



**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE
JUSTICE LEDERMAN

) THURSDAY, THE 6th
)
) DAY OF OCTOBER, 2005

BETWEEN:

GENERAL MOTORS CORPORATION

Applicant

- and -

TIERCON INDUSTRIES INC.

Respondent

ORDER

THIS MOTION, made by Royal Bank of Canada ("RBC"), as agent (the "Agent") for The Bank of Nova Scotia, National Bank of Canada, Comerica Bank and RBC (collectively, the "Senior Lenders"), for an order, *inter alia*:

- a) approving the fourth report of the Receiver dated September 27, 2005 (the "Fourth Report");
- b) approving the sale of the Purchased Assets by Zeifman Partners Inc., in its capacity as court-appointed Receiver and Manager (the "Receiver") of the property, assets and undertaking of Tiercon Industries Inc. ("Tiercon"), pursuant to an agreement of purchase and sale made as of September 27, 2005 (the "Purchase Agreement") between the Receiver and J2 Management Corp., and approving the Purchase Price provided therein;
- c) vesting the right, title and interest of Tiercon in and to the Purchased Assets in the Purchaser, free and clear of Claims;

- d) authorizing and directing the Receiver to distribute the Proceeds from the sale of the Purchased Assets to the Senior Lenders and any other proceeds of realization from collateral subject to the security held by the Agent and the Senior Lenders in accordance with this order; and
- e) granting such further and other relief as counsel may advise and this Honourable Court may permit,

was heard this day at 393 University Ave., Toronto, Ontario.

ON READING the Fourth Report and on hearing the submissions of counsel for the Agent and counsel for the Receiver, counsel for A.G. Simpson Automotive Inc., counsel for Business Software Alliance and Canadian Alliance against Software Theft, and no one else appearing although duly served as appears from the affidavit of service of Wilma Leo dated September 29, 2005, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of motion, the Fourth Report and motion record in respect of this motion be and it is hereby abridged and that the motion is properly returnable today and further that the requirement for service of the notice of motion and motion record herein upon any other parties, other than those listed in Schedule "A" hereto, is hereby dispensed with and that the service of the notice of motion, the Fourth Report, and motion record herein is hereby validated in all respects and deemed sufficient for all purposes.

THE FOURTH REPORT

2. **THIS COURT ORDERS** that the Fourth Report, and the activities of the Receiver as described in the Fourth Report, be and the same are hereby approved.

DEFINITIONS

3. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings ascribed thereto in the Purchase Agreement.

4. **THIS COURT ORDERS that:**

- (a) "Claims" means any and all rights, claims, benefits, interests, hypothecs, priorities, pledges, security interests (whether contractual, statutory or otherwise) charges (including court ordered charges), mortgages, estates, trusts or deemed trusts (whether contractual, statutory or otherwise), liens (whether contractual, statutory or otherwise), assignments, executions, writs of seizure and sale, judgments, options, adverse claims, levies, agreements, taxes, rights of distress, set-off (whether legal, equitable or contractual), liabilities (direct, indirect, absolute or contingent) or other claims (including claims provable in bankruptcy) and encumbrances, whether or not they have attached or have been perfected, registered or filed and whether secured, unsecured or otherwise, or any other rights, rights of use, disputes and debts, by or of all persons or entities of any kind including, without limiting the generality of the foregoing: (i) any charges created by Order of this Court in these proceedings, and (ii) all security interests or claims evidenced by registrations pursuant to the Ontario *Personal Property Security Act*, R.S.O. 1990, c. P-10, as amended (the "PPSA") listed on Schedule "B".
- (b) "Claimant" means any and all persons, whether acting in their capacity as principal or as agent, trustee, executor, administrator or other legal representative, who have or may in the future have a Claim, including the beneficiaries of all charges approved or created in orders made in these proceedings, as amended from time to time.
- (c) "Excluding Working Capital" means all cash, prepaids and deposits (which in each case, are not included in the items referenced in Sections 5.00(a) to (h) of the Transition Agreement), all tax refunds and other government receivables, in each case referable to the period on or before April 15, 2005.
- (d) "Proceeds" means the Purchase Price and any other funds received by the Receiver pursuant to the Purchase Agreement (other than payments on account of Transfer Taxes).

- (e) "Purchaser" means J2 Management Corp., or its nominee or permitted assignee under the Purchase Agreement.
- (f) "Transition Agreement" means the Transition Agreement dated as of April 15, 2005 among the Royal Bank of Canada, in its capacity as Agent for itself and the other Senior Lenders, General Motors Corporation and the Receiver.
- (g) "Working Capital Assets" means all inventory, prepaids and accounts receivable of Tiercon relating to goods or services provided to customers of Tiercon, other than Excluding Working Capital.

EXPANSION OF POWERS OF THE RECEIVER AND APPROVAL OF PURCHASE AGREEMENT

5. THIS COURT ORDERS AND DECLARES that:

- (a) the powers of the Receiver as set out in the Order of this Court made by the Honourable Madam Justice Greer on April 15, 2005 (the "Receivership Order") be and are hereby expanded, *nunc pro tunc* to authorize and direct the Receiver to enter into the Purchase Agreement and to complete the Transactions contemplated thereunder, as hereinafter provided. For greater certainty, notwithstanding paragraphs 36 and 37 of the Receivership Order, and without limiting or derogating from the powers of KPMG Inc. contained therein, the Receiver is hereby authorized and directed to enter into the Purchase Agreement and to complete the Transactions contemplated thereunder.
- (b) the Purchase Agreement (including all appendices attached thereto), all steps or actions contemplated therein, and the Purchase Price, are hereby approved;
- (c) the Purchase Price, the Sales Process (as defined in the Fourth Report) and the terms of the Purchase Agreement, are fair and commercially reasonable;
- (d) the execution of the Purchase Agreement by the Receiver is hereby authorized, ratified and confirmed *nunc pro tunc* and the Receiver is authorized and

directed to perform its obligations thereunder and to take such steps and sign such ancillary or related documentation as are necessary or incidental for the completion of the Transactions as contemplated under the Purchase Agreement or in furtherance of this Order; and

- (e) the Receiver be and it is hereby authorized to enter into such amendments to the Purchase Agreement (in accordance with the amendment provisions of the Purchase Agreement) as it may consider necessary and appropriate, subject to the Receiver obtaining the written consent of the Agent and the Purchaser, and any reference in this Order to the Purchase Agreement shall be deemed to be a reference to the Purchase Agreement, as so amended.

VESTING OF PURCHASED ASSETS

6. **THIS COURT ORDERS AND DECLARES** that, upon the payment of the Purchase Price in accordance with the Purchase Agreement and all conditions to Closing having been satisfied or waived by the Receiver (with the consent of the Agent), or the Purchaser, as the case may be:

- (a) the Receiver shall immediately file a certificate with this Court, and provide a copy to the Purchaser, substantially in the form of the sale certificate appended as Schedule "C" hereto, confirming the same (the "Sale Certificate"); and
- (b) the Receiver shall immediately thereafter deliver to the Purchaser a written confirmation that the Sale Certificate has been filed with the Court.

7. **THIS COURT ORDERS** that upon the filing of the Sale Certificate:

- (a) all right, title and interest of Tiercon in and to the Purchased Assets shall vest in the Purchaser absolutely and forever, free and clear of any and all Claims by any Claimants relating to the Purchased Assets and all such Claims shall thereupon be expunged and discharged against the Purchased Assets; and

- (b) any and all Claims of or by any Claimants in or to the Purchased Assets shall vest in the place and stead thereof in the Proceeds in accordance with their respective priorities.

VESTING OF RUNNING BOARD R&D

8. **THIS COURT ORDERS** that if the Receiver files a certificate with this court in the form appended as Schedule "D" hereto (the "Liquidation Certificate") then the Running Board R&D shall form part and parcel of the Purchased Assets and all the provisions of this Order shall apply to the Running Board R&D, *mutatis mutandis*, as the Purchased Assets.

SALE OF ADDITIONAL ASSETS

9. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized to sell any tooling or other equipment owned by Tiercon with the written consent of the Agent, but without further approval of this Court, provided that the aggregate consideration for all such transactions does not exceed \$150,000.

DISTRIBUTION OF PROCEEDS

10. **THIS COURT ORDERS** that the Receiver shall forthwith distribute, free and clear of all Claims, the Proceeds received from the Purchaser and any other proceeds of realization from collateral subject to the security held by the Agent and the Senior Lenders, from time to time, other than proceeds of Working Capital Assets (the "Senior Lenders' Collateral"), to the Senior Lenders, net of:

- (a) the Receiver's reasonable fees and expenses, and the reasonable fees and expenses of the Receiver's counsel relating to the sale of the Purchased Assets and the remaining Senior Lenders' Collateral; and
- (b) a reserve of \$50,000 to pay any future fees and expenses relating to the sale of the Purchased Assets and the remaining Senior Lenders' Collateral.

GENERAL

11. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings; and
- (b) the pendency of any application for a bankruptcy order issued at any time pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") in respect of Tiercon, any bankruptcy order issued pursuant to any such application or any assignment in bankruptcy filed by or on behalf of Tiercon; and
- (c) the provisions of any federal or provincial statute,

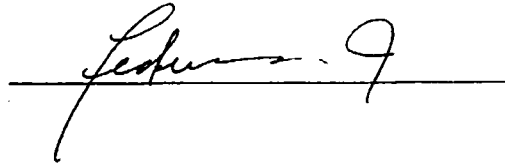
the Purchase Agreement and the Transactions contemplated thereby, including the vesting of the Purchased Assets in the Purchaser free and clear of all Claims pursuant to this Order, shall be binding upon all Claimants and any trustee in bankruptcy that may be appointed in respect of Tiercon and shall not be void or voidable by creditors or other Claimants, nor shall they constitute nor be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances or other reviewable transactions under the BIA or any other applicable federal or provincial legislation, nor do they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. **THIS COURT ORDERS** that the Receiver is relieved from compliance with the provisions of Part V of the PPSA, and from any and all other provisions of law relating to notice, statutory or otherwise, which a creditor or other party is required to issue in order to dispose of the collateral of a debtor in connection with the Transactions contemplated in the Purchase Agreement or any other sale of assets with is permitted pursuant to this Order.

13. **THIS COURT ORDERS** that the Transactions contemplated in the Purchase Agreement shall be exempt from any applicable bulk sales legislation in any jurisdiction in which the Purchased Assets are situate, including without limitation, the Ontario *Bulk Sales Act*, R.S.O. 1990, c. B-14, as amended, and the Transactions are in all respects judicial sales for the purposes of such bulk sales legislation.

14. **THIS COURT ORDERS** that no holder of any Claim which has been expunged or discharged as against the Purchased Assets pursuant to this Order shall take any steps or proceedings, or make any filings or claims in connection therewith against any of the Purchased Assets or against the Purchaser in connection with any such Claim.

15. **THIS COURT HEREBY** requests the aid and recognition of any court, tribunal or administrative body of any province of Canada or of the United States of America to give effect to the terms of this order. All courts and administrative bodies of all jurisdictions are hereby respectfully requested to make such orders and to provide such assistance they may deem necessary or appropriate.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT 06 2005

PER/PAR:



SCHEDULE "A"

SERVICE LIST

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Counsel for General Motors Corporation

Davies Ward Phillips & Vineberg LLP

Barristers & Solicitors
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Counsel for AG Simpson Automotive Inc.

Blakes Cassels Graydon LLP

Barristers and Solicitors
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Ogilvy Renault LLP

Barristers and Solicitors

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Baker & McKenzie LLP

Barristers and Solicitors

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Traub, Moldaver

Barrister and Solicitors

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4 King Street West, Suite 700

Toronto, ON

M4Y 1B6

Counsel for Galanda Properties Inc. and Blackridge Properties Inc.

Ducharme Fox LLP

Barristers and Solicitors

Attention: Gerald E. Skillings

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Windsor, ON

N9A 5M6

Counsel for Omega Tool Corp.

Borden Ladner Gervais, LLP

Barristers and Solicitors
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Counsel for Comsatec, Inc.

Miller Thomson LLP

Barristers and Solicitors
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M5H 3S1

Counsel for Zeifman Partners Inc.,
as Receiver and Manager of Tiercon Industries Inc.

1512642 Ontario Inc.

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A.G. Simpson Automotive Inc.

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M5H 2W9

Caterpillar Financial Services Ltd.

700 Dorval Drive, Unit 705
Oakville, ON
L6K 3V3

Davis Webb Schulze & Moon LLP

Barristers and Solicitors
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Counsel for Haessler Properties Inc.

Department of Justice (Canada)

Attention: Diane Winters

Ontario Regional Office

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GE Capital Canada Leasing Services Inc.

2300 Meadowvale Blvd., Suite 100

Mississauga, ON

L5N 5P9

General Motors Corporation

Attention: Mark Fischer

30009 Van Dyke

Warren, MI

USA

48090-9025

GMAC Leaseco Limited

3250 Bloor St. West, 8th Floor

Toronto, ON

M8X 2Y5

Hewitt Material Handling Inc.

425 Millway Avenue

Concord, ON

L4K 3V8

Image Financial Services Inc.

401 – 4145 North Service Road

Burlington, ON

L7L 6A3

I. Thibault Inc.

26, Rue De L'Entreprise

St-Damien, PQ

G0R 2Y0

OE Financial Services Inc.

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L7L 6A3

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N0R 1L0

Provincial Capital Corp.
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Mississauga, ON
L4W 1S5

Reko Automation & Machine Tool Inc.
5390 Brendan Lane
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N0R 1L0

Royal Bank Capital Partners
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Counsel for Business Software Alliance and Canadian Alliance against
Software theft

Tennant Financial Services
2300 Meadowvale Blvd, 200
Mississauga, ON
L5N 5P9

Unite Here – Ontario Council
Attention: Andrea Bowker
460 Richmond Street West
Suite 200
Toronto, ON
M5V 1Y1

SCHEDULE "B"

Tiercon Industries Inc.
(and all previous/predecessor names)

Registrations under the *Personal Property Security Act* (Ontario)
Currency date of printout(s) examined: September 14, 2005

Secured Party Reference File No. Registration No. (1C) - Amendment (2C)

Omega Tool Corp.	614399616	20050421 1002 1462 7821	2045 Solar Crescent Oldcastle, Ontario NOR1L0
Reko Automation & Machine Tool Inc.	613403883	20050316 1426 1862 5238	5390 Brendan Lane Oldcastle, Ontario NOR 1L0
Hewitt Material Handling Inc.	609615756	20041006 1949 1531 1250	425 Millway Avenue Concord, Ontario L4K 3V8
Hewitt Material Handling Inc.	607242258	20040713 1049 1529 4455	425 Millway Avenue Concord, Ontario L4K 3V8
Hewitt Material Handling Inc.	606723822	20040624 1449 1530 5387	425 Millway Avenue Concord, Ontario L4K 3V8
Hewitt Material Handling Inc.	605998692	20040601 1451 1530 6709	425 Millway Avenue Concord, Ontario L4K 3V8
General Motors Corporation	601539552	20031204 0934 1590 4968	30009 Van Dyke Warren, Michigan 48090-9025
Tennant Financial Services	892012968	20030227 1038 1529 6357	2300 Meadowvale Blvd, 200 Mississauga, Ontario L5N 5P9
Image Financial Services Inc.	875973744	20010906 0952 1146 6786	401 - 4145 North Service Road Burlington, Ontario L7L 6A3
Royal Bank of Canada	868259034	20001211 1439 1530 7741	200 Bay Street, 4 th Floor, P.O. Box 50 Toronto, Ontario M5J 2W7
GE Capital Canada Leasing Services Inc.	868124574	20001205 1619 6086 1506	2300 Meadowvale Blvd., Suite 100 Mississauga, Ontario L5N 5P9

Secured Party

Reference File No. Registration No. (IC)

- Amendment (2C)

Caterpillar Financial Services Ltd 700 Dorval Drive, Unit 705 Oakville, Ontario L6K 3V3	868070889	20001204 1755 1531 6957
Caterpillar Financial Services Ltd 700 Dorval Drive, Unit 705 Oakville, Ontario L6K 3V3	867432636	20001109 1808 1531 6991
GE Capital Canada Leasing Services Inc. 2300 Meadowvale Blvd., Suite 100 Mississauga, Ontario L5N 5P9	867367899	20001107 1626 6086 1430
GE Capital Canada Leasing Services Inc. 2300 Meadowvale Blvd., Suite 100 Mississauga, Ontario L5N 5P9	866940822	20001024 1656 6092 2860
2300 Meadowvale Blvd., Suite 100 Mississauga, Ontario L5N 5P9	863434656	20000704 1816 1531 1780
Caterpillar Financial Services Ltd 700 Dorval Drive, Unit 705 Oakville, Ontario L6K 3V3	863236197	20000627 1444 1530 5476
Caterpillar Financial Services Ltd 700 Dorval Drive, Unit 705 Oakville, Ontario L6K 3V3	858871143	20000131 1726 1590 5713
Royal Bank of Canada, as Agent 200 Bay Street, 13 th Floor, South Tower Toronto, Ontario M5J 2J5	868259043	20001211 1439 1530 7742
Royal Bank of Canada 200 Bay Street, 4 th Floor, P.O. Box 50 Toronto, Ontario M5J 2W7	859073148	20000208 1444 1590 5943
Royal Bank of Canada, as Agent 200 Bay Street, 12 th Floor, South Tower Toronto, Ontario M5J 2J5	606433644	20040615 1409 1462 2124
Provincial Capital Corp 1611 Britannia Rd East Mississauga, Ontario L4W1S5		

SCHEDULE "C"

Court File No. 05-CL-5854

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE ____) ____ DAY, THE ____ DAY
)
JUSTICE ____) OF _____, 2004

B E T W E E N:

GENERAL MOTORS CORPORATION

Applicant

- and -

TIERCON INDUSTRIES INC.

Respondent

SALE CERTIFICATE

RECITALS

- A. Pursuant to an Order dated April 15, 2005 of the Ontario Superior Court of Justice (Commercial List) (the "Court"), Zeifman Partners Inc. was appointed as receiver and manager (the "Receiver") of all of the assets, undertakings and property of Tiercon Industries Inc. ("Tiercon").
- B. Pursuant to an Order dated ●, 2005 the Court approved an agreement of purchase and sale made as of ●, 2005 (the "Purchase Agreement") between the Receiver and J2 Management Corp. (the "Purchaser") and provided for the vesting of the Purchased Assets, which vesting is to be effective upon the filing of a certificate confirming that the Receiver has obtained the Purchase Price in accordance with the Purchase Agreement and all conditions to closing with respect to the Purchased Assets have been satisfied or waived.
- C. Prior to Closing, the Purchaser did [not] exercise the Paint Infrastructure Option and therefore, the term "Purchased Assets" does [not] include the Paint Infrastructure Assets.

- D. Unless otherwise indicated herein, terms with initial capitals have the meaning set out in the Purchase Agreement.

THE RECEIVER HEREBY CERTIFIES that it has obtained the Purchase Price in accordance with the Purchase Agreement and that all conditions to closing with respect to the Purchased Assets have been satisfied or waived.

DATED at Toronto, Ontario this ● day of ●, 2005.

Zeifman Partners Inc., in its capacity as Receiver and Manager of the property, assets and undertaking of Tiercon Industries Inc. and not in its personal capacity

By: _____

Name:

Title:

SCHEDULE "D"

Court File No. 05-CL-5854

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE _____) _____ DAY, THE ____ DAY
)
JUSTICE _____) OF _____, 2004

B E T W E E N:

GENERAL MOTORS CORPORATION

Applicant

- and -

TIERCON INDUSTRIES INC.

Respondent

LIQUIDATION CERTIFICATE

RECITALS

- A. Pursuant to an Order dated April 15, 2005 of the Ontario Superior Court of Justice (Commercial List) (the "Court"), Zeifman Partners Inc. was appointed as receiver and manager (the "Receiver") of all of the assets, undertakings and property of Tiercon Industries Inc. ("Tiercon").
- B. Pursuant to an Order dated ●, 2005 the Court approved an agreement of purchase and sale made as of ●, 2005 (the "Purchase Agreement") between the Receiver and J2 Management Corp. (the "Purchaser") and provided for the vesting of the Running Board R&D if all or substantially all of the Plastics Assets were not sold as a going-concern and all or substantially all of the Plastics Assets were provided to an auctioneer for liquidation, and if at such time the Receiver had not been discharged.
- C. Unless otherwise indicated herein, terms with initial capitals have the meaning set out in the Purchase Agreement.

THE RECEIVER HEREBY CERTIFIES that all or substantially all of the Plastics Assets have not been sold as a going-concern and all or substantially all of the Plastics Assets have been provided to an auctioneer for liquidation, and the Receiver has not been discharged.

DATED at Toronto, Ontario this ● day of ●, 2005.

Zeifman Partners Inc., in its capacity as Receiver and Manager of the property, assets and undertaking of Tiercon Industries Inc. and not in its personal capacity

By: _____

Name:

Title:

GENERAL MOTORS CORPORATION
Applicant

and

TIERCON INDUSTRIES INC.
Respondent

Court File No: 05-CL-5854

**ONTARIO
SUPERIOR COURT OF JUSTICE-
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Bank of Canada, Bank of Nova Scotia, National
Bank of Canada and Comerica Bank