

Lease payments were established at \$1,759 based upon calculations which utilized mortgage-type amortization schedules and the fair market and salvage values of the Lathe, which were determined by the Plan's accountant, Tom Harmann.

Mr. McManus represents that he monitored the Lease from its inception through April 10, 1992. Mr. McManus further represents that from the inception of the Lease in 1988 until April 10, 1992, Masik has abided by all of the terms of the Lease, the Lathe has been kept in good working order and all rental due the Plan has been timely paid.

Jeffrey R. Brodek represents that, as of April 10, 1992, he assumed Mr. McManus' role as the independent, qualified fiduciary on behalf of the Plan and the Accounts with respect to the Lease. Mr. Brodek's qualifications include ten years of experience practicing employee benefits law. Mr. Brodek represents that he is unrelated to, and independent of, Masik. Mr. Brodek states that he understood and acknowledged his duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Plan based upon his familiarity with the fiduciary responsibility provisions of the Act.

Mr. Brodek represents he assumed the same duties that Mr. McManus had previously undertaken which included enforcing the terms of the Lease, making sure that the Lathe was kept in good working order and making sure that payments due under the Lease were timely paid to the Plan. Mr. Brodek represents Masik has abided by all of the terms of the Lease, the Lathe has been kept in good working order and all rentals due the Plan were timely paid through May 31, 1993, the expiration of the original five-year term of the Lease. At this time, the Trustees suspended any future Lease payments pending resolution of the prohibited transaction issues. However, Masik represents that it utilized the Lathe in the course of its operations after the cessation of the Lease payments. Masik represents that it will make payments pursuant to the rental rate specified by the Lease to the Plan for every month between June of 1993 through the present time, plus a reasonable rate of interest.

7. Because of the party in interest relationship and the past leasing arrangement between the Plan and Masik, the Trustees along with Masik (the Applicants) are aware of the fact that prohibited transactions have occurred in violation of the Act as of the date of Masik's first use of the Lathe. The Applicants have requested

retroactive exemptive relief with respect to the Lease as well as prospective exemptive relief for the Sale. In this regard, the Department is not proposing exemptive relief for the prohibited transactions described in this proposed exemption for the periods: (1) Prior to June 1, 1988, the date that Masik began leasing the Lathe from the Plan pursuant to a written lease; and (2) after May 31, 1993, the cessation of the Lease payments. Accordingly, Masik represents that within ninety days of the publication in the **Federal Register** of the grant of this exemption, it will file Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions, which are not subject to this exemption.

8. Masik represents that the participants whose accounts are invested in the Lathe desire to sell the Lathe so that an alternative investment can be made by the Accounts. The Trustees represent that because the Lathe is presently mounted in the concrete floor of Masik's plant, sale to an unrelated party at fair market value is unlikely due to the cost of removing the Lathe. Therefore, Masik proposes to purchase the Lathe for its fair market value on the date of the Sale. The Plan will not be required to pay any commissions, costs or other expenses in connection with these transactions.

9. The Trustees retained Richard Levo, a sales engineer for L.L. Richards Machinery Co, Inc. to appraise the Lathe. Mr. Levo has dealt in new and used chipmaking and fabricating machine tools for forty-three years. His appraisal, dated June 6, 1994, places the fair market value of the Lathe at \$29,500 based on its age, condition and location. Mr. Levo states that the Lathe has declined in value since its acquisition in 1987 due to recent innovations in technology which have left the Lathe obsolete. The appraisal for the Lathe will be reviewed and updated prior to the Sale pursuant to this exemption. Mr. Levo represents that both he and L.L. Richards Machinery Co, Inc. are independent of and unrelated to Masik.

10. In summary, the Applicants represent that the Lease and the Sale will satisfy the statutory criteria for an exemption under 408(a) of the Act because:

(a) With respect to the past Lease—

(1) the terms and conditions of the Lease have been at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (2) the Lathe did not exceed twenty-five percent of the assets of the Plan or of any individually-directed

accounts within the Plan at any time during the duration of the leasing arrangements; (3) Roger McManus, acting as the Plan's independent, qualified fiduciary, approved of the Lease; (4) Mr. McManus and subsequently, Jeffrey Brodek, acting as the Plan's independent, qualified fiduciary during different periods, monitored the Lease; (5) the rental charged by the Plan was based upon the fair market rental value of the Lathe; and (6) within ninety days of the publication in the **Federal Register** of the grant of this exemption, Masik will file Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions, which are not subject to this exemption.

(b) With respect to the prospective Sale—

(1) the Sale will be a one-time cash transaction; (2) the Plan will not be required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Lathe will be appraised by Richard Levo, an independent, qualified appraiser; (4) the sales price for the Lathe will reflect its fair market value on the date of the Sale; and (5) within ninety days of the publication in the **Federal Register** of the grant of this exemption, Masik will file Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions, which are not subject to this exemption.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

Simplex Time Recorder Co., Employee Savings Plan (the Plan), located in Gardner, Massachusetts

[Application No. D-09935]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the proposed extension of credit (the Loan) to the Plan by Simplex Time Recorder Co. (the Employer), a party in interest with respect to the Plan, with regard to a