fraud investigation, with over 40,000 members all over the world. Mr. Fellin serves as President of the Pittsburgh Chapter of the ACFE and very active in programming the chapter's activities.

Mr. Fellin has testified numerous times as an expert witness on various business and accounting matters on a variety of issues including economic damages and loss. He has testified in both Federal and State Courts and at arbitration proceedings. Mr. Fellin has also been appointed as a special examiner by the bankruptcy court to conduct forensic accounting investigations.

Mr. Fellin has been a frequent speaker at local and national continuing education seminars and conferences on the topics of economic damages, fraud and forensic accounting analysis. In addition, he has been published in several leading professional journals. In the recent past, he has had speaking engagements at National Conferences for the American Institute of CPA's and the Association of Certified Fraud Examiners on various topics including damages and forensic accounting. He has also had numerous local speaking engagements on these topics as well.

Mr. Fellin received his Bachelor of Science degree from Villanova University with a major in Accounting, and a minor in Finance. He is a member of several professional organizations including the American Institute of CPA's and the Pennsylvania Institute of CPA's. He has served on the boards of the Pittsburgh Symphony Orchestra; the Alzheimer's Association and has participated in numerous philanthropic events and fundraisers.

Expert Report of
MICHAEL H. BRONDER, CPA
in the Matter of

Gortech Global Fabrication, LLC v.
DMG Chicago, Inc. Court of Common Pleas
of Clearfield County, Pennsylvania,
Civil Division No. 07-754-CD



BRONDER & COMPANY, P.C.
CERTIFIED PUBLIC ACCOUNTANTS

EXHIBIT B

BRONDER & COMPANY, P.C.
CERTIFIED PUBLIC ACCOUNTANTS

235 ALPHA DRIVE
PITTSBURGH, PA 15238
TELEPHONE 412.963.1270
FACSIMILE 412.963.8838
WWW.BRONDERCPAS.COM

July 20, 2011

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

Re: **Gortech Global Fabrication, LLC v. DMG Chicago, Inc. Court of Common Pleas
of Clearfield County, Pennsylvania, Civil Division No. 07-754-CD**

Dear Mr. Teufel:

In accordance with your request, I have analyzed the damages sought in the Complaint filed by Gortech Global Fabrication, LLC ("Gortech") against DMG Chicago, Inc. ("DMG"). The purpose of my engagement was to prepare a report assessing damages suffered by Gortech as a result of the DMG's breach of a contract to supply a machine to Gortech as a trade-in for another machine.

In performing my engagement, I met with legal counsel and had various discussions with Mr. Dennis V. Raybuck of Gortech to collect information regarding the nature of the dispute. In addition, I reviewed deposition transcripts and exhibits, pleadings, discovery answers and other documents produced in discovery as detailed in Exhibit A to my report. I also relied upon my own independent research and analysis, my professional training and 26 years of experience as a Certified Public Accountant.

QUALIFICATIONS

I am a Certified Public Accountant and President of BRONDER & COMPANY, P.C. Established in 1989, BRONDER & COMPANY, P.C. is a public accounting firm involved in audits and reviews of financial statements, income tax preparation and planning services, management advisory services, consulting and litigation support services.

I received a Bachelor's Degree in Business Administration from Robert Morris College in 1983 and was licensed as a Certified Public Accountant by the Commonwealth of Pennsylvania State Board of Accountancy in 1986. I specialize in serving closely-held businesses with sales of approximately \$1 million to \$100 million and spend a significant portion of my time performing litigation support services, including the calculation of economic damages in a variety of civil actions. I have spoken publicly on a number of accounting and business topics, and have testified in court and at arbitration proceedings as an expert in accounting and other financial matters. My curriculum vitae is attached as Exhibit B to this report.

BACKGROUND

Following is my brief understanding of the background of this matter, which is derived from my review of the pleadings, written discovery, and other documents in this case and my conversations with individuals knowledgeable about the dispute.

During February 2005, Predator Performance, LLC ("Predator"), a company related to Gortech, purchased from DMG two machines; a DMU 100T 5 and a CTX 320 Linear CNC. Predator returned the DMU 100T 5 because it did not perform as promised; and on October 12, 2005, Predator paid the remaining balance due for the purchase of the CTX 320.

Predator subsequently conveyed the CTX 320 to Gortech, and Gortech had discussions with DMG regarding trading in the CTX 320. Gortech decided against trading the CTX 320; however, DMG had already sold the CTX 320 to another of DMG's customers. Gortech agreed to accept a used 2003 CTX 420 V4 in trade for the CTX 320 as an accommodation to DMG. The CTX 420 V4 was delivered to Gortech in February 2006.

During late 2005, Gortech was contacted by Sensus Metering Systems, Inc. ("Sensus") requesting quotes for various parts that Sensus desired to purchase from an outside source. Sensus provided Gortech with target costs for the parts and likely would have ordered the parts from Gortech if the parts met the required quality and specifications. Gortech intended to manufacture these parts for Sensus using the machine purchased from DMG.

After taking delivery of the CTX 420 V4, Gortech discovered that the machine had previously been damaged. DMG supplied replacement parts for those parts that needed to be replaced; however, the machine continued to experience significant vibration problems. In addition, software problems surfaced with the CTX 420 V4, and DMG had to install new software to correct the problem. In addition to the various problems with the machine, DMG failed to provide training that it had promised in the agreement to trade in the CTX 320 on the CTX 420 V4.

On June 8, 2006, DMG entered into a contract agreeing to replace the CTX 420 V4 with a new CTX 420 V6, including all options, a machine that was worth substantially more than the CTX 420 V4. DMG failed to deliver the CTX 420 V6 as required by the contract and, instead, offered to provide training on the CTX 420 V4. Gortech insisted that DMG honor its contract or refund the money Gortech had paid. DMG failed to honor the contract or refund the money.

As a direct result of DMG's failure to provide a working machine to Gortech, Gortech permanently lost the opportunity to manufacture parts for Sensus, and Sensus continued to produce the parts in-house.

SCOPE OF ENGAGEMENT

The scope of my engagement is limited to an analysis of relevant financial information to determine the amount of damages sustained by Gortech assuming that DMG will be held liable for its actions described above. I do not render any opinion regarding the existence of such liability.

DAMAGES

In my professional opinion, there exist at least three categories for calculating damages in this matter. These categories are as follows:

1. Difference between the value of the CTX 420 V6 and the value of the CTX 420 V4,
2. Lost profits as a result of DMG's failure to deliver a properly functioning CTX 420 V4 or the CTX 420 V6, and
3. Interest on the two categories listed above.

For the reasons explained at length below, I have concluded that Gortech is entitled to an award of damages in the amount of \$1,756,831. In the following sections of this report, I provide a detailed analysis of each category of damages.

Difference Between the Value of the CTX 420 V6 and the Value of the CTX 420 V4

On February 9, 2005, Predator paid DMG \$52,500 as a down payment toward the two machines it originally purchased (i.e. the DMU 100T 5 and the CTX 320). Upon Predator's return of the DMU 100T 5 to DMG, the entire down payment was applied to the CTX 320. DMG agreed to reimburse Predator for certain expenses associated with the DMU 100T 5 totaling \$14,653.85. After applying the down payment and the expense reimbursement to the purchase price of \$199,500 for the CTX 320, Predator owed \$132,346.15 to DMG. Predator paid DMG this \$132,346.15 on October 12, 2005. In total, Predator paid \$199,500 for the CTX 320. Gortech subsequently agreed to take a used 2003 CTX 420 V4 in trade for the CTX 320 as an accommodation to DMG. According to a price list dated 24/05/2011 provided by DMG, the price of a CTX 420 V4 as of April 14, 2004 was \$179,900.

After receiving the CTX 420, V4, Gortech discovered that the machine was damaged and had software problems. Furthermore, DMG failed to provide training to Gortech, resulting in the CTX 420 V4 being of no value to Gortech.

In an effort to rectify the situation between DMG and Gortech, DMG agreed, on June 8, 2006, to provide a new CTX 420 V6 in trade for the CTX 420 V4; however, DMG has failed to provide the new machine. The difference between the value of the CTX 420 V6 that was promised by DMG and the value of the CTX 420 V4 as of June 8, 2006 represents damages suffered by Gortech as a result of DMG's actions.

Based on information provided by DMG, machinery such as the CTX 420 V4 loses 30% of its value in the first year, and the remaining value of the machinery depreciates over five to seven years. In addition, DMG acknowledged that the specific machine owned by Gortech would have had its value negatively impacted by the fact that the machine had previously been "crashed."

Following is a calculation of the approximate value of the 2003 CTX 420 V4 as of June 8, 2006:

List price of CTX 420 V4	\$	179,900.00
Depreciation for 2003 at 30%	\$	(53,970.00)
Depreciation for 2004 at 14%	\$	(25,186.00)
Depreciation for 2005 at 14%	\$	(25,186.00)
Depreciation through May 2006 at 5.83%	\$	(10,494.17)
Estimated value at June 8, 2006 ¹	\$	<u>65,063.83</u>

DMG has provided a price list as of April 14, 2006 for the CTX 420 V6, including all options and accessories; and Mr. Dennis Raybuck of Gortech has identified the options and accessories that Gortech would have selected for the replacement CTX 420 V6. Following is a calculation of the value, as of April 14, 2006, of the CTX 420 V6 with the selected options and accessories:

Part Number	Description from Price List	Price per Unit	Options Selected	Extended Price
B-A2350	CTX 420 Linear V6 HEIDENHAIN IT	\$232,900	1	\$232,900
B-H2305	tool gauging device in working area, autom.	\$6,250	1	6,250
B-F0025	add. high pressure coolant pump, 20 bar	\$12,350	1	12,350
B-Z0400	coolant spray gun	\$1,280	1	1,280
B-E2302	bar machining package for parts up to	\$16,150	1	16,150
B-B0020	main spindle reduction tube, per 0	\$555	1	555
B-K0005	interface for bar feed/loading magazine	\$3,450	1	3,450
B-K0400	bar loading magazine IRCO, SiMag 70.1-R	\$44,200	1	44,200
B-S0208	3-jaw chuck KH 315/117, Berg	\$12,050	1	12,050
B-S0904	soft top jaws (3 pcs.), chuck 0250	\$140	6	840
B-W0003	Tool pre-setter type PRIMA, orientation price	\$45,700	1	45,700
B-Z2065	package for increased ambient temperature	\$3,270	1	3,270
B-Z0900	additional documentation	\$505	2	1,010
B-Z0050	drawing of oil tank	\$210	2	420
B-Z0910	wiring diagrams and parts lists,	\$505	2	1,010
B-Z0912	wiring diagrams and parts lists	\$505	2	1,010
B-Y2001	comm. of the machine w/ bar feed	\$5,690	1	5,690
B-Y0218	course in maintenance mechanic, 4,5 days	\$2,120	1	2,120
B-Y0215	course service electronic, 4,5 days	\$2,120	1	2,120
B-Y0212	course in trouble shooting a. diagnostic 3 d.	\$1,410	1	1,410

¹ Rather than assign a specific impairment in value to the damages caused by the "crash," I depreciated the machine over the shorter life (5 years) cited by DMG.

B-Y0000	Packing cost for road transport	\$480	1	480
B-Y0031	Packing cost, sea case	\$2,810	1	2,810
B-Y0034	Packing cost, sea case, for bar feeder	\$1,780	1	1,780
A-S061	Progr./Train. Software TurnPlus iT classroom	\$14,350	1	14,350
A-D058	Prog./Sett./Oper., HNH PlusiT, DINPlus V7x, 4,5d	\$2,120	1	2,120
A-D059	Sett./Oper., HNH PlusiT, TurnPlus V7x, 2.5d	\$1,180	1	1,180
A-D060	Prog./Sett./Oper., C/Y-axis, HNH PlusiT, TurnPlus V7x, 2d	\$940	1	940
A-D092	Training at customers premises outside	\$1,770	1	1,770
TOTAL				<u>\$419,215</u>

Based on this calculation, the difference between the value of the new CTX 420 V6 with all options and accessories and the 2003 CTX 420 V4 on June 8, 2006 was \$354,151.17.

Gortech's Lost Profits

The second category of damages identified above is Gortech's lost profits. Lost profits are generally measured by the difference between the profits that the plaintiff would have realized but for the defendant's actions and the plaintiff's actual profits. In other words, lost profits equal incremental revenues less incremental costs.

Gortech originally purchased a machine from DMG with the intention of expanding its manufacturing capabilities to perform a greater volume of work and to take on additional customers, thereby increasing sales. It is not possible to accurately quantify every additional dollar of sales that Gortech would have realized had DMG lived up to its contractual requirements; however, the opportunity to manufacture parts for Sensus is one that was clearly lost as a result of DMG's actions.

Based on an Affidavit provided by Ms. Stephanie Radaker, a Buyer for Sensus in 2005, Sensus was prepared to outsource the manufacturing of specific parts if the outside source had the ability to produce the parts in conformity with Sensus' drawings and specifications and at prices specified by Sensus. Ms. Radaker, on behalf of Sensus, solicited quotes from Gortech via emails in late 2005.

In her Affidavit, Ms. Radaker generally stated that, if Gortech would have been able to provide Sensus with parts that met Sensus' specifications, cost, quality and delivery requirements, Sensus would have likely ordered parts from Gortech that, after a phase-in period, amounted to annual volumes of at least \$328,414.48. Ms. Radaker also stated that these sales would have continued for many years.

Because of DMG's actions, Gortech was not able to supply Sensus with the parts; and, as a result, Sensus continued to produce the parts in-house. The potential sales to Sensus represent the minimum lost sales suffered by Gortech as a result of DMG's failure to provide Gortech with properly functioning machinery.

It is likely that Gortech would have had substantially more sales than those related to the Sensus opportunity had DMG provided a properly operating CTX 420 V6; however, to provide a conservative calculation of lost profits, I have not considered such additional sales. In addition, I conservatively assumed that the level of sales to Sensus would have remained constant at \$328,414.48 per year, with no growth. I further assumed that the sales to Sensus would have commenced March 1, 2006 (the month after the delivery of the CTX 420 V4), and that it would have taken the remainder of 2006 for sales to phase in to the point at which monthly sales were averaging \$27,367.87 (1/12th of \$328,414.48).

The following chart summarizes Gortech's lost sales through October 19, 2011 (the scheduled date for commencement of trial) related to the Sensus opportunity:

Lost Sales to Sensus						
	2006	2007	2008	2009	2010	2011
January	\$ -	\$ 27,368	\$ 27,368	\$ 27,368	\$ 27,368	\$ 27,368
February	-	27,368	27,368	27,368	27,368	27,368
March	2,488	27,368	27,368	27,368	27,368	27,368
April	4,976	27,368	27,368	27,368	27,368	27,368
May	7,464	27,368	27,368	27,368	27,368	27,368
June	9,952	27,368	27,368	27,368	27,368	27,368
July	12,440	27,368	27,368	27,368	27,368	27,368
August	14,928	27,368	27,368	27,368	27,368	27,368
September	17,416	27,368	27,368	27,368	27,368	27,368
October	19,904	27,368	27,368	27,368	27,368	16,774
November	22,392	27,368	27,368	27,368	27,368	-
December	24,880	27,368	27,368	27,368	27,368	-
	<u>\$ 136,840</u>	<u>\$ 328,416</u>	<u>\$ 328,416</u>	<u>\$ 328,416</u>	<u>\$ 328,416</u>	<u>\$ 263,086</u>

In total, from March 1, 2006 through October 19, 2011, Gortech's lost sales to Sensus were \$1,713,590.

To determine Gortech's incremental costs associated with these lost sales, I obtained a summary of Gortech's machine shop profits by job from July 2005 through March 2009. During that time, Gortech performed approximately 90 machine shop jobs, earning total gross revenues of \$314,835.

Gortech maintained job cost records that accounted for hours spent by employee for each job. To determine cost by job, Gortech calculated the hourly cost for each employee including payroll taxes and benefits, added the cost of materials used (if any) and allocated plant overhead based on an hourly rate (generally \$10.80 per hour). Gortech then determined gross profit by job by subtracting total cost from revenues, calculated gross profit percentage by job and took a mathematical average of each job's profit percentage resulting in average profit of 71.38%.

I reviewed Gortech's methodology and found that several adjustments were required to properly calculate gross profit. I agreed with Gortech's calculation of hourly cost per employee, including payroll taxes and benefits. I also agreed with Gortech's assigning cost of materials to jobs; however, I did not agree with Gortech's methodology for allocating overhead to jobs or its calculation of average profit.

In allocating overhead, Gortech identified total overhead for its plant and allocated a portion of this overhead to the machine shop based on relative square footage. Gortech then calculated an hourly rate for overhead by dividing the allocated overhead by 2,080 hours worked per year.

To properly account for overhead, I identified the items of overhead that varied with production and removed fixed items of overhead that did not vary with production. I allocated variable overhead to the machine shop based on square footage, and then divided the allocated variable overhead by the actual number of hours worked per year in the machine shop from July 2005 through March 2009. The result of my calculation increased Gortech's overhead rate from about \$10.80 per hour to \$15.47 per hour. I then determined revised gross profit by job. Rather than calculate a mathematical average of each job's profit percentage, I summed gross profit from all jobs and divided that sum by total revenues from all jobs. The result, 65.29%, represents a weighted-average gross profit percentage earned by Gortech and is a reasonable estimate of the gross profit that Gortech would have realized on sales that were lost as a result of DMG's actions.

Based on my calculations, Gortech's lost profits related to the Sensus opportunity are \$1,118,803 (\$1,713,590 X 65.29%).

Interest

The third and final category of damages that I identified is interest on the amounts calculated in categories 1 and 2. I calculated interest using a simple rate of 6%, the legal rate of interest in Pennsylvania.

In calculating interest, I made the following assumptions:

1. The damages related to DMG's failure to deliver the CTX 420 V6 occurred on July 31, 2006, based on my assumption that delivery of the machine should have occurred by the end of the month following the month in which DMG agreed to provide the new machine.
2. Gortech's lost profits would have been realized at the end of each month in which its lost sales to Sensus would have occurred based on the chart on page 6 of this report.

Based on my calculations, interest through October 19, 2011 at 6% per year on the two categories of damages is \$283,877.

SUMMARY OF ALL DAMAGES

The total of all damages that I calculated in this matter is summarized as follows:

Difference in value of machines	\$	354,151
Lost profits	\$	1,118,803
Interest	\$	283,877
Total Damages	\$	<u>1,756,831</u>

My opinions and conclusions expressed herein are based on all information provided to me to date in this matter and are expressed to a reasonable degree of professional and accounting certainty. Should additional information come to my attention that would affect my opinions and conclusions, I reserve the right to update my report. This report may only be used in connection with the matter of **Gortech Global Fabrication, LLC v. DMG Chicago, Inc.**, and may not be used for any other purposes.

BRONDER & COMPANY, P.C. is being compensated for its professional services on this engagement based on the amount of time required as calculated at its standard billing rates, which range from \$35 to \$250 per hour, plus actual out-of-pocket expenses. Our fee is not contingent upon the results of the litigation.

Sincerely,



Michael H. Bronder, CPA

Exhibit A – Documents Reviewed

1. Complaint
2. Answer and New Matter
3. Plaintiff's Response to Defendant's First Set of Interrogatories and Request for Production of Documents Directed to Plaintiff
4. Answer to Interrogatories, Response to Request for Production of Documents and Response to Request for Admissions
5. Affidavit of Stephanie Radaker and related Exhibits
6. Email from Dennis Raybuck dated March 11, 2010
7. Machine Shop Gross Profit Study July 2005 – March 2009
8. Deckel Maho Gildemeister Price List dated 24/05/2011
9. Defendant's Pre-Trial Statement
10. Deposition of Timothy D. Altfather
11. Deposition of Dennis V. Raybuck
12. Deposition of Todd. D. Gordon
13. Deposition of Mark Henne and related Exhibits
14. Deposition of Gerald Fitzpatrick and related Exhibits
15. Documents Bates Stamped GOR001 – GOR 538
16. 243 documents produced by DMG on May 26, 2011

Curriculum Vitae of Michael H. Bronder, CPA

BRONDER & COMPANY, P.C.

235 ALPHA DRIVE

PITTSBURGH, PA 15238

Michael H. Bronder earned a Bachelor of Science degree in Business Administration, with honors, from Robert Morris College in 1983. Mr. Bronder obtained his license as a certified public accountant in 1986 and is currently licensed as a certified public accountant in the state of Pennsylvania. Mr. Bronder is a member of both the American and Pennsylvania Institutes of Certified Public Accountants.

Mr. Bronder, the president of BRONDER & COMPANY, P.C., has 26 years experience in public accounting, primarily in the areas of financial reporting, tax reporting and compliance, and litigation support. Bronder has served as an expert or consultant in approximately 45 cases involving:

- intellectual property disputes, including the valuation of intellectual property and the calculation of lost profits and unjust enrichment related to misappropriation (on both the plaintiff and defendant side),
- accounting malpractice claims,
- divorce (including asset and business valuation calculations),
- construction contract claims (on both the plaintiff and defendant side),
- forensic accounting involving the determination of misappropriated funds related to fraud, and calculation of resulting damages,
- business dissolution disputes involving business valuation,
- personal injury matters and the determination of related damages (on both the plaintiff and defendant side),
- business contract disputes including the determination of lost profits (on both the plaintiff and defendant side),
- trade mark infringement,
- bankruptcy (including assisting debtor-in-possession's counsel in identifying potential preferential payments), and
- shareholder disputes, primarily involving business valuations.

Many of these cases involved the calculation of damages, lost profits, potential future cash flow, income streams, and asset values. Bronder has extensive experience in preparing expert reports involving the calculation of damages, evaluating expert reports prepared by others, participating in the discovery process, performing forensic accounting investigations, assisting with and testifying in depositions, providing expert testimony at trial and arbitration, and consulting in settlement negotiations. In the last four years, Mr. Bronder has testified in court, arbitration and deposition in the following matters:

- International Cartridge Corporation v. Kilgore Flares Company, LLC, SinterFire, Inc., Daniel S. Yaich and Joseph S. Coury;
- Tube City IMS, LLC, Claimant, and Severstal Wheeling, Inc., Respondent;
- Digital Encoding Factory, LLC, et al v. Iron Mountain Information Management, Inc.;
- Marcor Remediation, Inc. v. C/G Electrodes, LLC;
- Trafford Corporation v. Columbia Gas of Pennsylvania, Inc., Columbia Gas of Maryland and Columbia Energy Group Service Corporation; and
- Pediatrix Screening, Inc. (Formerly Neo Gen Screening, Inc.) and Pediatrix Screening, L.P. (Formerly Neo Gen Screening, L.P.) v. TeleChem International, Inc.

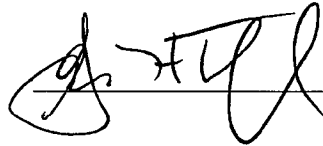
Mr. Bronder has frequently served as a discussion leader for the Pennsylvania Institute of CPAs. In addition, he was an instructor for an advanced accounting course for the New York State Society of Certified Public Accountants. Bronder is a past chairman and a current member of the Pennsylvania Institute of CPAs Committee on Construction Industry Seminar and has been a frequent speaker at this seminar on topics such as proper financial reporting, taxation and litigation.

Mr. Bronder has written and taught training programs for several national meetings of surety bond managers, such as Continental Insurance in Houston, Texas; Chubb Insurance in Warren, New Jersey and Absecon, New Jersey; and Seaboard Surety Company in Bedminster, New Jersey. Bronder has been a speaker for both the Pittsburgh and Altoona chapters of the Associated Builders and Contractors, the Associated Subcontractors of Western Pennsylvania, the Surety Association of Pittsburgh, the Allegheny County Bar Association and commercial loan officers of several banks.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Plaintiff's Third Motion in Limine was served upon the following by deposit in the United States mail, first class postage prepaid, this 19th day of September, 2011.

Joseph A. Hudock, Jr.
Summers, McDonnell, Hudock, Guthrie & Skeel, P.C.
707 Grant Street,
Suite 2400, Gulf Tower
Pittsburgh, PA 15219



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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this ____ day of _____, 2011, upon consideration of the Third Motion in Limine filed by Plaintiff Gortech Global Fabrication, LLC, and any responses thereto, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is Granted. It is hereby ORDERED that, at trial, the Defendant's expert shall refrain commenting on discovery issues, using unnecessarily insulting, inflammatory language, and criticizing assumptions on issues such as liability and causation, which have nothing to do with accounting.

J.

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

SCHEDULING ORDER

AND NOW, this _____ day of September, 2011, upon consideration of the Third Motion in Limine, filed by Plaintiff Gortech Global Fabrication, LLC, it is hereby Ordered that:

1. argument shall be held on _____ at _____ in Courtroom No. _____ of the Clearfield County Courthouse;
2. notice of entry of this Order shall be provided to all parties by the moving party.

_____. J.

ⓧ

FILED *no cc*
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SEP 21 2011

William A. Shaw
Prothonotary/Clerk of Courts *6x*

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	PLAINTIFF'S FOURTH MOTION IN
	:	LIMINE
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	
	:	Filed on behalf of Plaintiff
	:	
	:	Counsel of Record for this Party:
	:	
	:	Gregory H. Teufel, Esq.
	:	Pa. Id. No. 73062
	:	Amy J. Roy, Esq.
	:	Pa. Id. No. 86584
	:	Jeremy L.S. Samek, Esq.
	:	Pa. Id. No. 205060
	:	Eckert Seamans Cherin & Mellott, LLC
	:	U.S. Steel Tower
	:	600 Grant Street, 44 th Floor
	:	Pittsburgh, PA 15219
	:	412.566.6000 telephone
	:	412.566.6099 fax
	:	
	:	Christopher E. Mohnney, Esq.
	:	PA I.D. 63494
	:	25 East Park Avenue, Suite 6
	:	DuBois, PA 15801
	:	814.375.1044 telephone
	:	814.375.1088 fax

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

PLAINTIFF’S FOURTH MOTION IN LIMINE

Plaintiff, Gortech Global Fabrication, LLC (“Gortech” or “Plaintiff”), by its undersigned attorneys, hereby files the following Motion in Limine pursuant to Pa. R. Evid. 403, 408:

1. This Motion in Limine seeks to preclude Defendant DMG Chicago, Inc. (“DMG” or “Defendant”) from offering evidence or making reference to settlement negotiations.

2. DMG’s First Amended Pre-Trial Statement is very vague about what documents DMG intends to offer, but it lists all emails between the parties and those would include emails consisting of settlement communications.

3. Pa. R. Evid. 408 provides in relevant part as follows:

Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:

(1) furnishing or offering or promising to furnish – or accepting or offering or promising to accept – a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or statements made in compromise negotiations

4. DMG could attempt to introduce evidence regarding the fact that Gortech offered to settle the claims at issue for substantially less than the amounts of damages it is currently

seeking, in an attempt to improperly persuade the jury that the claims are therefore worth less than the amounts claimed.

5. Such an attempt would be improper under Pa. R. Evid. 403 and 408.

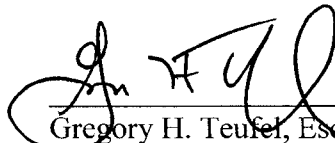
6. At this point at least, there is no obvious reason why any evidence of the parties' settlement negotiations would be proper or relevant at trial.

7. Unless and until some party opens the door or the settlement communications somehow become relevant and admissible at trial, the Court should preclude the parties from making any reference to or offering any evidence of settlement negotiations.

WHEREFORE, Plaintiff Gortech requests that this Court enter the attached proposed Order or grant such other and further relief as this Court may deem proper.

Respectfully submitted,

Dated: September 19, 2011

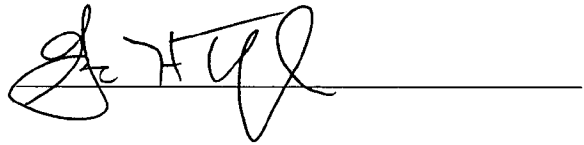


Gregory H. Teufel, Esq.
Jeremy L.S. Samek, Esq.
Christopher E. Mohney, Esq.
Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Plaintiff's Fourth Motion in Limine was served upon the following by deposit in the United States mail, first class postage prepaid, this 19th day of September, 2011.

Joseph A. Hudock, Jr.
Summers, McDonnell, Hudock, Guthrie & Skeel, P.C.
707 Grant Street,
Suite 2400, Gulf Tower
Pittsburgh, PA 15219



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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this ____ day of _____, 2011, upon consideration of the Fourth Motion in Limine filed by Plaintiff Gortech Global Fabrication, LLC, and any responses thereto, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is Granted. It is hereby ORDERED that, at trial, Plaintiff and Defendant shall refrain from making any reference to or offering any evidence of settlement negotiations.

_____. J.

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

SCHEDULING ORDER

AND NOW, this ____ day of September, 2011, upon consideration of the Fourth Motion in Limine, filed by Plaintiff Gortech Global Fabrication, LLC, it is hereby Ordered that:

1. argument shall be held on _____ at _____ in Courtroom No. ____ of the Clearfield County Courthouse;
2. notice of entry of this Order shall be provided to all parties by the moving party.

_____.J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

FILED

4 OCT 04 2011
m/c/1
William A. Shaw
Prothonotary/Clerk of Courts
w/c/1

**REPLY TO PLAINTIFF'S FIRST
MOTION IN LIMINE**

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

Counsel of Record for this Party:

Joseph A. Hudock, Jr.
PA I.D. #66064

SUMMERS, McDONNELL HUDOCK,
GUTHRIE & SKEEL, P.C.
Firm #911

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

REPLY TO PLAINTIFF'S FIRST MOTION IN LIMINE

AND NOW comes the Defendant, DMG Chicago, Inc., by and through its attorneys, Summers, McDonnell, Hudock, Guthrie & Skeel, and sets forth the following Reply to Plaintiff's First Motion in Limine and in support thereof avers as follows:

1. Defendant incorporates by reference its reply to plaintiff's Motion for Summary Judgment and Brief in Opposition Thereto which were filed with the court on September 15, 2011.

2. Denied. Because the "contract" referenced terms and conditions on the reverse, and the reverse was blank, the plaintiff was on notice that the alleged agreement was lacking material terms and conditions so that a valid contract was never formed.

3. Denied. While defendant has never disputed that its salesman signed and delivered the "contract" to the plaintiff, defendant has not waived any defenses but has steadfastly maintained that there never was a valid contract as the document which plaintiff terms the "contract" references other material terms and conditions on the reverse but the reverse was blank. Plaintiff therefore knew or should have known that the

"contract" was invalid. Furthermore, defendant's president sent an e-mail to plaintiff's counsel as early as April, 2007 setting forth his position that the contract was not valid. The validity of a contract is ordinarily a question of law for the court, and the defendant properly pled in its response to plaintiff's Complaint that plaintiff's assertion that the contract was valid was a legal conclusion to which no response was required. Defendant also denied plaintiff's request for admission asking the defendant to admit that the contract was valid.

4. Denied. For the reasons set forth in defendant's reply to plaintiff's Motion for Partial Summary Judgment and Brief in Opposition Thereto, it would be grossly unfair and prejudicial to the defendant if the plaintiff were permitted to prevail on liability without presenting any evidence at trial.

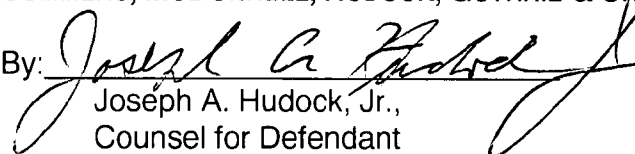
5. Denied. Plaintiff has been on notice since April of 2007 that defendant was contesting the validity of the contract. Despite this, plaintiff never requested that defendant produce the reverse of the "contract". However, it is believed and therefore averred that plaintiff was well aware of the additional terms and conditions based on a course of dealings between the parties in which the same or similar terms appeared in contract documents as well as custom in the industry.

WHEREFORE, defendant respectfully requests that this Honorable Court deny plaintiff's First Motion in Limine.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.

By:

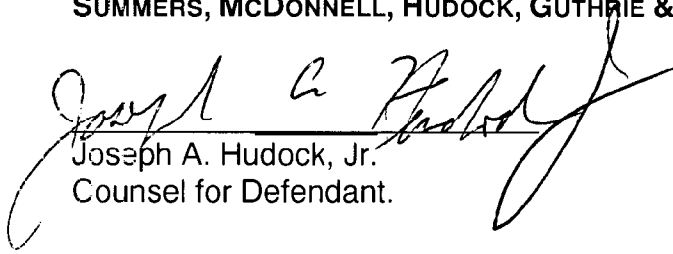

Joseph A. Hudock, Jr.,
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Response to Plaintiff's First Motion in Limine was served upon counsel of record by mailing the same via first class mail, postage pre-paid, this 3rd day of October, 2011, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.



Joseph A. Hudock, Jr.
Counsel for Defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

FILED

OCT 04 2011
William A. Shaw
Prothonotary/Clerk of Courts

**REPLY TO PLAINTIFF'S SECOND
MOTION IN LIMINE**

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

Counsel of Record for this Party:

Joseph A. Hudock, Jr.
PA I.D. #66064

SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, P.C.
Firm #911

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

REPLY TO PLAINTIFF'S SECOND MOTION IN LIMINE

AND NOW comes the Defendant, DMG Chicago, Inc., by and through its attorneys, Summers, McDonnell, Hudock, Guthrie & Skeel, and sets forth the following Reply to Plaintiff's Second Motion in Limine and in support thereof avers as follows:

1. Defendant incorporates by references its affidavit and expert report of its expert, James Fellin.
2. Denied. Plaintiff's tax returns are the single most important factor in assessing plaintiff's claim for future lost profits of over a million dollars. Without tax returns, the defendant will be unable to prepare an adequate defense at trial. The report prepared by plaintiff's expert, Mr. Bronder, uses only the numbers which plaintiff wants the jury to see rather than the numbers from the actual tax returns.
3. As explained in Mr. Fellin's affidavit, plaintiff's tax returns are highly relevant

and it would confuse the jury and result in unfair prejudice to defendant if the plaintiff were permitted to claim future lost profits without any numbers to substantiate those claims.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Paragraph 9 sets forth a legal conclusion to which no response is required.

10. Admitted.

11. Denied. Plaintiff's tax returns are the single most important piece of evidence in the case which, to date, plaintiff has not produced despite defendant's agreement to keep the tax returns confidential. Plaintiff's tax returns would show plaintiff's costs and revenues without which no credible expert could opine on plaintiff's claims in this case.

12.-20. Paragraphs 12 through 20 refer to Mr. Bronder's affidavit and therefore no response is required. To the extent a response is deemed necessary, Gortech's spreadsheet reveals only the numbers which Gortech wishes to reveal. The court, rather than Gortech, should be the arbiter of what is relevant.

21. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 21 of the plaintiff's Motion in Limine. Strict proof is demanded at the time of trial.

22. Denied. While plaintiff appears to concede that its operations were not profitable, plaintiff's tax returns are relevant to show plaintiff's revenues and costs.

23. Denied. Without plaintiff's tax returns, it is impossible to know whether plaintiff

would have earned a profit on any given contract.

24. Admitted.

25. Denied. While any profit or loss in this case may have had a very small impact on plaintiff's overall operation, the tax returns are relevant as they will aid the jury in making that determination.

26.-31. Paragraphs 26 through 31 of Plaintiff's Second Motion in Limine reference Mr. Bronder's affidavit, which speaks for itself. To the extent a response is deemed necessary, plaintiff's income tax returns, if prepared properly, would enable the jury to determine whether plaintiff's claim for future lost profits can be substantiated as they should reflect the revenues and costs involved with plaintiff's business.

32. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 32 of the plaintiff's Second Motion in Limine. Strict proof is demanded at the time of trial. By way of further response, plaintiff will not be prejudiced by having a jury hear evidence concerning its tax returns as there is no single piece of evidence more helpful in determining whether plaintiff does have any future lost profits.

33. Denied. Plaintiff's tax returns would not confuse or prejudice the jury but would allow the jury to fairly assess plaintiff's claim for future lost profits.

34. Denied. As stated above, plaintiff's tax returns will reveal the revenues and costs of plaintiff's business and will aid the jury immensely in determining whether plaintiff's claim for future lost profits is valid.

35. Denied. Plaintiff sets forth no basis for its claim that the jury would have "little real hope of understanding all of these issues" and the defendant believes that a

Clearfield County jury is as capable as any other jury of understanding the importance of the numbers reflected on plaintiff's tax returns.

36. Denied. Plaintiff's tax returns should reveal plaintiff's overall revenues and costs which are of paramount importance in evaluating plaintiff's claim for future lost profits,

37. Denied. Inasmuch as plaintiff has not produced its tax returns, defendant is unable to state whether the tax returns were prepared on the basis of generally accepted accounting principles. Assuming the returns are produced, Mr. Fellin would be able to review and analyze them, which is the method any competent tax professional would use. Therefore, the Frye standard which speaks to novel scientific methodology has no applicability.

38. Denied. Defendant is confident that the jury in Clearfield County will be able to fairly evaluate plaintiff's claims for lost profits in light of the information on plaintiff's tax returns. Defendant makes no comment on plaintiff's trial strategy.

39. Admitted in part and denied in part. It is admitted that Pennsylvania follows the Frye standard. It is denied that the evidence must have general acceptance in the scientific community before it is admissible. To the contrary, it is only the expert's methodology which must have general acceptance in the scientific community. See M.C.M. v. Milton Hershey Med. Ctr., 834 A.2d 1155 (Pa.Super. 2003) (only the principles and methodology employed by the expert witness must be generally accepted by the relevant scientific community – the conclusions reached by the expert witness from generally accepted principles and methodologies need not be generally accepted).

40. For all of these reasons, plaintiff should be required to produce its tax returns

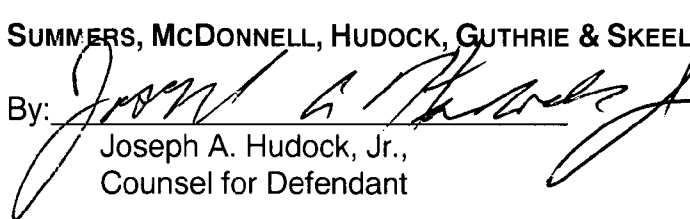
so the jury can fairly evaluate its claim of over a million dollars in lost profits.

WHEREFORE, defendant respectfully requests that this Honorable Court deny plaintiff's Second Motion in Limine.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.

By:

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

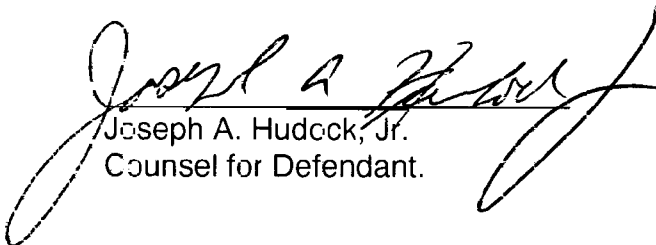
Joseph A. Hudock, Jr.,
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Response to Plaintiff's Second Motion in Limine was served upon counsel of record by mailing the same via first class mail, postage pre-paid, this 3rd day of October, 2011, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.


Joseph A. Hudock, Jr.
Counsel for Defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

FILED
OCT 04 2011
William A. Shaw
Notary Public/Clerk of Courts
No 46

**REPLY TO PLAINTIFF'S THIRD
MOTION IN LIMINE**

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
DMG Chicago, Inc.

Counsel of Record for this Party:

Joseph A. Hudock, Jr.
PA I.D. #66064

SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, P.C.
Firm #911

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL
FABRICATION, LLC,

Plaintiff,

vs.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No.: 07-754-CD

REPLY TO PLAINTIFF'S THIRD MOTION IN LIMINE

AND NOW comes the Defendant, DMG Chicago, Inc., by and through its attorneys, Summers, McDonnell, Hudock, Guthrie & Skeel, and sets forth the following Reply to Plaintiff's Third Motion in Limine and in support thereof avers as follows:

1. Denied. It is denied that defendant's expert, James Fellin, has made any improper, unfairly prejudicial, inflammatory, insulting or uncivil remarks in his expert report. A copy of Mr. Fellin's report is attached to plaintiff's Third Motion in Limine as Exhibit "A".

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Denied.

7. Denied. Mr. Fellin merely points out that plaintiff has failed to adequately document its claims for lost profits inasmuch as plaintiff has essentially cherry picked numbers it wants to use and has then given those numbers to its expert who, in turn, agrees with plaintiff.

8. Denied. Mr. Fellin is merely making a statement about what a trained professional like himself customarily has available to review in evaluating a claim for lost profits.

9. Admitted.

10. Denied. Mr. Fellin is merely making a statement about what a trained professional like himself customarily has available to review in evaluating a claim for lost profits.

11. Paragraph 11 of Plaintiff's Third Motion in Limine sets forth a legal conclusion to which no response is deemed necessary. To the extent a response is required, plaintiff misunderstands Mr. Fellin's statement as he is merely commenting on what is usual and customary.

12. Denied. Plaintiff has so far failed and refused to produce its tax returns despite the fact that defendant signed a confidentiality order and the tax returns constitute the single most important piece of evidence in the case. What plaintiff has produced to date are the documents that the plaintiff wants the defendant and jury to see.

13. Denied. Defendant has repeatedly requested plaintiff's tax returns which plaintiff has so far refused and failed to produce.

14. Denied. Mr. Fellin and the jury will be at a tremendous disadvantage if they are

not provided with plaintiff's tax returns as these will shed light on plaintiff's claim for over a million dollars of future lost profits.

15. Denied. Mr. Fellin is not rendering legal opinions but is merely pointing out the inadequacy of the information plaintiff's expert was given.

16. Denied. Mr. Fellin is not rendering legal opinions but is merely pointing out the inadequacy of the information plaintiff's expert was given.

17. Admitted.

18. Denied. Mr. Fellin is a CPA and certified fraud examiner who is in the best position to determine whether the information Gortech has provided is sufficient to substantiate its claim for lost profits.

19. Denied. To the contrary, Mr. Fellin is merely pointing out that the information supplied by plaintiff is inadequate for anyone to perform a fair evaluation of plaintiff's claim for lost profits.

20. Admitted.

21. Admitted.

22. Denied. Mr. Fellin simply makes clear that tax returns are of paramount importance in evaluating plaintiff's claim for future lost profits and that plaintiff has not produced the returns willingly.

23. Denied. After not having produced the tax returns, the plaintiff is in no position to argue that its conduct should escape censure.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. Denied. Mr. Fellin merely points out that plaintiff's expert is making assumptions not based on fact. Consequently, plaintiff's expert's conclusions are subject to attack on that basis.

29. Denied. Mr. Fellin's language is not derisive, uncivil or inflammatory but perhaps plaintiff's counsel has delicate sensibilities.

30. Admitted.

31. Denied. To the contrary, Mr. Fellin is not against plaintiff's expert making assumptions. Mr. Fellin is only against plaintiff's expert making assumptions based on imagined facts or facts not in evidence.

32. Admitted.

33. Admitted.

34. Denied. To the contrary, compilation of profit and loss statements is an area within Mr. Fellin's expertise and he is obligated to point out that plaintiff's expert has made a number of unfounded assumptions.

35. Denied. To the contrary, compilation of profit and loss statements is an area within Mr. Fellin's expertise and he is obligated to point out that plaintiff's expert has made a number of unfounded assumptions.

36. Denied. To the contrary, compilation of profit and loss statements is an area within Mr. Fellin's expertise and he is obligated to point out that plaintiff's expert has made a number of unfounded assumptions.

37. Denied. To the contrary, Mr. Fellin is merely pointing out that plaintiff's expert report lacks a sufficient evidentiary foundation due to the numerous unfounded

assumptions plaintiff's expert has made.

38. Denied. To the contrary, the entirety of Mr. Fellin's report has to do with accounting, his area of expertise.

39. Denied. To the contrary, Mr. Fellin simply points out that Mr. Bronder's methodology is suspect.

40. Denied. Mr. Fellin's statement has everything to do with accounting as he points out that plaintiff's expert is relying on highly speculative assumptions rather than actual facts.

41. Denied. Mr. Fellin's statement has everything to do with accounting as he points out that plaintiff's expert is relying on highly speculative assumptions rather than actual facts.

42. Admitted.

43. Admitted.

44. Denied. Although plaintiff may not like Mr. Fellin's use of the word "irresponsible," no other word better encapsulates plaintiff expert's use of one piece of evidence as the basis for his entire analysis.

45. Denied. Mr. Fellin is merely saying that the one piece of evidence upon which plaintiff's expert relies is a slender reed which will not support plaintiff's conclusions.

46. It is admitted that Mr. Bronder's analysis fails to take into account whether plaintiff would have obtained work from Sensus.

47. Denied. To the contrary, Mr. Fellin's comments are well within his area of expertise and simply point out that plaintiff's expert is making unwarranted assumptions in order to arrive at his conclusions.

48. Denied. To the contrary, had Mr. Bronder interviewed witnesses rather than performed a mathematical exercise with numbers spoon fed to him by the plaintiff, his report might have some credibility.

49. Admitted.

50. Denied. To the contrary, Mr. Fellin is simply making a point that plaintiff's expert engaged in a facile analysis of numbers provided to him by the plaintiff and made no effort to determine whether there was any factual basis for the numbers.

51. Admitted.

52. Denied. To the contrary, learning how the machines would be used would be of the utmost importance to anyone performing a serious analysis of plaintiff's alleged future lost profits.

53. Denied. To the contrary, Mr. Fellin is stating nothing more than the fact that plaintiff may have been able to use other machines to perform the work in question and this would go to the issue of plaintiff's failure to mitigate damages.

54. Denied. To the contrary, such opinions are well within the scope of experience of a CPA and certified fraud examiner.

55. Admitted.

56. Denied. To the contrary, "haphazard" and "unsophisticated" are two adjectives which aptly describe Mr. Bronder's analysis.

57. Admitted.

58. Denied. To the contrary, the adverbs "naively" and "imprudently" constitute fair comment and describe how Mr. Bronder accepted everything the plaintiff provided to him at face value without conducting any investigation of his own into whether the numbers he

was given were accurate.

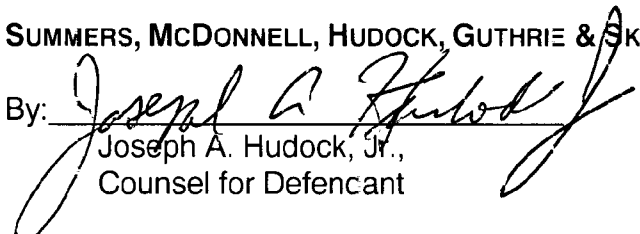
59. Denied. To the contrary, the adverbs "naively" and "imprudently" constitute fair comment and describe how Mr. Bronder accepted everything the plaintiff provided to him at face value without conducting any investigation of his own into whether the numbers he was given were accurate.

60. For the foregoing reasons, plaintiff's Third Motion in Limine should be denied.

WHEREFORE, defendant respectfully requests that this Honorable Court deny plaintiff's Third Motion in Limine.

Respectfully submitted,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.

By: 

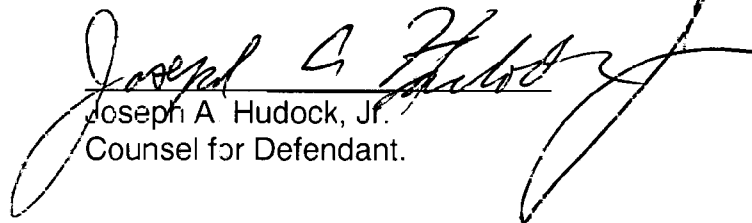
Joseph A. Hudock, Jr.,
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Response to Plaintiff's Third Motion in Limine was served upon counsel of record by mailing the same via first class mail, postage pre-paid, this 3rd day of October, 2011, addressed as follows:

Gregory H. Teufel, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL, P.C.


Joseph A. Hudock, Jr.
Counsel for Defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA CIVIL ACTION - LAW

GORTECH GLOBAL FABRICATIONS, LLC)
Plaintiff)

v.)

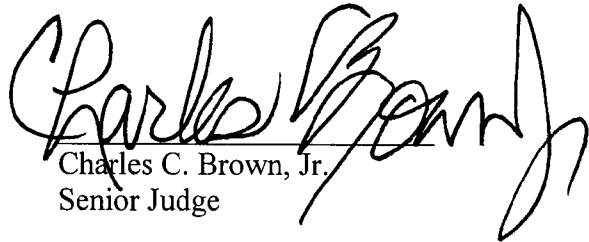
DMG CHICAGO, INC.)
Defendant)

No. 07-754-CD

ORDER

AND NOW, this 5th day of October, 2011, upon consideration of the Fourth Motion in Limine filed by Plaintiff Gortech Global Fabrication, LLC, and any responses thereto, it is hereby *ORDERED*, *ADJUDGED* and *DECREED* that said Motion is *GRANTED*. It is hereby *ORDERED* that, at trial, Plaintiff and Defendant shall refrain from making any reference to or offering any evidence of settlement negotiations.

BY THE COURT:


Charles C. Brown, Jr.
Senior Judge

1 cc: Gregory H. Teufel, Esquire
Christopher E. Mohney, Esquire
Joseph A. Hudock, Jr., Esquire

FILED
OCT 10 2011
William A. Shaw
Prothonotary/Clerk of Courts
616

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA CIVIL ACTION - LAW

GORTECH GLOBAL FABRICATIONS, LLC)
Plaintiff)

v.)

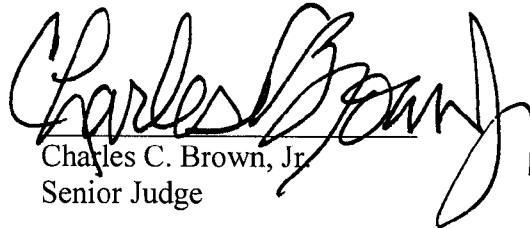
DMG CHICAGO, INC.)
Defendant)

No. 07-754-CD

ORDER

AND NOW, this 5th day of October, 2011, upon consideration of the Third Motion in Limine filed by Plaintiff Gortech Global Fabrication, LLC, and any responses thereto, it is hereby *ORDERED, ADJUDGED* and *DECREED* that said Motion is *DENIED*.

BY THE COURT:


Charles C. Brown, Jr.
Senior Judge

cc: Gregory H. Teufel, Esquire
Christopher E. Mohny, Esquire
Joseph A. Hudock, Jr., Esquire

FILED
011:2334
OCT 10 2011
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA CIVIL ACTION - LAW

GORTECH GLOBAL FABRICATIONS, LLC)
Plaintiff)

v.)

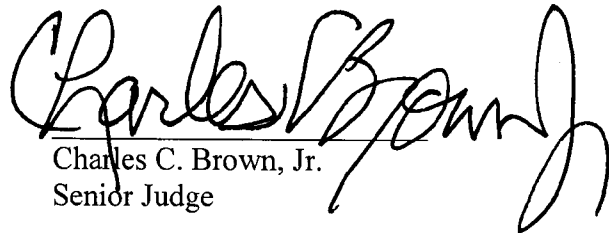
DMG CHICAGO, INC.)
Defendant)

No. 07-754-CD

ORDER

AND NOW, this 5th day of October, 2011, upon consideration of the Second Motion in Limine filed by Plaintiff Gortech Global Fabrication, LLC, and any responses thereto, it is hereby *ORDERED, ADJUDGED* and *DECREED* that said Motion is *DENIED*.

BY THE COURT:


Charles C. Brown, Jr.
Senior Judge

cc: Gregory H. Teufel, Esquire
Christopher E. Mohny, Esquire
Joseph A. Hudock, Jr., Esquire

FILED
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OCT 10 2011
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA CIVIL ACTION - LAW

GORTECH GLOBAL FABRICATIONS, LLC)
Plaintiff)

v.)

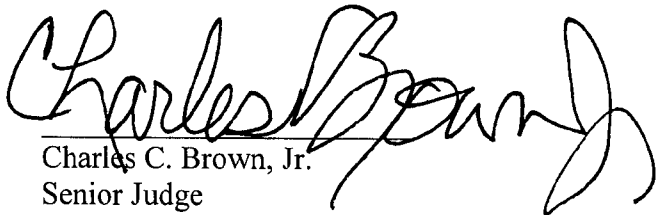
DMG CHICAGO, INC.)
Defendant)

No. 07-754-CD

ORDER

AND NOW, this 5th day of October, 2011, upon consideration of the First Motion in Limine filed by Plaintiff Gortech Global Fabrication, LLC, and any responses thereto, it is hereby *ORDERED, ADJUDGED and DECREED* that said Motion is *DENIED*.

BY THE COURT:


Charles C. Brown, Jr.
Senior Judge

cc: Gregory H. Teufel, Esquire
Christopher E. Mohny, Esquire
Joseph A. Hudock, Jr., Esquire

FILED
OCT 10 2011
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA CIVIL ACTION - LAW

GORTECH GLOBAL FABRICATIONS, LLC)
Plaintiff)

v.)

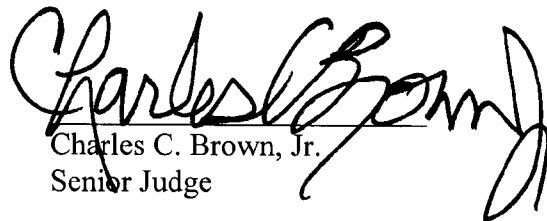
DMG CHICAGO, INC.)
Defendant)

No. 07-754-CD

ORDER

AND NOW, this 5th day of October, 2011, upon consideration of the Motion to Compel filed by Defendant DMG Chicago, Inc., it is hereby *ORDERED* that Plaintiff Gortech Global Fabrications, LLC is to produce its tax returns for the years 2004 to the present to Defendant's Counsel within *ten (10) days* from the date of this order.

BY THE COURT:


Charles C. Brown, Jr.
Senior Judge

cc: Gregory H. Teufel, Esquire
Christopher E. Mohny, Esquire
Joseph A. Hudock, Jr., Esquire

FILED
OCT 10 2011
William A. Shaw
Prothonotary/Clerk of Courts
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA CIVIL ACTION - LAW

GORTECH GLOBAL FABRICATIONS, LLC)
Plaintiff)

v.)

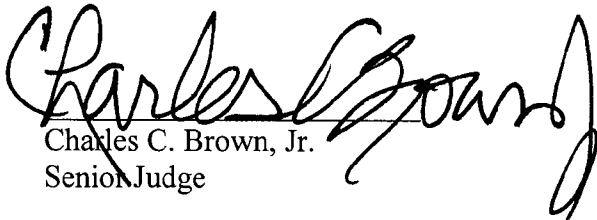
DMG CHICAGO, INC.)
Defendant)

No. 07-754-CD

ORDER

AND NOW, this 5th day of October, 2011, upon consideration of the Motion for Extension of Time to File Expert Report filed by Defendant DMG Chicago, Inc., and any responses thereto, it is hereby *ORDERED, ADJUDGED* and *DECREED* that said Motion is *DENIED, WITHOUT PREJUDICE* to DMG Chicago, Inc.'s right to seek permission to file an amended expert report after the current deadline of August 29, 2011, set forth in the Court's July 1, 2011 Order, based on any new information obtained subsequent to that date.

BY THE COURT:


Charles C. Brown, Jr.
Senior Judge

1 cc: Gregory H. Teufel, Esquire
Christopher E. Mohny, Esquire
Joseph A. Hudock, Jr., Esquire

FILED

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OCT 10 2011

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA CIVIL ACTION - LAW

GORTECH GLOBAL FABRICATIONS, LLC)
Plaintiff)

v.)

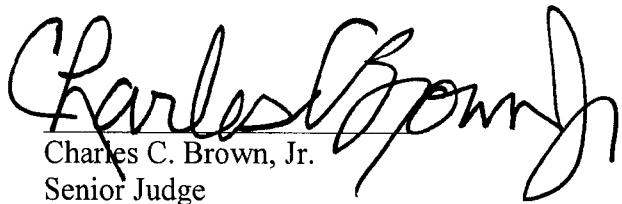
DMG CHICAGO, INC.)
Defendant)

No. 07-754-CD

ORDER

AND NOW, this 5th day of October, 2011, upon consideration of the Motion for Partial Summary Judgment filed by Plaintiff Gortech Global Fabrication, LLC, and any responses thereto, it is hereby *ORDERED, ADJUDGED* and *DECREED* that said Motion is *DENIED*.

BY THE COURT:


Charles C. Brown, Jr.
Senior Judge

1 cc: Gregory H. Teufel, Esquire
Christopher E. Mohny, Esquire
Joseph A. Hudock, Jr., Esquire

FILED
9/11/2011
OCT 10 2011
William A. Shaw
Prothonotary/Clerk of Courts

611

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

FILED
OCT 11 2011
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William A. Shaw
Notary/Clerk of Court
No. 11

GORTECH GLOBAL FABRICATION,
LLC

Plaintiff,

v.

DMG CHICAGO, INC.,

Defendant.

CIVIL DIVISION

No. 07-754-CD

PLAINTIFF'S MOTION FOR
RECONSIDERATION/CLARIFICATION
RE: ORDER DENYING PLAINTIFF'S
THIRD MOTION IN LIMINE

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Gregory H. Teufel, Esq.
Pa. Id. No. 73062
Amy J. Roy, Esq.
Pa. Id. No. 86584
Jeremy L.S. Samek, Esq.
Pa. Id. No. 205060
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
412.566.6000 telephone
412.566.6099 fax

Christopher E. Mohny, Esq.
PA I.D. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
814.375.1044 telephone
814.375.1088 fax

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

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

**PLAINTIFF’S MOTION FOR RECONSIDERATION/CLARIFICATION RE:
ORDER DENYING PLAINTIFF’S THIRD MOTION IN LIMINE**

Plaintiff, Gortech Global Fabrication, LLC (“Gortech” or “Plaintiff”), by its undersigned attorneys, hereby files the following Motion for Reconsideration/Clarification pursuant to Pa. R. Evid. 402, 403, and 702:

1. Gortech filed four motions in limine. Plaintiff’s Third Motion in Limine was denied.
2. Plaintiff’s Third Motion in Limine sought relief with respect to a number of issues concerning the expert report produced by Defendant DMG Chicago, Inc. (“DMG” or “Defendant”), seeking to prevent DMG’s expert from making improper, unfairly prejudicial, inflammatory, insulting, and uncivil editorial remarks and legal opinions at trial.
3. The reasons for the denial were not set forth in the Order denying Gortech’s Third Motion in Limine.
4. One of the issues raised in Gortech’s Third Motion in Limine was that DMG’s expert’s report contained comments as to discovery matters, such as:
 - “The deficient level of information that was produced by Gortech in support of its claim is highly unusual and not consistent with common practice in this area.” and

- “Gortech has fought to withhold critical information.”

5. Gortech’s Third Motion in Limine, *inter alia*, argued that discovery conduct matters are to be addressed to the Court in discovery motions, not to be complained about at trial, and certainly not to be addressed by any expert witness and that hearing criticisms of discovery conduct could only serve to prejudice and distract a jury from the real issues at trial.

6. DMG’s response to the Third Motion in Limine argued, at paragraphs 22 and 23, that “Mr. Fellin makes simply makes clear that . . . plaintiff has not produced the returns willingly” and “After not having produced the tax returns, the plaintiff is in no position to argue that its conduct should escape censure.”

7. By denying Gortech’s Third Motion in Limine, it is not clear whether the Court is condoning DMG’s apparent intention (1) to use testimony, evidence, or arguments to complain about and criticize Gortech’s responsiveness to the DMG’s discovery requests and (2) to attempt to censure Gortech for objecting to the production of tax returns.

8. That appears to be at least part of DMG’s stated purpose and intention at trial, based on its response to the Third Motion in Limine.

9. That would invite the jury to take a dim view of Gortech for objecting to the production of the tax returns and amount to a fairly severe discovery sanction for what were good faith, reasonable objections to producing the tax returns.

10. DMG did not even seek sanctions in its motion to compel production of tax returns, and if it had done so, presumably the Court would not have granted any sanctions, much less a sanction so severe as censuring Gortech for discovery conduct to the jury.

11. Gortech received the Order requiring production of the tax returns on October 5, 2011 and, though the Order required production of the tax returns within 10 days, Gortech immediately produced the tax returns the following day, on October 6, 2011.

12. Now that DMG has the tax returns and there is nothing left that DMG requested in discovery that has not been provided to DMG, Gortech requests that the Court reconsider the issue of the propriety of commenting on discovery matters in this case.

13. If this matter is not addressed pretrial, Gortech would be forced to object each time DMG attempted to try to unfairly prejudice the jury against Gortech by accusing Gortech of improperly withholding information in the discovery process, and objecting before the jury to such matters would exacerbate the prejudicial impact.

14. Emboldened by the denial of Gortech's Third Motion in Limine, DMG's counsel could choose to comment on such matters in his opening or closing arguments as well as through witnesses other than DMG's expert.

15. Allowing DMG to attempt to prejudice the jury against Gortech by accusing Gortech of improperly withholding information in the discovery process would violate Pa.R.Evid. 401, 402, and 403, because such matters are irrelevant to the issues to be tried and would be unfairly prejudicial to Gortech. See Waters v. Genesis Health Ventures, Inc., 400 F. Supp. 2d 814, 818 (E.D.Pa. 2005) (under similar federal rules, barring "evidence related to discovery disputes during the upcoming trial" because "disputes surrounding production of documents is entirely irrelevant" to plaintiff's claim); Green v. Baca, 226 F.R.D. 624, 642-643 (C.D.Cal. 2005) (granting motion in limine because "discovery disputes and initial failures to produce documents do not constitute admissible evidence").

16. For example, in Green v. Baca, the plaintiff sought to introduce evidence of alleged discovery violations on the theory that they were probative of whether defendant's wrongdoing was intentional. 226 F.R.D. at 642. The court excluded the evidence under the

similar federal Rule of Evidence 403,¹ explaining that "[e]ven if some inference of consciousness of wrongdoing could be drawn from the manner in which defendant responded to plaintiff's discovery requests in this case, it would be a weak inference at best ... and the unfair prejudice that defendant would suffer from the admission of the evidence would clearly outweigh its probative value." Id.; see also Jinks-Umstead v. England, Civ. No. 99-2691 (GK), 2005 U.S. Dist. LEXIS 34547, * 13 (D.D.C. Dec. 7, 2005) (granting defendant's motion in limine to exclude testimony regarding alleged spoliation of evidence and discovery disputes, explaining that "the bottom line is that the case is about discrimination and retaliation" and "will not be turned into a trial about discovery").²

17. Allowing DMG to attempt to unfairly prejudice the jury against Gortech by accusing Gortech of improperly withholding information in the discovery process would also violate Pa.R.Evid. 401, 402, and 403, because it would confuse the jury and divert the attention of the jury away from the issues to be tried. In Empire Gas Corp. v. Am. Bakeries Co., 646 F.Supp. 269, 276 (N.D. Ill. 1986), the court excluded evidence of pre-trial discovery disputes under Federal Rule of Evidence 403. The court reasoned that jurors do not know, nor are they expected to appreciate, the rules of discovery. Id. Consequently, if a party introduced evidence of pre-trial discovery disputes, under the concept of fairness, the opposing party would be entitled to introduce its own evidence of how discovery rules operate and the how those rules impacted the alleged disputes. Id. The result would be confusion of the issues and misleading the jury. Id. Specifically, such evidence has the potential of diverting the jury's attention from the principal issue of the case to questions concerning compliance with the rules of discovery.

¹ The federal Rule 403 provides that relevant evidence may be excluded if its probative value is "substantially outweighed," whereas the Pennsylvania Rule 403 eliminates the word "substantially." Therefore, the federal Rule 403 is no more protective, and arguably is less protective against unfair prejudice than the Pennsylvania Rule 403.

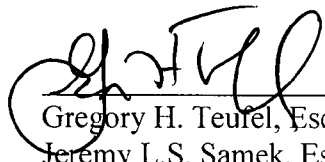
² All unpublished decisions referenced herein are attached hereto for the Court's convenience.

Id.; see also Sanford v. Ektelon/Prince Sports Group, Inc., 1999 WL 33544436, *4 (D.Neb.)
("[I]nformation regarding discovery disputes in this case . . . would be prejudicial, would take the jury away from the case, and will not be admissible.").

WHEREFORE, Plaintiff Gortech requests that this Court enter the attached proposed Order or grant such other and further relief as this Court may deem proper.

Respectfully submitted,

Dated: October 7, 2011



Gregory H. Teufel, Esq.
Jeremy L.S. Samek, Esq.
Christopher E. Mohny, Esq.
Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

LAVONNE JINKS-UMSTEAD, Plaintiff, v. GORDON R. ENGLAND, Defendant.

Civil Action No. 99-2691 (GK)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

2005 U.S. Dist. LEXIS 34547

December 7, 2005, Decided

December 7, 2005, Filed

SUBSEQUENT HISTORY: Motion denied by *Jinks-Umstead v. England*, 232 F.R.D. 142, 2005 U.S. Dist. LEXIS 32075 (D.D.C., Dec. 12, 2005)

PRIOR HISTORY: *Jinks-Umstead v. England*, 2005 U.S. Dist. LEXIS 22291 (D.D.C., Oct. 4, 2005)

COUNSEL: [*1] For LAVONNE JINKS-UMSTEAD, Plaintiff: John F. Karl, Jr., KARL & TARONE, Washington, DC.

For RICHARD DANZIG, Secretary of the Navy, Defendant: Rolando N. Valdez, U.S. ATTORNEY'S OFFICE, Washington, DC.

For GORDON R. ENGLAND, Secretary of the Navy, Defendant: Darrell C. Valdez, Rolando N. Valdez, Uldric L. Fiore, Jr., Laurie J. Weinstein, U.S. ATTORNEY'S OFFICE, Washington, DC.

JUDGES: Gladys Kessler, United States District Judge.

OPINION BY: Gladys Kessler

OPINION

MEMORANDUM OPINION

This is an employment discrimination lawsuit brought by Lavonne Jinks-Umstead, a supervisory contract specialist, against the United States Navy. Plaintiff alleges that she was discriminated against on the basis of her race when the Navy failed, from 1997 to 1999, to provide her with adequate staff assistance to help her perform her duties at the Carderock Division ("Carderock") of the Navy's Engineering Field Activities Chesapeake ("EFACHES"). The Navy responds that it refused to fill the open positions which would have provided staff assistance to Plaintiff because of a Department-wide reorganization process resulting from what it alleges was a reduction in the workload at the Carderock facility.

[*2] The case was originally tried to a jury in July, 2003. After a six-day trial, the jury returned a verdict in favor of the Defendant. Thereafter, the Court granted Plaintiff's Motion for a New Trial on Liability and Damages for two reasons: first, Defendant failed to comply with its pre-trial discovery obligations to locate and produce certain Work In Progress ("WIP") reports which Plaintiff believed would counter Defendant's argument that there was no justification for giving her the staff support she requested; second, a number of emails relating to what Defendant characterized as a reorganization and downsizing at EFACHES were erroneously admitted into evidence. Subsequent to granting the motion for a new trial, the Court ordered further discovery. Once disputes surfaced over the post-trial discovery, the Court referred all discovery matters to Magistrate Judge Facciola for resolution.

A new trial date is scheduled for January 18, 2006. The parties have filed numerous *in limine* motions. Because all of these motions focus on interrelated discovery issues -- both those pertinent to the first trial and those flowing from post-trial proceedings, the Court will deal with all of [*3] the pending Motions in this consolidated Memorandum Opinion.

Initially, it must be noted that the contentiousness of the parties in this case has not abated one whit. They have battled in front of this Court and the jury, in front of Magistrate Judge Facciola, and now again in front of this Court. Plaintiff's papers are repetitive, accusatory, and exaggerated. Defendant's papers suffer from other defects -- at times they mischaracterize the rulings of Magistrate Judge Facciola or prior events in this case, and they often fail to provide an adequate substantive response to the arguments made by Plaintiff. In sum, counsel have done little to simplify or streamline the remaining issues.

The Motions pending before the Court at this time, which consist of well over 100 pages of pleadings, are (1) Defendant's Motion to Reinstate the Jury Verdict; (2) Plaintiff's Motion in Limine to Bar Oral Testimony Not Supported By Documents and Exclude Evidence That Is

Irrelevant and Confusing; (3) Plaintiff's Motion in Limine for a Jury Instruction on the Navy's Discovery Abuses and Spoliation of Evidence, or in the Alternative for Partial Summary Judgment; (4) Defendant's Motion in Limine to Exclude [*4] Argument and Preclude Instruction Regarding an Adverse Inference; and (5) Defendant's Motion in Limine to Exclude Testimony Regarding Alleged Spoliation and Discovery Disputes. All Motions were accompanied by related Oppositions and Replies. Upon consideration of all Motions, Pleadings, applicable case law, and the entire record herein, the Court concludes as follows:

I. Defendant's Motion to Reinstate the Jury Verdict

Defendant argues that the jury verdict in its favor entered July 2, 2005, should be reinstated because, as a consequence of additional discovery which Plaintiff has received pursuant to the Court's post-trial Orders (Docket # 249, 275, and 276), "it is apparent that the documents do not support Plaintiff's claim." Defendant's Motion at p. 1. The documents submitted as an exhibit to Defendant's Motion do not clearly demonstrate that Plaintiff's Division at Carderock was adequately staffed and that she was not, therefore, the victim of discrimination. Moreover, the decision as to whether the documents prove what Defendant argues they prove is clearly a decision for a jury, and not this Court, to make. Consequently, it is hereby ordered that Defendant's Motion [*5] to Reinstate the Jury Verdict is **denied**.

II. The Remaining Motions

The four remaining Motions are inextricably intertwined. The Court has no intention of rehashing all the facts and history pertinent to those Motions. The parties have done that repeatedly at enormous length.

There are basically three issues presented in the four remaining Motions. First, whether an instruction should be given to the jury allowing it to draw an adverse inference from the discovery abuse committed by Defendant up to and during the first trial, and for the alleged discovery abuse committed by Defendant in the post-trial discovery ordered by this Court and Magistrate Judge Facciola.

Second, whether the jury should be informed about Defendant's discovery abuse prior to and during the last trial and what Plaintiff alleges to be post-trial discovery abuse.

Third, whether Defendant should be precluded from presenting oral testimony that purports to relate to documents which have not been produced by Defendant.

In sorting through the arguments presented, it is essential to differentiate between the discovery-related conduct of Defendant which occurred prior to and during

the July 2003 [*6] trial, and the discovery-related conduct of Defendant which occurred subsequent to that trial. As to the former period of time, there is no question that, as this Court held in its Memorandum Opinion of February 6, 2004, a new trial was required "because of Defendant's very serious failure to comply with its discovery obligations and locate and produce the [WIP] reports to which Plaintiff was entitled." *Jinks-Umstead v. England*, No. 99-2691, slip op. at 3 (GK) (D.D.C. Feb. 6, 2004). As to the latter period of time, Magistrate Judge Facciola ruled in his opinion of April 7, 2005, "on the record currently before the court, I see no reasonable grounds upon which this court could find that the Navy has knowingly and intentionally refused to comply with the court's June 30, 2004 [discovery] Order." *Jinks-Umstead v. England*, 227 F.R.D. 143 (JMF) (D.D.C. 2005). Additionally, Magistrate Judge Facciola concluded that "after a painstaking review of the depositions of Holleran and Carney, the court cannot see that the defendant is stonewalling or otherwise obstructing the post-trial discovery process." 227 F.R.D. 143.

In sum, although there were unquestionably [*7] discovery abuses prior to and during the July 2003 trial, it is also clear, based on Magistrate Judge Facciola's rulings, which are fully supported by the record, that there have been no such abuses since the Court granted Plaintiff's Motion for a New Trial and ordered further discovery. What is more, Defendant has been severely sanctioned for its earlier discovery abuses. Despite having prevailed at the July 2003 trial, Defendant has suffered the extreme sanction of having its verdict set aside. To put it rather colloquially, Defendant has "paid its dues" for its earlier violations of its discovery obligations. Finally, it must be remembered that although this Court found that there were serious discovery violations prior to and during the July 2003 trial, it never found, nor was there any reason to find, that Defendant's failure to comply was either wilful, intentional, or designed to impede Plaintiff from successfully litigating her case. This analysis of the long and convoluted discovery battle in this case provides the analytic framework for the Court's rulings on the three issues posed in the four pending Motions.

*A. The Court Concludes that the Facts in This Case Do Not Support [*8] the Giving of an Adverse Inference Instruction to the Jury Which Would Permit the Jury to Conclude that the Materials Withheld During the First Trial Would Have Supported the Plaintiff's Theory of the Case*

As Judge Louis Oberdorfer of this Court held in *Friends for All Children, Inc. v. Lockheed Aircraft Corp.*, 587 F. Supp. 180, 208-09 (D.D.C. 1984):

Under existing appellate precedents, to justify an adverse inference against [defendant], plaintiffs would have to demonstrate evil intent, bad faith, or wilfulness on the part of [defendant] in the destruction of evidence sufficient to support a reasonable inference that the missing evidence was detrimental to [defendant's] case.

Just as Judge Oberdorfer concluded in his case, where the facts were far more egregious than in the present case, this Court concludes that Plaintiff has failed to carry the intent element of her burden. There is nothing in the record to demonstrate "evil intent, bad faith, or wilfulness" on the part of the Navy. The Navy may have been extraordinarily sloppy in its failure to comply with its discovery obligations, but there is not a shred of evidence to show that that [*9] failure resulted from the "evil intent, bad faith, or wilfulness," which must be shown in order to justify the giving of an adverse inference instruction.

As to discovery problems which Plaintiff points to in the post-trial discovery process, Plaintiff's position is even weaker. Not only did Magistrate Judge Facciola conclude that Defendant had complied with all post-trial discovery orders, but he specifically found that Defendant was not "stonewalling or otherwise obstructing the post-trial discovery process." *Jinks-Umstead v. England*, No. 99-2691, slip op. at 17 (JMF) (D.D.C. Feb. 6, 2004). See also *Thompson v. U.S. Dep't of Hous. & Urban Dev.*, 219 F.R.D. 93, 100-01 (D. Md. 2003) (holding that, because the granting of an adverse inference is such an "extreme sanction, three things must be shown to warrant an adverse inference instruction for spoliation of evidence: (1) the party having control over the evidence had an obligation to preserve it when it was destroyed or altered; (2) the destruction or loss was accompanied by a culpable state of mind; and (3) the evidence that was destroyed or altered was relevant to the claims or defenses of the party that [*10] sought the discovery of the spoliated evidence, to the extent that a reasonable factfinder could conclude that the lost evidence would have supported the claims or defenses of the party that sought it.") (citations omitted).

It must be noted that there was no destruction of the WIP reports which were not produced before the first trial. As is known by all the parties, those reports were found in the office of Jasper Garner. Moreover, and most significantly, in post-trial discovery, Plaintiff has been given full access to the FIS database which supplies all the underlying data from which the WIP reports are prepared. While it is true that Ms. Holleran did destroy the

personal notes she made as she developed the staffing levels for Carderock, those personal notes were also based on data obtained from the FIS database. In short, by being given access to the FIS database, Plaintiff has been given the opportunity to obtain all the relevant information which she was denied at the first trial.

As support for requesting an adverse inference instruction in this case, Plaintiff relies heavily on *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 146-47, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000). *Reeves* [*11] is simply inapposite to the present situation. The Supreme Court held only that it is permissible for a jury to infer discrimination if it concludes that the Defendant's explanation for its personnel action is false or unworthy of belief. Specifically, the Court stated that this type of proof "is simply one form of circumstantial evidence that is probative of intentional discrimination." *Id.* at 147. The Supreme Court did not alter a plaintiff's burden to offer sufficient evidence to prove pretext or discrimination. Nor did it create a presumption of pretext from the fact that there had been discovery disputes between the parties. Indeed, there is nothing in *Reeves* to suggest that the Court was referring in any way to discovery issues.

Plaintiff also asks for the far more extreme sanction of shifting the burden of proof so that instead of Plaintiff having to prove the merits of her claims, as is the usual procedure, the jury would be instructed that the Navy must prove that it did *not* discriminate or retaliate against Plaintiff. Such sanction, as noted, is both extremely severe and extremely rare. Plaintiff relies on a case from a Florida Circuit Court which [*12] did grant such relief. In *Coleman Holdings, Inc. v. Morgan Stanley & Co., Inc.*, 2005 WL 679071, at *6 (Fla. Cir. Ct.), the trial court ruled that a "reasonable juror could conclude that evidence of [defendant's discovery] misconduct demonstrates its consciousness of guilt." However, in that case, the magnitude of the misconduct was extraordinary. For example, the court relied on the fact that the defendant continued to overwrite its emails for at least 12 months after it was ordered to stop that procedure; that one of the key supervisors involved in the discovery process admitted that he gave a false certification of compliance with the court's discovery order; and that counsel delayed reporting this fact to the court for more than six months after learning of it. The court concluded in that case that the defendant was guilty of a wilful and gross abuse of its discovery obligations. These facts are totally distinguishable from the facts presented in this case.

*B. The Court Concludes That the Facts in This Case Do Not Justify Informing the Jury About the Defendant's Discovery Abuse Prior to and During the Last Trial and What the Plaintiff Alleges to Be Post-Trial [*13] Discovery Abuse*

Plaintiff has requested in its Motion in Limine for a Jury Instruction on the Navy's Discovery Abuses and Spoliation of Evidence that the jury be instructed that certain documents were in existence on April 19, 1999, that the Navy failed to produce those documents in violation of its discovery preservation obligations, and that Patricia Holleran promised that she would give the documents she used to determine staffing levels at Carderock to the EEO investigator on October 7 and 8, 1999, but never did so. For the reasons stated above, the Court declines to give such instruction to the jury. As already noted, there is no evidence that Defendant acted wilfully, intentionally, or in bad faith. Second, it would be extremely prejudicial for the Court to give such an instruction, and Defendant has already been sanctioned for its conduct. Third, the bottom line is that the case is about discrimination and retaliation. The case will not be turned into a trial about discovery.

C. The Court Concludes That Defendant Will Not Be Precluded From Presenting Oral Testimony That Purports to Be Based on the Content of Documents Not Produced by the Navy

Plaintiff argues that the [*14] Navy should not be allowed to put on any generalized testimony regarding downsizing of the Navy, a reorganization at Carderock, or a reduction of hires in the 1102, 1105, or 1106 job series. Plaintiff relies on *Federal Rule of Evidence 1002*, better-known as the Best Evidence Rule. That rule provides: "to prove the contents of a writing . . . the original writing . . . is required."

Plaintiff has misunderstood the application of that Rule. As Wright & Gold emphasize in their widely-cited treatise, "the best-evidence-doctrine regulates the admissibility of evidence *only when offered to prove the contents of a writing. . .*" 31 Charles Alan Wright & Victor James Gold, *Federal Practice & Procedure*, § 7163 (2000) (emphasis added). As the Advisory Committee pointed out:

Application of the rule requires a resolution of the question whether contents are sought to be proved. Thus, an event may be proved by non-documentary evidence, even though a written record of it was made.

Fed. R. Evid. 1002 Advisory Committee's Note.

To state it a little differently: "no evidentiary rule . . . prohibits a witness [*15] from testifying to a fact simply because the fact can be supported by written documentation." *R&R Associates, Inc. v. Visual Scene, Inc.*, 726 F.2d 36, 38 (1st Cir. 1984). In short, "any witness

with knowledge of facts that exist independent of the contents of a writing . . . may testify without raising an issue under *Rule 1002*." Wright & Gold, § 7184.

In this case, the Court anticipates that Defendant will try to prove that the Navy was downsizing, that there was some type of reorganization to accompany such downsizing at Carderock, and that fewer people in the 1102, 1105, and 10106 job categories were being hired. None of those facts *require* proof of the actual contents of a writing, even though those may be or may have been documents which would support the testimony of Defendant's witnesses. This is not a case involving a will, a contract, or a deed -- where each and every word has a significant legal meaning. Rather, as the Missouri Supreme Court explained in *Cooley v. Director of Revenue, State of Missouri*, 896 S.W.2d 468, 470 (Mo. App. 1995):

proof of the mere existence, execution, delivery, or identity of a document is not considered [*16] proof of the terms of the document, and may be given without producing the original document or accounting for its absence. *McCormick on Evidence*, § 233 (4th ed. 1992); 2 *Jones on Evidence*, § 7.5 (6th ed. 1972). Furthermore, the rule does not become applicable simply because evidence is offered of facts which are contained in a writing. *State v. Kirksey*, 727 S.W.2d 201, 203 (Mo. App. 1987); *Jourdan v. Gilmore*, 638 S.W.2d 763, 770 (Mo. App. 1982). In other words, where the fact to be proved is evidenced in a writing but also exists independently of that writing, then both sources, oral and written, become primary evidence, and the best evidence rule is inapplicable. *State v. Curry*, 473 S.W.2d 747, 748-49 (Mo. 1971). In that regard, the best evidence rule does not exclude evidence based on personal knowledge even if documents or other writings would provide some of the same information. *Aluminum Products Ent. v. Fuhrmann Tooling*, 758 S.W.2d 119, 122 (Mo. App. 1988).

For these reasons, the Court concludes that the Best Evidence rule incorporated in *Federal Rule of Evidence 1002* is [*17] not applicable here and therefore does not preclude admission of oral testimony even though it purports to relate to documents not produced by Defendant (assuming that to be true). "The best evidence doctrine is inapplicable in these cases because the secondary

evidence is offered to prove an event, not the contents of a writing or recording." Wright & Gold, § 7184; *see also United States v. Bennett*, 363 F.3d 947, 953 (9th Cir. 2004); *Meyers v. United States*, 84 U.S. App. D.C. 101, 171 F.2d 800, 815-16 (D.C. Cir. 1948); *Maier v. Publisher Commercial Alcohol Co.*, 62 F. Supp. 161, 167 (E.D. Pa. 1945).

D. Miscellaneous Issues

Plaintiff has raised certain miscellaneous evidentiary issues in her voluminous papers. So that the parties are clear about what they may and may not do at trial, the Court makes the following rulings:

1. The Defendant is *not* barred from introducing testimony of evidence about any efforts made to place Plaintiff in a position as a Labor Relations Specialist working for Diane Truman.

2. The Defendant is *not* barred from introducing testimony that another individual named Scheer accepted a downgrade in order to avoid a RIF.

[*18] 3. The Defendant is *not* barred from introducing testimony that any actions it took regarding

Plaintiff were motivated by a desire not to subject her to what was thought to be an impending RIF.

All of the testimony identified in paragraphs 1-3 is relevant and probative.

III. Conclusion

For all the foregoing reasons, Defendant's Motion to Reinstate the Jury Verdict is **denied**; Plaintiff's Motion in Limine for a Jury Instruction on the Navy's Discovery Abuses and Spoliation of Evidence or, in the Alternative, for Partial Summary Judgment is **denied**; Plaintiff's Motion in Limine to Bar Oral Testimony Not Supported By Documents and Exclude Evidence That is Irrelevant and/or Confusing is **denied**; Defendant's Motion in Limine to Exclude Testimony Regarding Alleged Spoliation and Discovery Disputes is **granted**; and Defendant's Motion in Limine to Exclude Argument and Preclude Instruction Regarding an Adverse Inference is **granted**.

December 7, 2005

Gladys Kessler

United States District Judge

Only the Westlaw citation is currently available.

United States District Court, D. Nebraska.
Mark SANFORD and Vicki Sanford, Plaintiffs,
v.
EKTELON/PRINCE SPORTS GROUP, INC., and UVEX
Winter Optical, Inc., Defendants.

No. 8:97CV368.
Nov. 5, 1999.

ORDER

BATAILLON, J.

*1 The matters before the Court are defendants' motions in limine (Filing Nos. 130, 131, 132, 133, 134, 135, 136 and 137). The motions in limine include:

Filing 130 - Request to exclude evidence of contractual indemnity of UVEX as it is analogous to a liability insurer situation;

Filing 131 - Request to exclude reference to defendants' foreign affiliates;

Filing 132 - Request to exclude evidence of Astrospec 3000 packaging and warnings;

Filing 133 - Request to exclude other products manufactured and sold by the defendants;

Filing 134 - Request to exclude any other claims or lawsuits filed against the defendants;

Filing 135 - Request to exclude any evidence of discovery disputes, orders, or timeliness in this case;

Filing 136 - Request to exclude cumulative evidence of Dr. Whitted and Dr. Vinger with regard to the condition of Mark Sanford's eye; and

Filing 137 - Request to exclude evidence of or references to ANSI Z .87 or any other ANSI industrial standards for eye protectors.

Contractual Indemnity

Defendants request this Court to exclude any evidence regarding Ektelon's relationship as a contractual indemnitee of UVEX. It appears that Ektelon and UVEX entered into an indemnification agreement in November, 1992. (Exhibit 15) Although UVEX contends that it discontinued manufacturing sports eyewear, the Indemnification Agreement remained in force, and as a consequence, Ektelon has indemnity obligations to UVEX in this lawsuit.

UVEX contends that Ektelon is acting as an insurer, and therefore, no evidence of this relationship should be allowed on the issue of negligence. Patterson v. Swan, May, Smith & Anderson, 473 N.W.2d 94, 99 (Neb.1991); Schwartz v. Peterson, 256 N.W.2d 681 (Neb.1977); Kresha v. Kresha, 344 N.W.2d 906 (Neb.1984). However, defendant points out that while liability insurance is inadmissible upon the issue of negligence, it may be admissible for proof of agency, ownership, control or bias. Patterson, 473 N.W.2d at 99; Kresha, 344 N.W.2d 906.

Mark and Vicki Sanford (hereinafter Sanford) contend that the Indemnification Agreement is relevant to this case. First, Sanford states that it shows evidence that the Prism and the Astrospec are the same eyewear, an assertion that is disputed by the defendants. Second, the Indemnity Agreement makes references to the quantities of "UVEX 'Astrospec' (Ektelon 'Prism') (collectively 'the eyewear')." Sanford states that UVEX warns against use of Astrospec for sporting activities, yet it sold them to Ektelon for use in racquet sports. Third, Sanford argues that there is an admission by the parties in the Indemnity Agreement that the Prism does not meet the ASTM F803 standards, and that this admission goes to the issue of defective design, warranty, and negligence. Finally, Sanford argues that the Indemnity Agreement is relevant to what the parties knew about whether the Astrospec (Prism) would meet the applicable safety standards for racquet sports. In summary, Sanford asks this Court to find that the cases cited by defendants are inapplicable, because the probative value and relevance outweigh any danger of unfair prejudice. Fed.R.Evid. 401 and 403.

*2 The Court has reviewed Sanford's Index of Evidence, Exhibit 10 (Letter of May 11, 1992); Exhibit 11 (Letter of May 14, 1992); Exhibit 12 (Letter of November 8, 1993); and Exhibit 15 (Letter dated November 20, 1992 with attached Indemnity Agreement). The Court is of the opinion that the information regarding the issues pointed out by Sanford are relevant to crucial issues in this case, and are not offered to prove that the defendants acted negligently or otherwise wrongfully. Patterson, 473 N.W.2d 94, 99; Schwartz, 256 N.W.2d 681, 683-84. I am of the opinion that the Indemnity Agreement offers independent and substantive evidence that is relevant to the issues in the lawsuit and is more probative than prejudicial under Fed.R.Evid. 403. I further find the evidence with regard to indemnity to be admissible in this regard. Fed.R.Evid. 401 and 403.

Reference to Defendants' Foreign Affiliates
Defendants state that their respective companies have

current or past ownership connections to Germany, France and Italy. They contend that these connections will invoke sympathy or loyalty to the Nebraska plaintiffs and against the foreign corporations. Sanford contends that the location of individuals controlling all aspects of this product, and the decisions that occur as a result of that ownership and control, are relevant evidence in this case. Sanford further contends that evidence with regard to the size and structure of the defendants' businesses in relation to the product in this lawsuit is relevant. Sanford asks that no blanket ruling be made at this time.

The Court finds the case cited by defendants, *United States v. Bear Ribs*, 722 F.2d 420 (1983), to not be analogous to the one at hand. *Bear Ribs* was a criminal case that dealt with admissibility of irrelevant issues in the purely criminal context. In the case of *Union Electric Light & Power Co. v. Snyder Estate Co.*, 65 F.2d 297 (8th Cir.1933), the district court allowed testimony regarding stock purchases, stock earnings, and who controlled the stock. *Union Electric*, 65 F.2d 297, 303. On appeal, the Court of Appeals stated: "these inquiries threw no light upon the single issue to be tried by the jury; but it is observed the evidence was not overlooked in counsel's argument to the jury...." *Id.* The Court further stated:

This evidence not only took the jury far from the simple issue to be tried, but it distracted their attention from that issue, and brought before them the size and wealth of plaintiff and its affiliates, and the above-quoted argument of defendants' counsel was calculated to keep fresh in the minds of the jury the size and wealth and foreign character of the plaintiff. To permit evidence of the wealth of a party litigant, except where position or wealth is necessarily involved in determining the damages sustained, is prejudicial error.

Union Electric, 65 F.2d 297, 303. See also, *Pevely Dairy Co. v. United States*, 178 F.2d 363, 371 (8th Cir.1949) (where court found that testimony regarding ownership of stock by foreign corporation was not pertinent to any of the issues in the lawsuit, and could have only one purpose "and that was to prejudice the jury."); *Gearhart v. Uniden*, 781 F.2d 147 (8th Cir.1986) (where the court stated: "On retrial, however, the District Court should limit the scope of the admissible consumer-complaint evidence and prohibit references to Uniden of Japan, Taiwan, or Hong Kong similar to those made in closing argument at the original trial.") *Id.*, at 148.

*3 This Court finds that references to foreign affiliation in this case would be prejudicial to the defendants and

such references are not relevant to the issues in this case. Therefore, defendants' motion in limine with regard to references to foreign affiliations will be granted.

Admissibility of Packaging and Warnings

Defendants contend that the Astrospec 3000 and the Prism are separate and different eyewear. They contend that the structure is different and that different warnings accompany the Prism eyewear, as it is designed and manufactured for sports use, unlike the Astrospec 3000. Defendants state that the Astrospec 3000 insert specifically warns against use in athletic games. (Astrospec 3000 Warning, Evidence Index, Exhibit F). The Defendants request that this Court find that the Astrospec 3000 warning not be permitted into evidence as it is irrelevant and prejudicial.

Sanford contends that the Prism and Astrospec 3000 eyewear are one and the same. Dr. Vinger has also opined that he believes that they are the same. (Depo. of Dr. Paul Vinger, 85:4-7; Filing No. 125). Sanford, therefore, requests that this court allow the warnings for the Astrospec 3000 to be admitted as evidence.

The Court ruled that Dr. Vinger can testify on the issue of whether the Prism and the Astrospec 3000 are virtually the same eyewear. (Filing No. 184) If this testimony is introduced at trial, then both the warnings are relevant to the issues in the lawsuit. The prejudice, if any, to the defendants, is outweighed by the relevance of this evidence in the lawsuit. Therefore, defendants' motion in limine with regard to this issue is denied.

Other Eyewear Products

Defendants next contend that Sanford should be prohibited from introducing any evidence regarding other eyewear products manufactured, distributed or sold by the defendants. From 1991-93 UVEX did manufacture eyewear that was used in sports activities. Prior to 1991, and subsequent to 1993, UVEX contends that it did not manufacture eyewear that was used in sports activities. Ektelon states that it sold the UVEX Prism eyewear, and now markets and sells a variety of eyewear for sports applications. Defendants contend that introducing other kinds of eyewear manufactured and sold by them would be irrelevant to the issues in the case and could be prejudicial to them.

Sanford contends that they should be allowed to introduce evidence of the UVEX Astrospec 3000 product. This Court agrees and has already ruled that such evidence

is relevant and admissible.

Sanford next argues that the defendants were marketing other products that met the applicable ASTM F803 standards. These products and the written language contained on the packaging, according to Sanford, are proof that defendants knew of the requirements for meeting the ASTM standards. Also, Sanford wants to use these products to compare to the Prism and show that the other products, but not the Prism, had a safe design.

*4 Sanford has not indicated to the Court what products he would like to introduce or when the products were manufactured. Based on what has been presented to this Court, the Court rules that introduction of other eyewear products, other than the UVEX as previously set forth herein, does not appear to be relevant evidence. In addition, such evidence could violate the subsequent remedial measures rule, depending upon the date of manufacture and distribution. Fed.R.Evid. 407. Therefore, this Court rules that evidence of other eyewear will not be admissible, unless at trial evidence evolves that would make these other products relevant. For example, the Court could foresee that this evidence could be used for impeachment purposes. Sanford is free to raise this issue at trial if the evidence so dictates.

Other Claims or Lawsuits Against the Defendants

Sanford served interrogatories on the defendants asking for other lawsuits involving these defendants and protective goggles. The defendants responded that there were no similar lawsuits or claims. Defendants request that this Court not admit any other lawsuits, claims or judgments into evidence in this case.

Sanford claims that defendants did not adequately answer the interrogatory in question and have refused to give him information regarding any specific claim or lawsuit. Sanford states, "A ruling on the defendants' fifth Motion in Limine cannot be made until the Court is presented with specific evidence." Sanford then requests that this Court not make a blanket ruling on this issue.

Sanford offers no evidence that any other claims or lawsuits that are relevant to this case even exist. As a consequence, the Court rules that defendants' motion in limine in this regard should be granted, and Sanford will be unable to produce evidence of other claims, lawsuits or judgments against the defendants during the trial.

Exclusion of Discovery Disputes

Defendants anticipate that Sanford will make reference to the parties' discovery disputes, orders or timeliness of production of documents in this case. Any references to these disputes, according to defendants, would be unduly prejudicial and irrelevant. Further, they would take the jury away from its role which is to decide the issues in the lawsuit. See Empire Gas Corp. V. American Bakeries, Co., 646 F.Supp. 269, 274-276 (N.D.Ill.1986).

Sanford argues that the defendants' litigation conduct is relevant to the punitive damages requested in this case. Further, Sanford contends that the evidence surrounding the process of the case may be relevant, and this Court should not rule on it until it is introduced at trial.

This Court has ruled that punitive damages will not be allowed in this case. (Filing No. ____). This Court further rules that information regarding discovery disputes in this case is not relevant, would be prejudicial, would take the jury away from the case, and will not be admissible. *Empire Gas Corp. v. American Bakeries Co.*, 646 F.Supp. 274-76. The defendants' motion in limine is granted on this issue.

Cumulative Evidence on Mark Sanford's Eye

*5 Defendants request that this Court not allow evidence that is cumulative with regard to the injury to Mark Sanford's eye. Both Dr. Paul Vinger and Dr. Peter Whitted are expected to testify on this issue. Sanford claims that these two doctors will testify on different subjects. Dr. Vinger, according to Sanford, will testify about the defective nature of the eyewear and how the defects caused injury to Sanford's eye. Dr. Whitted, on the other hand, will testify regarding treatment, surgeries, extent of injury and impairment, and cost of treatment.

The Court has reviewed Sanford's exhibits, Tabs 1-4, and the deposition testimony and finds that the testimony as presented does not appear to be cumulative. Therefore, the Court finds that this motion in limine should be overruled. However, the Court further notes that if the evidence as presented at trial becomes cumulative, the defendants are free to raise this issue again.

Exclusion of ANSI Standards

Defendants request that this Court exclude any evidence or reference to American National Standards Institute (ANSI) standards for eye and face protective wear. These guidelines, and particularly ANSI Z.87, do not apply to sports. According to defendants, these standards are purely for industrial use. Defendants believe that intro-

duction of these standards would confuse the issues, particularly with regard to the different standards between industrial eyewear and sports eyewear.

Sanford contends that the Astrospec 3000 and the Prism are the same eyewear. Sanford further suggests that the "Z87" marking was removed from the temple piece of the Astrospec 3000 when it was sold to Ektelon as the Prism. (Plaintiffs' Index of Evidence, Tab 1). The marking indicates that the glasses are safe for industrial use only, and not for athletic activities. Sanford contends that by marking the Z.87 off the Prism, Ektelon hid the fact that the eyewear was not safe for athletic activities.

The Court finds that the evidence is relevant and probative on this issue. Therefore, the Court overrules the defendants' motion in limine on this claim.

IT IS THEREFORE ORDERED that defendants' motions in limine (Filing Nos. 130 through 137, inclusive) are hereby denied in part and granted in part as set forth in this order.

D.Neb.,1999.

Sanford v. Ektelon/Prince Sports Group, Inc.

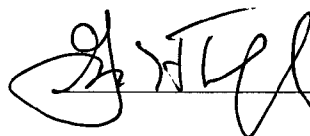
Not Reported in F.Supp.2d, 1999 WL 33544436 (D.Neb.)

END OF DOCUMENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Plaintiff's Motion for Reconsideration/Clarification Re: Order Denying Plaintiff's Third Motion in Limine was served upon the following by email and deposit in the United States mail, first class postage prepaid, this 7th day of October, 2011.

Joseph A. Hudock, Jr.
Summers, McDonnell, Hudock, Guthrie & Skeel, P.C.
707 Grant Street,
Suite 2400, Gulf Tower
Pittsburgh, PA 15219



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC

Plaintiff,

v.

DMG CHICAGO, INC.,

Defendant.

: **CIVIL DIVISION**

:
: No. 07-754-CD

:
: **PRAECIPE TO MARK CASE**
: **SETTLED AND DISCONTINUED**
: **WITH PREJUDICE**

:
: Filed on behalf of Plaintiff

:
: Counsel of Record for this Party:

:
: Gregory H. Teufel, Esq.
: Pa. Id. No. 73062
: Amy J. Roy, Esq.
: Pa. Id. No. 86584
: Jeremy L.S. Samek, Esq.
: Pa. Id. No. 205060
: Eckert Seamans Cherin & Mellott, LLC
: U.S. Steel Tower
: 600 Grant Street, 44th Floor
: Pittsburgh, PA 15219
: 412.566.6000 telephone
: 412.566.6099 fax

:
: Christopher E. Mohny, Esq.
: PA I.D. 63494
: 25 East Park Avenue, Suite 6
: DuBois, PA 15801
: 814.375.1044 telephone
: 814.375.1088 fax

FILED NO
MAR 20 2012
William A. Shaw
Prothonotary/Clerk of Courts
copy to CIA
6K

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

GORTECH GLOBAL FABRICATION, LLC	:	CIVIL DIVISION
	:	
Plaintiff,	:	No. 07-754-CD
	:	
v.	:	
	:	
DMG CHICAGO, INC.,	:	
	:	
Defendant.	:	

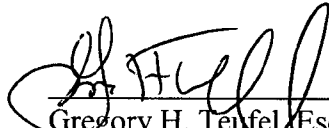
PRAECIPE TO MARK CASE SETTLED AND DISCONTINUED
WITH PREJUDICE

TO THE PROTHONOTARY:

Please mark the above-captioned matter as settled and discontinued with prejudice.

Respectfully submitted,

Dated: March 22, 2011

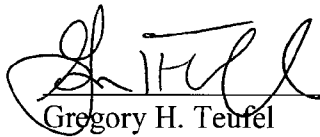


Gregory H. Teufel, Esq.
Jeremy L.S. Samek, Esq.
Christopher E. Mohnsey, Esq.
Attorneys for Plaintiff,
Gortech Global Fabrication, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Praecipe to Mark Case Settled and Discontinued With Prejudice was served upon the following by email and deposit in the United States mail, first class postage prepaid, this 22nd day of March 2012.

Joseph A. Hudock, Jr.
Summers, McDonnell, Hudock, Guthrie & Skeel, P.C.
707 Grant Street,
Suite 2400, Gulf Tower
Pittsburgh, PA 15219



**SUMMERS, McDONNELL, HUDOCK,
GUTHRIE & SKEEL, P.C.**
ATTORNEYS AT LAW

STEPHEN J. SUMMERS
THOMAS A. McDONNELL
JOSEPH A. HUDOCK, JR.
GREGG A. GUTHRIE
PETER B. SKEEL
PATRICK M. CONNELLY*
JEFFREY C. CATANZARITE

PITTSBURGH OFFICE:
GULF TOWER, SUITE 2400
707 GRANT STREET
PITTSBURGH, PA 15219
PHONE 412-261-3232
FAX 412-261-3239

JASON A. HINES
KEVIN D. RAUCH
ERIN M. BRAUN
GUY E. BLASS
MARK J. GOLEN
ROBERT J. FISHER, JR.
JOHN A. LUCY
SETH T. BLACK**
MATTHEW RIDLEY
JULIA A. PHILLIPS
GARTH A. GARTIN
DANIEL J. SAMMEL
MICAH T. SAUL
KRISTA M. CORABI
ALICIA A. GENTHER

*ALSO ADMITTED IN WV

June 30, 2011

The Honorable Fredric J. Ammerman
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

**ALSO ADMITTED IN NJ

In Re: Gortech Global Fabrication, LLC vs. DMG Chicago, Inc.
Docket Number : 07-754-CD (Clearfield Co.)
Our File : 16887

Dear Judge Ammerman:

You had requested a letter brief on the issue of the discoverability of sentences 4 and 5 in the e-mail dated May 30, 2007 at 8:50 p.m. from Phil Rugari to York Franke. As the Court is aware, the last sentence of Rule 4003.3 provides that the representative of a party does not have to disclose his "mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics." The explanatory comment to the rule does little to explain the rule, in my opinion. The penultimate sentence of the second paragraph of the explanatory comment reiterates the last sentence of the rule but then goes on to state in the next sentence, "Memoranda or notes made by the representative are not protected." In the case *sub judice*, the document in question is an e-mail communication rather than personal memoranda or notes, so I believe the quoted sentence is inapposite.

I have researched the case law, and the case which has the best discussion of Rule 4003.3 is Tate v. Philadelphia Savings Fund Society, 1 Pa. D. & C. 4th 131 (C.C.P. Phila. Co. 1987). Tate involved a fall-down accident which was investigated by a representative of the defendant property owner, who then refused to allow the representative to answer questions at his deposition concerning what he observed about the condition of the property. The court in Tate looked at the language of Rule 4003.3 and noted that the rules committee did not define the term "representative." Following Judge Wettick's lead in the case of Equitable Gas Co. v. Wallbrook Ins. Co., 133

P.L.J. 216 (1984), the court agreed that "Any person, not a lawyer, who has a tie to a party which might require or occasion participation in decisions respecting the value or merit of a claim or defense, or respecting strategy or tactics, should be regarded as a representative of that party for purposes of Rule 4003.3." The court therefore found that the investigator was a "representative." Likewise, in this case, Mr. Rugari should be found to be the representative of a party for purposes of Rule 4003.3.

The Tate court then looked at the communication itself and noted that Rule 4003.3 does not prohibit discovery of all mental impressions, opinions or conclusions. Protection is available only for those concerning the value or merit of a claim or defense or a strategy or tactic. Because the court found that the statements at issue concerned only factual observations made by the investigator, it permitted disclosure of the memoranda containing the statements.

Here, on the other hand, it is submitted that the comments in the e-mail are one representative/employee's opinion concerning another employee's conduct. The text of the e-mail reads, "If you had not misrepresented this machine we wouldn't be in this mess. Please fess up your failings in this transaction." These remarks appear to me to be nothing more than the writer's opinion that the plaintiff has a good case. As explained by Judge Avalino in the Tate case, comments concerning the value or merit of a claim, "have no evidentiary value. At best, they are inexpert speculation or conjecture and, at worst, they are just plain gossip. They may be of interest to an adversary, but they are not probative on any of the issues joined for trial . . ." Judge Avalino went on to note that, "What the representative knows, by definition, is evidentiary. In other words, plaintiff is entitled to seek disclosure of the representative's factual findings but not his opinions concerning the merit of a claim or defense."

I believe the Court's concern is that the two sentences in question may constitute an admission by a party opponent under Pa.R.E. 803(25)(D). The problem as I see it is we do not know if Mr. Rugari knew what he was talking about when he made the statement. For all we know, Mr. Rugari may have intensely disliked Mr. Franke and was all too happy to use this particular transaction gone sour as a vehicle to call him on the carpet without having first researched the matter and determined what the true facts were. Neither Mr. Rugari nor Mr. Franke has been deposed, nor have I spoken to either one of them, and both have left the company. I therefore do not know whether

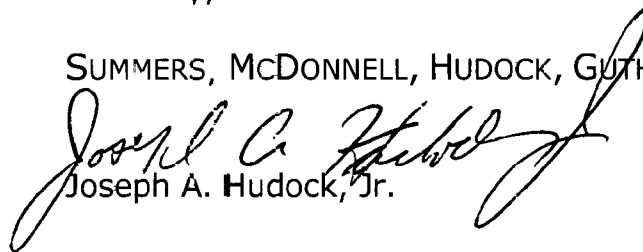
THE HONORABLE FREDRIC J. AMMERMAN
JUNE 30, 2011
PAGE 3

Mr. Franke did, in fact, misrepresent anything about the machine he sold to plaintiff or, assuming that he did, whether Mr. Rugari actually knew that he had done so. It seems to me that the e-mails between Mr. York and Mr. Rugari represent nothing more than each writer pointing the finger at the other due to the fact that the case was heading to litigation. For the foregoing reasons, I suggest that the redactions to sentences 4 and 5 of the e-mail were proper.

I am enclosing for your convenience a copy of the Tate case.

Sincerely,

SUMMERS, McDONNELL, HUDOCK, GUTHRIE & SKEEL



Joseph A. Hudock, Jr.

JAH/lab
Enclosure



**Joyce A. Tate v. Philadelphia Savings Fund Society, Southeastern Pennsylvania
Transportation Authority and City of Philadelphia**

No. 2124

COMMON PLEAS COURT OF PHILADELPHIA COUNTY, PENNSYLVANIA

16 Phila. 214; 1987 Phila. Cty. Rptr. LEXIS 28; 1 Pa. D. & C.4th 131

September 22, 1987

SUBSEQUENT HISTORY: *Reported at Tate v. Philadelphia Sav. Fund Soc., 1 Pa. D. & C.4th 131, 1987 Pa. Dist. & Cnty. Dec. LEXIS 6 (1987)*

HEADNOTES

[**1] Discovery -- Work Product Privilege -- Mental Impressions -- Opinions Regarding Merit of a Claim -
- Party's Expert -- Firsthand Knowledge

SYLLABUS

(1) *Rule 4003.3*, which was adopted on December 16, 1978, all but abolished the work product privilege which, under former *rule 4011(d)*, protected from discovery information secured in anticipation of litigation

(2) An employee who, upon the request of his employer, has conducted an investigation in anticipation of litigation, must reveal, as part of discovery, his findings

(3) *Rule 4003.3* provides that discovery shall not include disclosure of a party's non-lawyer representative's mental impressions, conclusions or opinions respecting the value or merit of a claim or defense, or respecting strategy or tactics

(4) When a lawyer orally interviews a witness, who hasn't signed a written statement, his/her notes of the interview are protected from discovery, however the same notes, made by a party's non-lawyer representative, are not similarly protected

(5) If a party's expert is not expected to be called at trial, his identity and mental impression, conclusions or opinions, are protected as privileged information unless a showing of exceptional circumstances [**2] can be made (*Rule 4003.5(a)(3)*)

(6) When a party's expert is expected to be called at trial, discovery is limited to a mere synopsis of the testimony expected, unless the Court grants an application for cause shown (*Rule 4003.5(a)(2)*)

(7) A non-lawyer, who has on occasion participated in decisions respecting litigation strategy or tactics for a party, should be regarded as a representative of that party for the purposes of *Rule 4003.3*

(8) A party's non-lawyer representative, who has acquired firsthand knowledge of relevant matters may be called as a witness

(9) A lawyer's mental impressions, conclusions or opinions, formed as a result of an inspection, are part of his work product and as such are protected from discovery.

COUNSEL: *Morton A. Slifkin*, Esquire, for Plaintiff,
Joyce A. Tate

Philip Toran, Esquire, for Defendant, Philadelphia Savings Fund Society

Joan L. Gerson, Esquire, for Defendant, Southeastern Pennsylvania Transportation Authority and City of Philadelphia

Daniel R. Meachum, Esquire, for Defendant, City of Philadelphia

JUDGES: AVELLINO, J.

OPINION BY: AVELLINO

OPINION

COPY

Phil
Rugari/MG/DMGCC/GILDEMEISTER

05/30/2007 08:50 PM

To York
Franke/SV/DMGCC/GILDEMEISTER@GILDEMEISTER
cc Christoph
Reinkemeier/MG/DMGCC/GILDEMEISTER@GILDEMEISTER,
R, Gerald
Fitzpatrick/FI/DMGCC/GILDEMEISTER@GILDEMEISTER,
Kiran Shetty/FI/DMGAM/GILDEMEISTER@GILDEMEISTER,
Mark
Henne/SL/DMGCC/GILDEMEISTER@GILDEMEISTER,
Robert
Nedler/SL/DMGCC/GILDEMEISTER@GILDEMEISTER

bcc

Subject Re: Fw: Gortech Global Fabrication

York,

[REDACTED] You are employed by
DMG and need to be a partner in our resolution here. [REDACTED]

[REDACTED] We have
a problem to deal with here and I need a professional report from you. Please stick to the facts and not
your opinions.

York Franke

----- Original Message -----

From: York Franke
Sent: 30.05.2007 18:53 EDT
To: Phil Rugari
Cc: Christoph Reinkemeier; Gerald Fitzpatrick; Kiran Shetty; Mark Henne;
Robert Nedler
Subject: Re: Fw: Gortech Global Fabrication

Responding to point one, I sold the machine based on DMG Chicago guaranteeing immediate availability
upon acceptance of my trade in offer (attached-signed by Jim Gondeck).

[REDACTED] DMG Chicago also guaranteed free and clear title free of all
liens.

The trade in offer was accepted on December 9, 2005 and I sold the machine on February 3, 2006.

[attachment "Christnacht-Gondeck-Franke signed PREDATOR trade in.pdf" deleted by Phil
Rugari/MG/DMGCC/GILDEMEISTER]

York Franke
President
DMG Used Machine Division
1665 Penny Lane
Schaumburg, IL 60173
USA

Phone: +847-781-0277 x 262
Cell Phone: +224-622-5376
Fax: +847-781-5053
Email: york.franke@dmgamerica.com
Website: www.dmgamerica.com

Phil
Rugari/MG/DMGCC/GILDEMEISTER

05/30/2007 08:50 PM

To York
Franke/SV/DMGCC/GILDEMEISTER@GILDEMEISTER
cc Christoph
Reinkemeier/MG/DMGCC/GILDEMEISTER@GILDEMEISTER,
R, Gerald
Fitzpatrick/FI/DMGCC/GILDEMEISTER@GILDEMEISTER,
Kiran Shetty/FI/DMGAM/GILDEMEISTER@GILDEMEISTER,
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Henne/SL/DMGCC/GILDEMEISTER@GILDEMEISTER,
Robert
Nedler/SL/DMGCC/GILDEMEISTER@GILDEMEISTER
bcc

Subject Re: Fw: Gortech Global Fabrication

York,

Please disrobe yourself of this mentality that you work for some other company. You are employed by DMG and need to be a partner in our resolution here. You are not innocent here. If you had not misrepresented this machine we wouldn't be in this mess. Please fess up your failings in this transaction. If you do not now, surely you will be in front of a judge having to "tell the whole truth and nothing but the truth." York, start standing by your fellow DMG colleges and stop throwing people under the bus. We have a problem to deal with here and I need a professional report from you. Please stick to the facts and not your opinions.

York Franke

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If the customer did not want to trade in the machine and/or machine was not available Jim Gondeck should have never signed my trade in offer. DMG Chicago also guaranteed free and clear title free of all liens.

The trade in offer was accepted on December 9, 2005 and I sold the machine on February 3, 2006.

[attachment "Christnacht-Gondeck-Franke signed PREDATOR trade in.pdf" deleted by Phil Rugari/MG/DMGCC/GILDEMEISTER]

York Franke
President
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1665 Penny Lane
Schaumburg, IL 60173
USA

Phone: +847-781-0277 x 262
Cell Phone: +224-622-5376
Fax: +847-781-5053
Email: york.franke@dmgamerica.com
Website: www.dmgamerica.com

RuG
4003.3