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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	CASE NO. 98-50531	
LUCERNE PRODUCTS, INC.)		
Debtor-in-Possession)	CHAPTER 11	
)		
LUCERNE PRODUCTS, INC.)	ADV. NO. 98-5125	
Plaintiff)		
)	JUDGE	MARILYN
)	SHEA-STONUM	
v.)		
)	ORDER AWARDING	
DOUGLAS D. MATHEWS, et al.)	SANCTIONS AGAINST	
Defendant)	DOUGLAS MATTHEWS	

This matter came before the Court on a plaintiff-debtor's "Request for Hearing to Consider Sanctions Against Douglas Matthews" (the "Request for Sanctions"). A hearing on the matter was scheduled for January 14, 2000. Douglas Matthews did not file an objection or other respond to the Request for Sanctions.

Appearing at the January 14th hearing were Christopher Niekamp, counsel for plaintiff-debtor, and John Myers, counsel for Matthews. During the hearing the Court received evidence in the form of exhibits and also in the form of testimony from Robert Riedel, former president of plaintiff-debtor. Matthews, who was also present during the hearing, did not testify. At the conclusion of the hearing the matter was taken under advisement.

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. It is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A),(E), and (O) over which this Court has jurisdiction pursuant to 28 U.S.C. §1334(b). Based upon testimony and evidence presented at the January 14th

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hearing, the arguments of counsel and the pleadings in this adversary proceeding and plaintiff-debtor's main chapter 11 case, the Court makes the following findings of fact and conclusions of law.

FACTS¹

A. Background

Plaintiff-debtor was incorporated in 1951 as an Ohio corporation and has been a manufacturer of hand tools and electrical switches. Plaintiff-debtor began its manufacturing operations at a facility located in Boston Heights, Ohio (the "Ohio Facility") and later opened a second manufacturing plant in Bolivar, Tennessee (the "Tennessee Facility"). Until 1996, plaintiff-debtor had a single customer for its products.

On April 30, 1996, plaintiff-debtor's president resigned due to a financial downturn suffered by the loss of plaintiff-debtor's major customer. To improve its financial condition, plaintiff-debtor engaged turnaround consultants to advise it on key management and other decisions. During the period of its management by this outside consulting group, plaintiff-debtor began outsourcing production of certain parts, molds and other tooling. Compounding its difficulties, on July 6, 1996, plaintiff-debtor suffered a severe fire at the Ohio Facility and was forced to move all of its production operations to the Tennessee Facility. In June, 1997, the outside consulting group resigned.

Plaintiff-debtor was unable to address its difficulties adequately and plaintiff-debtor continued to suffer losses. As a result, those creditors of plaintiff-debtor (who subsequently comprised the Official Committee of Unsecured Creditors in plaintiff-debtor's main chapter 11 case) commenced an involuntary chapter 7 bankruptcy

¹ The Court also incorporates by this reference, the findings of fact set forth in the Turnover Order.

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petition against plaintiff-debtor on February 24, 1998. On March 16, 1998, plaintiff-debtor voluntarily converted the proceeding to a chapter 11 case in which it remained in possession of its property and operated its business as debtor-in-possession, pursuant to §§1107 and 1108 of the Bankruptcy Code.

At the time of the commencement of the bankruptcy case, plaintiff-debtor's President and Chief Executive Officer was Linda Matthews and Robert Riedel held the offices of Secretary, Treasurer and Vice President of Finance. The sole shareholder of plaintiff-debtor was the Matthews Trust whose beneficiaries included Douglas Matthews and Linda Matthews.

In early April 1998, the Official Committee of Unsecured Creditors expressed its desire that the involvement of Douglas Matthews and Linda Matthews in the management of plaintiff-debtor be terminated. An agreement was reached whereby William H. Shackelford, Jr. ("Shackelford") was employed, by contract and court order entered on April 23, 1998, as plaintiff-debtor's President.

After Shackelford was employed as president of plaintiff-debtor, Douglas Matthews and Linda Matthews remained as both officers and members of plaintiff-debtor's board of directors. During August 1998, plaintiff-debtor and Shackelford commenced discussions for the sale of substantially all of debtor's assets. Seeking to halt these discussions, Douglas Matthews and Linda Matthews attempted to terminate Shackelford's position as plaintiff-debtor's president. Concerned that this interference would permanently derail plaintiff-debtor's efforts to sell its property, plaintiff-debtor, on August 28, 1998, filed a "Motion to Appoint Person in Control of Debtor and for Emergency Hearing" pursuant to Fed. R. Bankr. P. 9001. On September 11, 1998, an order was entered appointing Shackelford as "person in control" of

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plaintiff-debtor.

B. The Lucerne Assets, the Disputed Assets and the Matthews Litigation

Sometime in August 1998, Shackelford and plaintiff-debtor's counsel discovered that Douglas Matthews and/or Linda Matthews had taken into their possession and had purported to transfer a valuable estate asset known in this case as the "DC Switch." Shortly after this discovery, plaintiff-debtor initiated the within adversary proceeding (hereinafter referred to as the "Matthews Litigation"). Named as defendants in the Matthews Litigation were Douglas Matthews, Linda Matthews and Emma Anderson, who is Douglas Matthews' grandmother.

In the Matthews Litigation, plaintiff-debtor asserted claims of fraudulent conveyance, preference, and breach of fiduciary duties. Plaintiff-debtor also requested that temporary and permanent restraining orders be entered to prevent defendants from transferring, disposing or damaging the DC Switch. A temporary restraining order was entered on August 12, 1998.

On November 23, 1998, an order was entered in plaintiff-debtor's main chapter 11 case approving the sale of substantially all of plaintiff-debtor's assets (defined in that order and hereinafter referred to as the "Lucerne Assets") to Lucerne Technologies. Pursuant to that order of sale, and pursuant to another order entered in the main chapter 11 case on September 11, 1998, Douglas Matthews was ordered to turn over to either plaintiff-debtor or Lucerne Technologies all Lucerne Assets in his possession or control. Also pursuant to the November 23, 1998 order of sale, plaintiff-debtor was required to assist Lucerne Technologies in obtaining the return of any Lucerne Assets not otherwise located in the Tennessee Facility.

On November 30, 1998, plaintiff-debtor filed a "Motion for Contempt, Motion to Turn Over Property and Request for Emergency Hearing and Temporary Restraining

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Order" (the "Turnover Motion") in the Matthews Litigation. In the Turnover Motion, plaintiff-debtor alleged that, despite this Court's prior orders, Douglas Matthews still retained possession or control over some Lucerne Assets. Accordingly, plaintiff-debtor sought a court order requiring Douglas Matthews to turn over (i) all "DC Switch" working and non-working prototypes and related parts and (ii) a list of the names of owners of each injection mold formerly used by plaintiff-debtor. [(i) and (ii) were collectively referred to in the Turnover Order (as defined below) and shall hereinafter be collectively referred to as the "Disputed Assets"].

On December 17, 1998, the Court held an evidentiary hearing on the Turnover Motion. During that hearing, plaintiff-debtor did not request that the Court enter monetary sanctions against Douglas Matthews but reserved the right to seek such relief against Matthews at a later date if the Court ordered turn over of the Disputed Assets and if Matthews failed to abide by such turnover order.

On February 8, 1999, the Court entered an "Order Requiring Turnover of Property" (the "Turnover Order"). In the Turnover Order, Douglas Matthews was found to be in contempt of this Court's prior orders to turn over the Disputed Assets. In an effort to allow Matthews to purge himself of such contempt, the Turnover Order provided:

1. That . . . Matthews shall turn over the Disputed Assets to his attorney, Leland Cole, on or before **February 16, 1999**, and that upon receipt of the Disputed Assets, Mr. Cole shall contact plaintiff-debtor's attorney to determine how the Disputed Assets will be delivered to Lucerne Technologies.
2. That if Matthews fails to turn over the Disputed Assets by February 16, 1999, counsel for plaintiff-debtor or Lucerne Technologies shall appear at a hearing to be held on **February 18, 1999**, at **1:30 p.m.**, in Room 250, U.S. Courthouse and Federal Building, 2 South Main Street, Akron, Ohio, and state for the record Matthew's failure to comply with this Order. At

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such hearing, and without further notice to Matthews or his counsel, the Court will consider and decide upon damages and/or other appropriate relief to be granted for Matthew's continuing contempt. Additionally at the February 18th hearing, the Court, without further notice to Matthews or his counsel, may also consider a criminal referral of Matthew's violations of the orders of this Court and other applicable bankruptcy law to the United States attorney pursuant to 18 U.S.C. §3057.

See Turnover Order (docket number 27) at pages 8-9 (emphasis in the original).

Douglas Matthews again failed to turn over the Disputed Assets and on February 18, 1999, an evidentiary hearing was held to consider proper monetary sanctions against Douglas Matthews. Appearing at the February 18, 1999 hearing were Christopher Niekamp, counsel for plaintiff-debtor, and Lee Wagoner, counsel for Douglas Matthews. Douglas Matthews was present and testified.

At the conclusion of the February 18th hearing, the parties represented to the Court that they had reached a potential compromise and requested that the Court's consideration of sanctions against Douglas Matthews be continued to a later date. On March 19, 1999, plaintiff-debtor filed a motion seeking Court approval to settle the Matthews Litigation and two consolidated adversary proceedings that were collectively referenced as the "Wooster Sheet Metal Litigation." A hearing on plaintiff-debtor's motion to compromise was held on April 14, 1999.

During the April 14th hearing, plaintiff-debtor's counsel represented that Douglas Matthews had failed to comply with the terms of the parties' settlement and that plaintiff-debtor planned to pursue the Matthews Litigation. Thereafter, on July 2, 1999, plaintiff-debtor filed another motion seeking Court approval to settle the Wooster Sheet Metal Litigation and the Matthews Litigation as to all defendants but Douglas Matthews. A hearing was held on August 5, 1999 and an order granting the motion to compromise was entered on August 18, 1999.

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On September 23, 1999, plaintiff-debtor filed yet another motion to compromise the Matthews Litigation as to the only remaining defendant, Douglas Matthews.² The terms of the proposed compromise provided, *inter alia*, that, in return for dismissing the Matthews Litigation, Douglas Matthews would pay to plaintiff-debtor \$10,000.00. The proposed compromise also provided that Douglas Matthews would remain bound by previous orders (including all restraining orders) of the Bankruptcy Court regarding the Disputed Assets.

On October 15, 1999, the Court held a hearing on plaintiff-debtor's latest motion to compromise. During that hearing, counsel for plaintiff-debtor represented to the Court that, to date, Douglas Matthews had failed to provide him with certain financial statements needed to consummate the proposed settlement. Because Douglas Matthews failed to appear at that hearing, the Court continued the hearing to November 16, 1999. Thereafter, on October 20, 1999, counsel for plaintiff-debtor filed a pleading in debtor's main chapter 11 case that was styled "Motion to Continue Hearing on Debtor's Motion to Compromise Claim with Douglas Matthews." That pleading, which was served on Douglas Matthews, set forth that the adjourned hearing on plaintiff-debtor's motion to compromise would be held on November 16, 1999. In addition to service of this pleading, plaintiff-debtor's counsel also issued to Douglas Matthews a subpoena requiring his appearance at the November 16, 1999 hearing.

Douglas Matthews failed to appear at the November 16, 1999 hearing. When questioned as to why Douglas Matthews was not present, Mr. Matthews' counsel

² Sometime in or around August, 1999, Douglas Matthews retained John Myers as replacement counsel and sometime thereafter, plaintiff-debtor's counsel and Mr. Myers began renewed negotiations to settle the Matthews litigation.

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indicated that his client was in Tennessee meeting with defense attorneys to prepare for a November 17, 1999 hearing in a criminal matter then pending against him. Because plaintiff-debtor's counsel wanted to depose Douglas Matthews as to issues related to the proposed settlement, counsel once again requested that the hearing on plaintiff-debtor's motion to compromise be adjourned.

At the conclusion of the November 16th hearing, the Court directed that Douglas Matthews was to provide evidence to support the representation that he could not attend the hearing because he was preparing for a hearing in the criminal matter.³ The Court also directed that Douglas Matthews appear for a deposition by plaintiff-debtor's attorney, to be scheduled at a mutually convenient time during the last week of November or the first week of December, 1999.

Douglas Matthews' deposition was scheduled for December 3, 1999 in the Akron, Ohio office of plaintiff-debtor's counsel and Douglas Matthews once again failed to appear claiming that he was ill. The deposition was then rescheduled for December 7, 1999. Again, Douglas Matthews failed to appear, this time claiming that it was because he missed his flight from Tennessee.

C. The Firemans Fund Insurance Co. Litigation

On June 26, 1998, plaintiff-debtor filed a complaint against Firemans Fund Insurance Co. ("Firemans Fund") alleging breach of contract (the "Firemans Fund

³ During the January 14th hearing on the Request for Sanctions, the only evidence Mr. Matthews presented was a facsimile copy of a letter addressed to Mr. Matthews' counsel from a legal assistant at a law firm in Jackson, Tennessee. The text of that letter stated: "I am writing this letter to confirm that Doug Matthews was in Madison County Circuit Court in Jackson, Tennessee on November 16, 1999. If you have any further questions, please do not hesitate to give me a call. Sincerely, /s/ Patty Spry, Legal Secretary for David W. Camp." As with most of Mr. Matthews' other actions in this case, it falls far short of complying with what this Court has ordered.

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Litigation"). The Firemans Fund Litigation stemmed from the fire at the Ohio Facility and Firemans Fund's policy to insure that facility. The dispute between the parties arose because Firemans Fund refused to compensate plaintiff-debtor under the parties' contract of insurance for business interruption during the policy period as well as during an extended indemnity coverage period. The lost business income claim related specifically to potential profits that could have been generated by production of the "DC Switch."

On October 21, 1998, plaintiff-debtor filed a motion to compromise the Firemans Fund Litigation. Pursuant to the proposed compromise, the parties agreed to resolve the dispute through binding arbitration. On December 3, 1998, the Court entered an order approving the compromise and directing the appointment of an arbitrator. Arbitration was scheduled for April 1 and 2, 1999 and Mr. Matthews agreed to appear and testify on plaintiff-debtor's at the arbitration hearing.

During the arbitration, the arbitrators requested to see the "DC Switch." However, because Mr. Matthews has never turned over the actual switch or any of the working and nonworking prototypes, plaintiff-debtor was unable to grant the arbitrators' request. Also, Mr. Matthews failed to appear and testify at the arbitration. The arbitrators eventually awarded plaintiff-debtor \$91,675.00 for lost profits for sales of the "DC Switch."

DISCUSSION

The Bankruptcy Court has the inherent authority to impose sanctions for misconduct during the course of a case and to compensate an injured party for losses suffered by reason of such misconduct. *See* §105(a) and Fed. R. Bankr. P. 9020; *In re Kriss*, 217 B.R. 147, 159 (Bankr. S.D.N.Y. 1998) (and cases cited therein). *See also Michaelson v. United States ex rel. Chicago*, 266 U.S. 42 (1924) (power to punish for

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contempt is inherent in all courts).⁴ Factors to be considered in imposing civil contempt sanctions are: (1) the harm from noncompliance; (2) the probable effectiveness of the sanction; (3) the financial resources of the contemnor and the burden the sanctions may impose; and (4) the willfulness of the contemnor in disregarding the court's order. *See Matter of United States Abatement Corp.*, 150 B.R. 381, 388 (Bankr. E.D. La. 1993), *citing United States v. United Mine Workers*, 330 U.S. 258 (1947).

In the Request for Sanctions, plaintiff-debtor requests that the Court impose sanctions against Matthews of "at a minimum of \$50,000.00" and "that said amount be found to be for willful and malicious injuries caused by Douglas Matthews to Debtor's estate, as such terms are defined in [§]523(a)(6) [of the Bankruptcy Code]." Plaintiff-debtor argues that Matthews' contempt damaged debtor's estate by (1) causing it to incur additional attorney fees; (2) causing a delay in the closing of the sale of the Lucerne Assets to Lucerne Tech which, in turn, caused a reduction in the sale price of the Lucerne Assets to Lucerne Tech; and (3) causing a reduction in the amount recovered from the arbitrators for lost profits from sales of the "DC Switch." Each of these arguments will be discussed, in turn, below.

(1) Whether Matthews' Contempt Caused Debtor to Incur Additional

⁴ The sanctions at issue in this case for Mr. Matthews' civil contempt which was established pursuant to the Turnover Order. Civil contempt is a refusal to do an act the court has ordered for the benefit of a party; the sentence is remedial. Criminal contempt, on the other hand, is a completed act of disobedience; the sentence is punitive to vindicate the authority of the court. *See Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 441 (1911). *See also In re Stone*, 166 B.R. 269, 275 (Bankr.W.D.Pa.1994) ("civil contempt sanctions are meant to coerce or to compensate; criminal contempt sanctions to punish"); *McDonald's Corp. v. Victory Investments*, 727 F.2d 82, 87 (3d Cir.1984) ("civil contempt may be employed to coerce the defendant into compliance with the court's order and to compensate for losses sustained by the disobedience").

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Attorney Fees: During the hearing on the Request for Sanctions, plaintiff-debtor introduced into evidence an itemized list of attorney fees (the "Attorney Fees") that were charged to debtor's estate by its counsel (Roderick, Myers & Linton or "RM&L") and counsel for the Official Committee of Unsecured Creditors (Simon, Warner & Doby or "SW&D") and that plaintiff-debtor contends were caused by Matthews' contempt. The amount of the Attorney Fees totals \$21,770.00 and was broken down by plaintiff-debtor as follows:

1. Roderick, Myers & Linton Fees:	
A. Matthews Litigation Prior to 2/18/99	\$12,860.25
B. Other Matthews Related RM&L Fees Prior to 2/18/99	\$ 1,885.00
2. SW&D Fees for Matthews Litigation Prior to 2/18/99	\$16,355.00
TOTAL FEES:	\$31,100.25
Total Fees x .70%	
Approximate Amount Actually Paid:	\$21,770.00 ⁵

Through his testimony, Robert Riedel explained that, but for Matthews' failure to cooperate with plaintiff-debtor, the Attorney Fees would not have been incurred. For instance, plaintiff-debtor was charged for several appearances by counsel at Court hearings where Douglas Matthews was supposed to but did not appear. Also, had

⁵ Pursuant to a voluntary reduction in their fees, RM&L and SW&D were paid only 70% of the amount of the fees charged in this case.

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Douglas Matthews turned over the "DC Switch" and related assets at the beginning of this case, plaintiff-debtor would not have had to initiate and prosecute the Matthews Litigation.

During cross-examination, Mr. Riedel acknowledged that the time and description entries for the Attorney Fees were not broken down to differentiate between actions taken solely against Douglas Matthews and actions taken against the other defendants in the Matthews Litigation. However, Mr. Riedel also explained that it would have been very difficult to distinguish between actions taken by only Douglas Matthews and actions taken by Douglas Matthews and the other Matthews Litigation defendants because, very often, they were acting in concert.

The Attorney Fees were broken down between fees incurred before the Court entered its Turnover Order and fees incurred after that time.⁶ After the Court entered its Turnover Order, it was Douglas Matthews, alone, that failed to comply with that order and also failed to comply with plaintiff-debtors' attempts to settle the Matthews Litigation. But for that noncompliance, plaintiff-debtor would not have had to expend additional fees. Accordingly, the entire amount of fees incurred by plaintiff-debtor after this Court's entry of the Turnover Order should be awarded to plaintiff-debtor as sanctions against Mr. Matthews.

Although Mr. Matthews has been difficult to deal with, the actions of Linda Matthews also caused this case to stop and start many, many times. If Douglas Matthews

⁶ In the Attorney Fees, plaintiff-debtor lists this distinguishing date as February 18, 1999 when, in fact, the Turnover Order was entered on February 8, 1999. The Court need not deal with this discrepancy, however, because if it caused an error in plaintiff-debtor's calculation, that error works in Mr. Matthews' favor

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and Linda Matthews had merely turned over all their rights in and to the "DC Switch" at the onset of this case, the Matthews Litigation would have been unnecessary. Although the fees incurred prior to entry of the Turnover Order, cannot be severally attributed to Douglas Matthews' conduct, Mr. Matthews' constant unwillingness to cooperate with plaintiff-debtor and to abide by this Court's Orders aggravated matters and forced plaintiff-debtor to incur the Attorney Fees. As a joint defendant in the Matthews Litigation and one who has continually refused to abide by this Court's Orders, Mr. Matthews is liable, both jointly and severally, for the damage he caused by his contempt. *Cf. Prosser, Law of Torts (4th Ed.1978) 292, §46* (a "joint tortfeasor" has been defined as one who actively participates, cooperates in, requests, aids, encourages, ratifies, or adopts a wrongdoer's actions in pursuance of a common plan or design to commit a tortious act). Accordingly, the entire amount of fees incurred by plaintiff-debtor prior to this Court's entry of the Turnover Order should be awarded to plaintiff-debtor as sanctions against Mr. Matthews.

As noted, the attorney fees paid to counsel by plaintiff-debtor were discounted by 30% in order to increase the potential distribution to creditors holding allowed unsecured claims and, thus, to benefit plaintiff-debtor's estate. However, there is no reason that counsel for plaintiff-debtor or counsel for the Official Committee of Unsecured Creditors should have to absorb those unpaid fees for the benefit of Mr. Matthews. Accordingly, the entire nondiscounted amount of fees incurred by plaintiff-debtor in relation to the Matthews Litigation (\$31,100.25) should be awarded to plaintiff-debtor as sanctions against Mr. Matthews.

(2) Whether Matthews' Contempt Caused a Delay in the Closing of the Sale of the Lucerne Assets to Lucerne Tech: During his testimony, Mr. Riedel indicated

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that Lucerne Tech did not want to close on the sale of plaintiff-debtor's assets until it had possession of the "DC Switch" working and nonworking prototypes and that, because Douglas Matthews failed to ever turn those over, the sale to Lucerne Tech was delayed. According to Mr. Riedel, that delay caused a reduction in accounts receivables (which was used in the formulation of the ultimate sales price) so that plaintiff-debtor received approximately \$100,000.00 less in proceeds from the sale.

Other than a general reference by Mr. Riedel, no other evidence was presented to the Court to demonstrate that the reduction occurred solely (or at least for the most part) because of Mr. Matthews' contempt. Without more, the Court cannot hold Mr. Matthews' responsible for the decrease in the price of the sale to Lucerne Tech.

(3) Whether Matthews' Contempt Caused a Reduction in the Amount Recovered from Lost Profits for Sales of the "DC Switch:" Mr. Riedel was present at and testified during the arbitration proceeding in the Firemans Fund Litigation. During the January 14th hearing on the Request for Sanctions, Mr. Riedel testified that, in his opinion, had the arbitrators been able to see the "DC Switch" working or nonworking prototypes, their award for lost profits for sales of that item would have been much higher than \$91,675.00. Even without the actual "DC Switch," Mr. Riedel explained that, had Douglas Matthews appeared to testify at the arbitration proceeding, the arbitrators would have had a much greater understanding of the sales potential of the "DC Switch" because Mr. Matthews was directly involved in the development of that technology. Mr. Riedel claimed that, if the "DC Switch" could have been produced and sold, profits could have exceeded \$1 million.

Throughout the Matthews Litigation and plaintiff-debtor's main chapter 11 case, the Court has heard much testimony regarding construction, design and potential sales capacity of the "DC Switch." That testimony was very technical and, quite often, difficult

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to understand because there was no tangible item that witnesses and counsel could refer to as an illustration. Such was the case because Mr. Matthews has refused to turn over the "DC Switch" working and nonworking prototypes that are in his possession or control.

Had the arbitrators been given the benefit of viewing either working or nonworking prototypes of the "DC Switch, they would have had a greater knowledge upon which to make their award for lost profits from sales and in all probability would have granted an award in excess of \$91,675.00. Unfortunately, without some evidence quantifying that amount, this Court cannot make a separate award on this basis. Rather, it should be viewed as an additional factor supporting the award of the fully articulated legal fees address previously in this discussion.

(4) Whether Plaintiff-Debtor's Injury was Caused by Douglas Matthews' Conduct Willful and Malicious: A "willful and malicious injury" for purposes of §523(a)(6) is an injury that an actor intended to occur as a result of some deliberate act and not merely an injury that happened to occur because an intentional act was taken. *Kawaauhau v. Geiger*, 523 U.S. 57, 118 U.S. 974 (1998). Douglas Matthews has an intimate knowledge of plaintiff-debtor's business operations and knows the importance that technology like the "DC Switch" plays in the industry of manufacturing hand tools and electrical switches. Accordingly, Douglas Matthews would also know that, if plaintiff-debtor were not able to produce working and nonworking prototypes of the "DC Switch," its ability to reorganize or ultimately sell its assets would be harmed. Douglas Matthews' actions in this case were deliberate and by taking those actions he intended to cause the resulting harm to defendant-debtor.

CONCLUSION

In making its decision, the Court has taken into consideration the harm from Douglas Matthews' noncompliance with this Court's Orders to turn over the "DC Switch;" the probable effectiveness of a sanction; and, the willfulness of Douglas

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Matthews in disregarding this Court's orders. Because no evidence was presented regarding the financial resources of Mr. Matthews and the burden any sanctions may impose upon him, the Court was unable to also take that matter into consideration.

Based upon the foregoing, the Court finds that Douglas Matthews' contempt caused injury to plaintiff-debtor in the amount of \$31,100.25, that prejudgment interest shall be awarded from November 30, 1998, and that such injury was caused by Mr. Matthews' willful and malicious conduct. A judgment entry consistent with the opinion will be entered separately.

IT IS SO ORDERED.

MARILYN SHEA-STONUM
U.S. Bankruptcy Judge

DATED: 3/31/00