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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

MARK IV INDUSTRIES, INC., et al.

Debtors.

Chapter 11

Case No. 09-12795 (SMB)

(Jointly Administered)

In re:

DAYCO PRODUCTS, LLC,

Debtor.

Chapter 11

Case No. 09-12803 (SMB)

**AMENDED NOTICE OF MOTION AND MOTION
OF CITY OF ST. PETERSBURG, FLORIDA,
JEFF MONTGOMERY ASSOCIATES, AND
TWIN OIL COMPANY, INC. FOR
RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO 11 U.S.C. § 362(d) AND RULE 4001**

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD IN IN RE: DAYCO
PRODUCTS, LLC.

PLEASE TAKE NOTICE that on Wednesday, July 15, 2009, at 10:00 a.m.,

Movants City of St. Petersburg, Florida, Jeff Montgomery Associates, and Twin Oil Company,
Inc., hereinafter collectively referred to as “Movants”, by and through their undersigned counsel,
will move this Court for relief from the automatic stay pursuant to 11 U.S.C. § 362(d) and

Bankruptcy Rule 4001 in order to continue the prosecution of a pre-existing class action complaint on behalf of themselves and other similarly situated in the United States District Court for the Southern District of Florida against the Debtor Dayco Products, LLC (“Debtor”), limiting their relief against the Debtor to the right to proceed against any and all insured interests and policies insuring such claims. In support of this motion, Movants show unto the Court as follows:

BACKGROUND

1. The Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code in this Court on April 30, 2009.
2. On September 1, 2006, Movants filed a class action complaint against Debtor, and others, in the United States District Court for the Southern District of Florida. A copy of the operative complaint is attached hereto as Ex. A. That action has progressed through discovery and pretrial motion practice and is currently expected to be set for trial in November of this year. A copy of the docket is attached hereto as Ex. B. On or about February 26, 2009, the Movants and Debtor reached an agreement in principle on a settlement of Debtor’s liability to the individual Movants. Before that settlement could be consummated, the instant bankruptcy petition was filed.
3. Movants wish to pursue their claims against the Debtor and other parties based upon various state law causes of action.
4. Movants believe their claims against the Debtor may be covered under certain policies of liability insurance maintained by the Debtor as of the time of the incident and/or as of the time the claims were originally discovered or made.

5. The Debtor's bankruptcy has effectuated a stay, thereby preventing Movants from pursuing the action and/or consummating the settlement referred to above.

GROUND FOR RELIEF REQUESTED

6. 11 U.S.C. § 362(d) states that a creditor may seek relief from the terms of the automatic stay “. . . for cause, including the lack of adequate protection of an interest in property of such party in interest . . . if the debtor does not have an equity in such property; and such property is not necessary to an effective reorganization”

7. Movants have not been able to proceed with claims on their behalf because of the stay imposed by Debtor's bankruptcy filing.

8. Movants have ample cause for relief from the automatic stay. Movants are seeking to liquidate unsecured claims and to limit their recovery on the claims to the Debtor's insurance policies, if any. The Florida litigation is well advanced with an impending trial date, and is being defended by Debtor's insurance company. In such circumstances, lifting of the stay is warranted. *See In re Sonnax Industries, Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990) (factors to be considered by the court include “whether the debtor's insurer has assumed full responsibility for defending it,” “whether the parties are ready for trial in the other proceeding,” and “[the] impact of the stay on the parties and the balance of harms”); *In re Mazzeo*, 167 F.3d 139, 143 (2d Cir. 1999) (same); *In re Keene Corp.*, 171 B.R. 180, 184 (Bankr. S.D.N.Y. 1994) (“where the continuation of the stay deprives the judgment creditor of the opportunity to collect the judgment from a third party—and no other courses of collection exist—a court will generally lift the stay to permit the litigation to continue”); *In re OES Environmental, Inc.*, 319 B.R. 266, 269 (Bankr. M.D. Fla. 2004) (lifting stay to allow movant to proceed against the debtor's insurance provider); *Green v. Welsh*, 956 F.2d 30, 35 (2d Cir. 1992) (discharge injunction does not prevent suit


against debtor in order to reach insurance proceeds).

9. Accordingly, Movants request that this Court lift the automatic stay for the sole purpose of allowing Movants to conclude the prosecution of their claims against the Debtor in the State of Florida, and limit their recovery on such claims to the Debtor's insurance policies, if any, for such claims.

WHEREFORE, Movants City of St. Petersburg, Jeff Montgomery Associates, and Twin Oil Company, Inc. respectfully request that this Honorable Court grant them relief from the automatic stay with respect to their right to proceed with the prosecution of their claims in the United States District Court for the Southern District of Florida, limiting any recovery to insurance proceeds, if any exist.

Respectfully submitted,

LIEFF, CABRASER, HEIMANN & BERNSTEIN,
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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2009, the Notice of Motion and Motion of City of St. Petersburg, Florida, Jeff Montgomery Associates, and Twin Oil Company, Inc. for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(D) and Rule 4001 was mailed by first class mail, postage pre-paid, to the following:

Jay M. Goffman
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036

United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004



Allen Wong