

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>IN RE:</b>	)	<b>Chapter 11</b>
	)	
<b>CITATION CORPORATION, et al.,<sup>1</sup></b>	)	<b>Case No. 04-8130-TOM-11</b>
	)	
<b>Debtors.</b>	)	<b>Hearing Scheduled for</b>
	)	<b>October 4, 2004 at 2 p.m.</b>
	)	

**DEBTORS' MOTION FOR IMMEDIATE SANCTIONS AGAINST MAMMOET USA, INC., AND NORTH COAST INDUSTRIAL SERVICES FOR REFUSING TO COMPLY WITH THIS COURT'S SEPTEMBER 29, 2004 ORDER ALLOWING DEBTORS' ASSUMPTION OF CERTAIN PRE-PETITION CONTRACTS**

COME NOW, Citation Corporation ("Citation"), its holding company, and Interstate Southwest, Ltd., one of Citation's subsidiaries ("Citation Navasota"), as debtors and debtors in possession (collectively, the "Company" or the "Debtors"), and, pursuant to section 105 of chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), move this Court (this "Motion") to enter an Order awarding immediate sanctions against Mammoet USA, Inc., and North Coast Industrial Services, for their refusal to perform under certain contracts with the Debtors, and in support thereof, state:

**JURISDICTION AND VENUE**

1. On September 18, 2004 (the "Petition Date"), each of the Debtors (along with numerous other related entities) filed a voluntary petition for relief under chapter 11 of the

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<sup>1</sup> In addition to the Citation Corporation, the Debtors include the following entities: (i) Citation Holding Company, (ii) Berlin Foundry Corporation, (iii) Bohn Aluminum, Inc., (iv) Castwell Products, Inc., (v) Citation Precision, Inc., (vi) HI-TECH, Inc., (vii) Iroquois Foundry Corporation, (viii) ISW Texas Corporation, (ix) Mansfield Foundry Corporation, (x) OBI Liquidating Corp., (xi) Texas Steel Corporation, (xii) TSC Texas Corporation, (xiii) Citation Aluminum, LLC, (xiv) Citation Castings, LLC, (xv) Citation Grand Rapids, LLC, (xvi) Citation Lake Zurich, LLC, (xvii) Citation Michigan, LLC, (xviii) Citation Wisconsin Forging, LLC, (xix) Citation Wisconsin, LLC, (xx) ITM Holding Co., LLC, (xxi) Interstate Southwest, Ltd., (xxii) Texas Foundries Ltd., and (xxiii) MFC Liquidating Company, Ltd.

Bankruptcy Code with the Clerk of this Court. On September 20, 2004, the Court entered an Order consolidating, for procedural purposes only, the Debtors' chapter 11 cases filed on the Petition Date, and for joint administration of those chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to §§ 1107 and 1108.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Debtors' chapter 11 cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 365 of the Bankruptcy Code.

### **FACTUAL BACKGROUND**

3. On or about September 28, 2004, Debtors filed an Emergency Motion to Assume Executory Contracts (the "Emergency Motion"). The Emergency Motion requested entry of an order, pursuant to sections 365(a) and 365(b) of the Bankruptcy Code, authorizing their assumption of (1) that certain executory contract between Citation Navasota and Mammoet USA, Inc. ("Mammoet"), and (2) that certain executory contract between Citation Navasota and North Coast Industrial Service ("North Coast").

4. Prior to the Commencement Date and in connection with the ordinary course operation of their businesses in the State of Texas, Citation Navasota entered into a contract (the "North Coast Contract") with North Coast to purchase two (2) 35,000-lb. Steam Forging Hammers (the "Hammers"). Citation Navasota has paid the full purchase price for the Hammers in accordance with the payment and pricing terms set forth in the Contract, but has not exercised its right to inspect the product prior to transport, and it still has to accept delivery under the contract. North Coast has the remaining performance obligation of making the Hammers available for shipment and delivery to Citation Navasota. Therefore, the North Coast Contract is executory in

nature. North Coast is requiring the Company to assume the North Coast Contract before it will make the Hammers available for delivery.

5. Prior to the Commencement Date and in connection with the ordinary course operation of their businesses in the State of Texas, Citation Navasota entered into a contract (the "Mammoet Contract," and together with the North Coast Contract, the "Contracts") with Mammoet for the disassembly, shipment and assembly of the Hammers that were previously purchased from North Coast, including all rigging, trucking, assembly and rail charges. Citation Navasota has paid two-thirds of the purchase price required under the Mammoet Contract, but has yet to pay the final one-third of the purchase price, which does not become due until Mammoet completes its obligations under the Mammoet Contract. Mammoet, which had begun performance of its obligations under the Mammoet Contract, has ceased performance and advised the Company that it will not complete performance under the Mammoet Contract until said contract is assumed by the Company.

6. The Emergency Motion explained that the subject of the Contracts — the Hammers — are critically important to the continued operations of Citation Navasota's plant in Navasota, Texas. The 50,000-lb. hammers currently being used in the Navasota plant are severely damaged and are teetering on the brink of destruction. Should these hammers fail before the Hammers are delivered to Citation Navasota, plant operations in Navasota would cease, causing the Company and its creditors severe economic harm. Therefore, it is imperative that the Company assume the Contracts, and that North Coast and Mammoet resume performance of their obligations under the Contracts immediately.

7. Notice of the Emergency Motion was served on (1) counsel for Mammoet USA, Inc; (2) counsel for North Coast Industrial Services; and (3) all parties appearing on the Master Service

List, in accordance with the Court's Order Establishing Case Management Procedures entered on September 22, 2004, and the Debtors submit that, given the nature of the relief requested, no other or further notice need be given.

8. The Emergency Motion requested that this Court shorten the notice period required for hearing the Emergency Motion, which this Court did by entry of an Order dated September 28, 2004. The Emergency Motion was set for hearing on September 29, 2004. As directed by September 28, 2004 Order, Debtors gave notice of the upcoming hearing to Mammoet, North Coast, the Bankruptcy Administrator, counsel for the administrative agent for the Debtors' pre-petition lenders, and counsel for the administrative agent for the Debtors' post-petition lenders.

9. At the hearing on September 29, 2004, this Court entered an Order granting the Emergency Motion (the "September 29, 2004 Order"). The September 29, 2004 Order authorized Debtors to assume the Mammoet Contract and the North Coast Contract. The Executory Order also ordered the Debtors, North Coast Industrial Services, and Mammoet USA, Inc., to immediately resume performance under the Contracts.

10. On Friday morning, October 1, 2004, and later that afternoon, counsel for Debtors spoke with both counsel for Mammoet and counsel for North Coast, and was informed that for whatever reason, the Contracts would not be performed. Concern was expressed by one or both parties at the period during which parties have to object to the September 29, 2004 Order, which runs until October 15, 2004.

11. Either Mammoet or North Coast or both are refusing to perform under the respective Contract(s), and this places Debtors in a precarious situation with regard to its operations and also puts the Debtors and their creditors at serious risk of immediate harm and jeopardy.

**RELIEF REQUESTED**

12. By this Motion and for the reasons set forth above, the Debtors respectfully request entry of an Order, pursuant to section 105 of the Bankruptcy Code, awarding sanctions against North Coast and/or Mammoet for its/their refusal to perform under the Mammoet Contract and/or North Coast Contract, in an amount sufficient to a) adequately compensate Debtors for the nonperformance; and b) to sufficiently punish North Coast and/or Mammoet for its/their nonperformance; and c) to sufficiently deter any similarly-situation parties, including parties involved in the instant Bankruptcy Case.

13. Debtors are also requesting, by separate motion, that the applicable notice period for the instant Motion be shortened and that the instant Motion be set for hearing at the next Scheduled Hearing (as defined in the Court's Order Establishing Case Management Procedures, entered on September 22, 2004 (the "Case Management Order")), on Monday, October 4, 2004, at 2:00 P.M.

**NOTICE**

14. No trustee, examiner, or statutory committee of unsecured creditors has been appointed in these chapter 11 cases. Notice of the instant Motion has been served on (1) counsel for Mammoet USA, Inc; (2) counsel for North Coast Industrial Services, and (3) all parties appearing on the Master Service List, in accordance with the Case Management Order.

**WHEREFORE**, CITATION AND CITATION NAVASOTA respectfully request entry of an Order:

A. Awarding sanctions in favor of Citation and Citation Navasota and against Mammoet USA, Inc., and/or North Coast Industrial Services, pursuant to section 105 of the Bankruptcy Code, for its/their refusal to perform under the Mammoet Contract and/or the North Coast Contract, in an amount sufficient to a) adequately compensate Debtors for the nonperformance; and b) to sufficiently punish Mammoet and/or North Coast for its/their

nonperformance; and c) to sufficiently deter any similarly-situated parties, including parties involved in the instant Bankruptcy Case; and

B. For such other and further relief as this Court deems just to enforce compliance with the September 29, 2004 Order.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served on the attached service list by directing same to their office addresses through facsimile or first-class, United States mail, postage prepaid, on this the 1st day of October 2004.

/s/ Stephanie H. Williams \_\_\_\_\_  
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