

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION
47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT* R.S.C.1985,
c. B-3 AND IN THE MATTER OF SECTION 101 OF THE *COURTS
OF JUSTICE ACT*, R.S.O. 1990, c. C-43**

BETWEEN

HSBC BANK CANADA

Applicant

and

HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED

Respondent

**MOTION RECORD
(Returnable October 28, 2009)**

October 15, 2009

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION
47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT* R.S.C.1985,
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

In Bankruptcy and Insolvency

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 47(1)
OF THE *BANKRUPTCY AND INSOLVENCY ACT* R.S.C.1985, c. B-3 AND
IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE*
ACT, R.S.O. 1990, c. C-43**

BETWEEN

HSBC BANK CANADA

Applicant

and

HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED

Respondent

NOTICE OF MOTION

Deloitte & Touche Inc., in its capacity as Court-Appointed Interim Receiver and Receiver (the "Receiver") of Harwell Hesco Electric Supply Co. Limited ("Harwell") will make a motion to a Judge of the Commercial List on Wednesday, October 28, 2009, at 10:00 a.m. at the court house, 330 University Avenue, Ontario, M5G 1E6.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (i) if necessary, an Order abridging the time for service of this Notice of Motion, the Second Report of the Receiver and the Motion Record herein and directing any further service of this Notice of Motion, the Second Report of the Receiver and the

Motion Record be dispensed with, such that this motion is properly returnable on the date it is heard;

- (ii) an Order approving the Second Report of the Receiver dated October 7, 2009 and the actions of the Receiver set out therein;
- (iii) an Order approving the Receiver's Statement of Cash Receipts and Disbursements for the period March 2 to September 30, 2009;
- (iv) an Order approving the proposed Scheme of Distribution described herein;
- (v) an Order approving the Receiver's conduct and activities since its appointment to date; and
- (vi) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. By Order of the Honourable Madame Justice Pepall dated March 2, 2009 (the "Initial Order"), Deloitte & Touche Inc. was appointed interim receiver and receiver, without security, over all of the assets, undertakings and properties of Harwell pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*.
2. On March 2, 2009, the Receiver, on behalf of Harwell, filed an assignment in bankruptcy and the Office of the Superintendent of Bankruptcy subsequently issued a certificate naming Deloitte & Touche Inc. as Trustee of the estate of the bankrupt.

3. By Order of the Honourable Madame Justice Pepall dated March 31, 2009, the Court approved a sale transaction (the "Danbury Sale") between the Receiver and Danbury Industrial ("Danbury") for the liquidation of the inventory and fixed assets of the Company by Danbury.
4. Since its appointment, the Receiver has taken steps to realize on the assets of Harwell, including by way of the Danbury Sale, the particulars of which are set out in the Second Report of the Receiver. For the period of March 2 to September 30, 2009, the Receiver has realized an excess of cash receipts over disbursements in the amount of \$2,028,337.
5. The Receiver has obtained an independent legal opinion on the validity and enforceability of HSBC's security which indicates, subject to the usual qualifications, that HSBC's security is valid and enforceable and ranks in priority to all other secured parties. The Receiver has confirmed that the outstanding HSBC debt is approximately \$2,927,000.00.
6. A review of the PPSA Registrations against Harwell showed other registrations by equipment lessors and by Laurence P. Vassallo, Joseph G. Vassallo, George T. Vassallo, and the Estate of Laurence M. Vassallo. To date, only two members of the Vassallo family have filed proofs of claim (which were incomplete) with the Receiver. All leased equipment of which the Receiver had knowledge was returned to the lessors by Harwell prior to the date of receivership or by the Receiver after March 2, 2009.
7. The proposed Scheme of Distribution is as follows:
 - (i) First, pursuant to Paragraph 18 of the Initial Order, to any unpaid liabilities incurred by the Receiver in connection with these proceedings, including the fees and disbursements of the Receiver and its legal counsel which is currently estimated at approximately \$250,000.00;

- (ii) Second, a holdback in the amount of \$26,000 for the unpaid claims of Canada Revenue Agency for unremitted payroll deductions and WEPP payments that rank in priority to HSBC's secured debt;
- (iii) Third, a holdback in the amount of \$1,010,434.53, pending resolution of litigation commenced by Angela Vassallo, the widow of Laurence M. Vassallo, against the Receiver, the Trustee, HSBC and others, as more fully described in the Receiver's Second Report;
- (iv) Fourth, up to \$2,927,000 to be paid to HSBC on account of its outstanding secured debt; and
- (v) Distribution of any remaining proceeds to be determined by the Receiver upon first receiving approval of this Honourable Court.

8. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, section 47 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

9. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. the Notice of Motion herein;
- 2. the Second Report of the Receiver dated October 7, 2009; and
- 3. such further and other material as counsel may advise and this Honourable Court may permit.

October 15, 2009

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HSBC BANK CANADA
Applicant

-and-

HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED
Respondent

Court File No. CV-09-8035-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
IN BANKRUPTCY AND INSOLVENCY

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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Court File No. CV-09-8035-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

HSBC BANK CANADA

Applicant

- and -

HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED

Respondent

**SECOND REPORT OF DELOITTE & TOUCHE INC.
INTERIM RECEIVER AND RECEIVER**

October 7, 2009

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I. Introduction

1. By Order of the Honourable Madame Justice Pepall dated March 2, 2009 (the "Initial Order"), Deloitte & Touche Inc. was appointed interim receiver and receiver (the "Receiver"), without security, over all of the assets, undertakings and properties of Harwell Hesco Electric Supply Co. Limited ("Harwell" or the "Company") pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* ("BIA") and section 101 of the *Courts of Justice Act*. A copy of the Initial Order is attached hereto as Exhibit "A".
2. By Order of the Honourable Madame Justice Pepall dated March 31, 2009 (the "March 31 Order"), the Court approved the sale transaction (the "Danbury Sale") between the Receiver and Danbury Industrial ("Danbury") for the liquidation of the inventory and fixed assets of the Company by Danbury. A copy of the March 31 Order is attached hereto as Exhibit "B".

II. Purpose of the Report

3. The purpose of this the Receiver's second report is to:
 - a) Report to this Honourable Court on the activities of the Receiver since the Receiver's First Report to the Court dated March 24, 2009;
 - b) Seek this Honourable Court's approval of the Scheme of Distribution described herein;
 - c) Provide this Honourable Court with a summary of the Receiver's Statement of Cash Receipts and Disbursements for the period March 2 to September 30, 2009; and
 - d) Seek this Honourable Court's approval of the Receiver's conduct and activities to date.

III. Background to Receivership

4. Harwell is a private corporation that carried on business as a distributor and wholesaler of electrical supplies and components to manufacturers and contractors throughout southern Ontario. The Company operated five outlets, including a head office and warehouse facility located in Toronto.
5. The Company was unable to meet its financial obligations as they came due. In particular, the Company was in default on its loan obligations to its senior secured creditor, HSBC Bank Canada ("HSBC" or the "Bank"), to whom it owed approximately \$2.8 million. On March 2, 2009, the

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Bank made an application to the Ontario Superior Court of Justice (Commercial List) for the appointment of the Receiver, which application was granted.

6. Also on March 2, 2009, the Receiver, on behalf of the Company, filed an assignment in bankruptcy and the Office of the Superintendent of Bankruptcy subsequently issued a Certificate of Appointment naming Deloitte & Touche Inc. as Trustee of the estate of the bankrupt (the "Trustee").

IV. Asset Realization

Sale of inventory and fixed assets

7. Upon the Court's approval of the Danbury Sale, Danbury commenced its liquidation of the inventory and fixed assets of the Company. Danbury conducted retail/wholesale inventory sales at four of the Company's locations, closing locations and consolidating assets as necessary. It also held auctions at three locations for the remaining inventory and assets not previously sold. Danbury requested and was given an extension of 30 days by the Receiver to complete its liquidation sale, in return for agreeing to pay the additional occupancy costs. As at the end of June 2009, all inventory and fixed assets of the Company had been sold and removed, and the Receiver had vacated all of the Company's locations.
8. Pursuant to the terms of the Danbury Sale, Danbury provided a net minimum guarantee of \$840,000 (the "NMG") with respect to the Company's inventory and fixed assets. As at the date of this report, Danbury has paid the Receiver \$360,000 of the NMG and has refused to pay the remaining balance of \$480,000.
9. In its proposal dated March 30, 2009, Danbury had estimated that it would generate sales proceeds of \$1,575,894 from the sale of the inventory and fixed assets. Danbury has advised the Receiver that the actual sales proceeds were \$759,134.63.
10. On August 26, 2009, 1416088 Ontario Limited, carrying on business as Danbury Industrial, commenced a legal action against Deloitte & Touche Inc. and HSBC claiming damages in the amount of \$500,000 and alleging that the Receiver had made representations as to the value of the inventory upon which Danbury had relied to its detriment. A copy of the Statement of Claim giving rise to this litigation (the "Danbury Claim") is attached hereto as Exhibit "C".

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11. Danbury did not obtain the consent of the Receiver or seek leave of this Honourable Court to proceed against the Receiver as provided for in paragraph 8 of the Initial Order. In addition, the Danbury Claim was not filed with the Commercial List.
 12. On September 30, 2009, counsel for the Receiver attended at a 9:30 Commercial List Appointment and consented to a hearing date of February 3, 2010 for Danbury's motion for leave to commence a proceeding against the Receiver. The Motion judge hearing this matter will also hear submissions from the parties at that time as to whether or not the matter should be transferred to the Commercial List.

Accounts Receivable

13. As of the date of the receivership, the Company's accounts receivable totalled \$2,836,311. Of this amount, almost \$1.4 million or 49% was over 90 days old and included customers who had filed for bankruptcy or whose accounts had previously been sent to a collection agency. The largest customer owed \$272,050 and has claimed a set-off of \$241,922 for construction lien claims and related expenses arising from Harwell's failure to pay the related suppliers, while the second largest customer who owed approximately \$144,000 had filed for bankruptcy in 2007.
14. As of September 30, 2009, the Receiver has collected \$1,272,164. All remaining accounts have been turned over to a collection agency or referred to legal counsel for collection. At this time, it is uncertain how much of these amounts will ultimately be collected.

V. Life Insurance

Life Insurance Policy of Laurence M. Vassallo

15. In May 1994, Harwell purchased a life insurance policy from North American Life Assurance Company on the life of the Company's president, Laurence M. Vassallo (the "Policy"). This policy is now administered by Manulife Financial ("Manulife"). Pursuant to the Policy, Harwell was the sole named beneficiary of the insurance proceeds payable upon the death of Laurence M. Vassallo.
16. Laurence M. Vassallo's death on September 24, 2008 triggered the insurance coverage relating to the Policy. On October 17, 2008, the Policy was paid out by Manulife by way of a cheque made payable to Harwell. The death benefit paid to Harwell was \$1,008,569.37 plus interest of \$1,865.16, totaling \$1,010,434.53 (the "Proceeds").

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17. The Proceeds were deposited to a business account in the name of Harwell at TD Canada Trust (the "TD Account"), which had been opened by Laurence P. Vassallo ("Vassallo Sr."), the father of Laurence M. Vassallo and the former chief executive officer and sole shareholder of Harwell, and Joseph G. Vassallo (the brother of Laurence M. Vassallo and the former president and director of Harwell) only a few weeks prior to receipt of the Proceeds.
 18. Shortly after the deposit of the Proceeds to the TD Account, several transactions occurred resulting in the transfer of the proceeds to Vassallo Sr., and the TD Account was closed. None of these transactions were disclosed to the Receiver by Vassallo Sr.
 19. The Proceeds were subject to the security of HSBC and had been transferred to Vassallo Sr. at a time when the Company was insolvent and in default on its loan obligations to HSBC.
 20. Given the covert nature of the opening of the TD Account and the deposit and dissipation of the Proceeds, it was perceived that there was a real and genuine risk that Vassallo Sr. would continue to dissipate the funds resulting in substantial prejudice to the estate of Harwell and Harwell's creditors. Accordingly, on April 17, 2009 the Receiver made an application to this Honourable Court for an order to prevent Vassallo Sr. from continuing to dissipate the Proceeds.
 21. By way of an order granted by the Honourable Mr. Justice Newbould on April 17, 2009 (the "April 17 Order"), Vassallo Sr. was restrained from disposing of any of his assets. A copy of the April 17 Order is attached hereto as Exhibit "D".
 22. On April 21, 2009, legal counsel for Vassallo Sr. contacted the Receiver to advise that Vassallo Sr. was prepared to return the Proceeds to the Receiver. The payment was to be made in two instalments consisting of (i) \$800,000 to be paid on April 24, 2009 and (ii) \$210,434.53 to be paid by July 31, 2009.
 23. Pursuant to the settlement terms agreed to by the parties, upon the payment of the aforementioned amounts by Vassallo Sr., the April 17 Order is to be vacated in its entirety and the Receiver's application is to be dismissed on a with prejudice and without costs basis. Until such time, the Receiver's application has been adjourned *sine die*.
 24. Vassallo Sr. paid the first instalment of \$800,000 but failed to pay the Receiver the remaining \$210,434.53 by the July 31, 2009 due date.
 25. The Receiver has agreed to accept payment of the remaining amount due, plus an additional \$10,000 for costs and forgone interest, from Vassallo Sr. on or before January 15, 2010 in return for Vassallo Sr. providing his consent to judgment in this matter in favour of the Receiver for an

amount of \$220,434.53. Vassallo Sr.'s consent to judgment has been provided and is being held in escrow by the Receiver's counsel pending the receipt of the final payment.

26. On June 19, 2009, Angela Vassallo, the widow of Laurence M. Vassallo, filed a Statement of Claim against Vassallo Sr., the Receiver, HSBC, George Vassallo, Joseph Vassallo, Jolage Limited, and the Trustee (the "AV Claim") in respect of the Proceeds. The AV Claim asserts that Laurence M. Vassallo was the beneficial owner of the Policy and that, accordingly, Angela Vassallo is the beneficiary of a Resulting Trust or Constructive Trust involving the Proceeds. A copy of the AV Claim is attached hereto as Exhibit "E".
27. Ms. Vassallo did not obtain the consent of the Receiver or seek leave of this Honourable Court prior to initiating legal proceedings against the Receiver and Trustee and has not, to date, taken any further formal action to advance her claim.

Life Insurance Policies of Joseph and George Vassallo

28. In May 1994, Harwell purchased a life insurance policy from North American Life Assurance Company on the life of Joseph G. Vassallo (the "JV Policy"). The JV Policy has a cash surrender value of \$292,000 in 2014. The JV Policy is administered by Manulife and has an annual premium of \$9,620.
29. In May 1994, Harwell also purchased a life insurance policy from North American Life Assurance Company on the life of George T. Vassallo (the "GV Policy"). The GV Policy has a cash surrender value of \$280,000 in 2014. The JV Policy is administered by Manulife and has an annual premium of \$6,320.
30. Without the knowledge or consent of the Receiver, the JV Policy and the GV Policy were transferred to Joseph G. Vassallo in February 2009.
31. The Receiver is in the process of having the JV Policy and GV Policy transferred back into the name of the Company.

VI. Receiver's Cash Receipts and Disbursements

32. Attached hereto as Exhibit "F" is a statement of the Receiver's cash receipts and disbursements for the period March 2 to September 30, 2009 which indicates an excess of receipts over disbursements of \$2,028,337. Since its appointment, the Receiver has collected total receipts of \$2,519,023. Proceeds include \$360,000 from the sale of inventory and fixed assets, \$800,000

from the recovery of the Proceeds, and \$1,272,164 from the collection of accounts receivable. Disbursements totalled \$450,854.

VII. Proposed Scheme of Distribution

33. The Receiver has obtained an independent legal opinion from Aird & Berlis LLP on the validity and enforceability of HSBC's security which indicates, subject to the usual qualifications, that HSBC's security is valid and enforceable and ranks in priority to all other secured parties. Attached hereto as Exhibit "G" is a copy of the Aird & Berlis LLP legal opinion. The Receiver has confirmed that the outstanding HSBC debt is approximately \$2,927,000.
34. A review of the PPSA Registrations against Harwell showed other registrations by equipment lessors and by members of the Vassallo family, namely Vassallo Sr., Joseph G. Vassallo, George T. Vassallo, and the Estate of Laurence M. Vassallo. As at the time of this report, only two members of the Vassallo family have filed proofs of claim (which were incomplete) with the Receiver. All leased equipment of which the Receiver had knowledge was returned to the lessors by Harwell prior to the date of receivership or by the Receiver after March 2, 2009.
35. The Receiver proposes the following Scheme of Distribution:
- i) First, pursuant to Paragraph 18 of the Initial Order, a reserve for any unpaid liabilities incurred by the Receiver in connection with these proceedings, including the fees and disbursements of the Receiver and its legal counsel which is currently estimated at approximately \$250,000;
 - ii) Second, a holdback in the amount of \$26,000 for the unpaid claims of Canada Revenue Agency for unremitted payroll deductions and WEPP payments that rank in priority to HSBC's secured debt;
 - iii) Third, a holdback in the amount of \$1,010,434.53, pending resolution of the AV Claim;
 - iv) Fourth, up to \$2,927,000 to be paid to HSBC on account of its outstanding secured debt; and
 - v) Distribution of any remaining proceeds to be determined by the Receiver upon first receiving approval of this Honourable Court.

VIII. Conclusion

36. The Receiver respectfully requests that this Honourable Court grant an Order which provides for the following:

- a) Approval of the Receiver's Statement of Cash Receipts and Disbursements for the period March 2 to September 30, 2009;
- b) Approval of the Scheme of Distribution described herein; and
- c) Approval of the Receiver's conduct and activities since its appointment to date.

All of the foregoing is respectfully submitted to this Honourable Court as of this 7th day of October, 2009.

Deloitte & Touche Inc.
In its capacity as Interim Receiver and Receiver
of Harwell Hesco Electric Supply Co. Limited
and not in its personal capacity



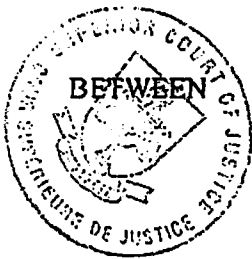
Robert J. Bougie, CA • CIRP
Senior Vice-President

Court File No.: CV-09-8035-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE MADAME)
JUSTICE PEPALL)
)

MONDAY, THE 2nd DAY
OF MARCH, 2009



HSBC BANK CANADA

Applicant

and

HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED

Respondent

ORDER

THIS APPLICATION, made by the Applicant, HSBC Bank Canada (the "HSBC") for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (the "BIA") and section 101 of the *Courts of Justice Act* (the "CJA") appointing Deloitte & Touche Inc. ("Deloitte") as interim receiver and receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Harwell Hesco Electric Supply Co. Limited (the "Borrower") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Consent of the Parties, the Affidavit of Stephen Wayland, sworn February 26, 2009, and on hearing the submissions of counsel for HSBC and the Borrower, and on reading the consent of Deloitte to act as the Receiver.

+ on George Vassallo being unopposed, -
JJP

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 47(1) of the BIA and section 101 of the CJA, Deloitte is hereby appointed Receiver, without security, of all of the Borrower's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the business of the Borrower, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Borrower;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, current or former employees, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Borrower or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Borrower and to exercise all remedies of the Borrower in collecting such monies, including, without limitation, to enforce any security held by the Borrower;
- (g) to settle, extend or compromise any indebtedness owing to the Borrower;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Borrower, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Borrower;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Borrower, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and

negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$500,000 provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to meet with and discuss with any Persons (as defined below) with which the Borrower currently or previously has had any dealings, and to share information or require the delivery of such documents as the Receiver may require, subject to such terms as to confidentiality as the Receiver deems advisable;

- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Borrower;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Borrower, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Borrower;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Borrower may have;
- (t) to make, on behalf of the Borrower, an assignment in bankruptcy for the benefit of creditors generally; and,
- (u) to take any steps reasonably incidental to the exercise of these powers,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Borrower, and without interference from any other Person.

RETENTION OF LAWYERS

4. THIS COURT ORDERS that the Receiver may retain Baker & McKenzie LLP, lawyers for the Applicant herein, to represent and advise the Receiver in respect of any matter where there is no conflict of interest.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Borrower, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations,

governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Borrower, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE BORROWER OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Borrower or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Borrower or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Borrower, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Borrower to carry on any business which the Borrower are not lawfully entitled to carry on, (ii) exempt the Receiver or the Borrower from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Borrower, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Borrower or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized

banking services, payroll services, insurance (and for which purposes, the Receiver shall be considered thereunder, with the Borrower, to be the insured), transportation services, utility or other services to the Borrower are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Borrower's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Borrower or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Borrower shall remain the employees of the Borrower until such time as the Receiver, on the Borrower's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal*

Information Protection and Electronic Documents Act, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Borrower, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge").

19. THIS COURT ORDERS the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the

Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

GENERAL

25. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Borrower.

27. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

28. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Borrower's estate with such priority and at such time as this Court may determine.

30. THIS COURT ORDERS that the Receiver may serve any court materials in these proceedings (including, without limitation, Application Records, Motion Records, Facta and Orders) on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsel's email address as recorded on the service list, provided that the Receiver shall deliver printed copies of such materials to the Borrower's counsel and to any other party requesting same as soon as practicable thereafter.

off

+ since shall be deemed to have been effected one day thereafter.

31. THIS COURT ORDERS that the Receiver may serve any court materials in these proceedings (including, without limitation, Application Records, Motion Records, Facta and Orders) on all unrepresented creditors, including foreign based creditors, by courier to the creditor's address as recorded on the service list.

off

+ since shall be deemed to have been effected one day thereafter.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Joseph J. Pall...

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

MAR 02 2009

PER / PAR: [Signature]

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

33. THIS IS TO CERTIFY that Deloitte & Touche Inc., the interim receiver and receiver (the "Receiver") of all of the assets, undertakings and properties of Harwell Hesco Electric Supply Co. Limited appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the ____ day of _____, 2009 (the "Order") made in an application having Court file number _____ has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

34. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

35. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

36. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

37. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

38. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

39. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2009.

Deloitte & Touche Inc., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____
Name:
Title:

HSBC BANK CANADA
Applicant

-and- HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED
Respondent

Court File No. CV-09-8035-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

ORDER

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Fax: (416) 863-6275

Lawyers for the Applicant

Court File No. CV-09-8035-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE MADAME)
JUSTICE PEPALL)
TUESDAY, THE 31ST DAY
OF MARCH, 2009



HSBC BANK CANADA

Applicant

and

HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED

Respondent

IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTION 47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c.C.43, AS AMENDED

APPROVAL AND VESTING ORDER

THIS MOTION, made by Deloitte & Touche Inc. in its capacity as the Court-appointed interim receiver and receiver (the "Receiver") of the undertaking, property and assets of Harwell Hesco Electric Supply Co. Limited (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by the conditionally accepted liquidation proposal (the "Sale Agreement") between the Receiver and Danbury Industrial (the "Purchaser") made as of March

19, 2009 and appended to the First Report of the Receiver dated March 24, 2009 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets referred to in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

SP

ON READING the Report and on hearing the submissions of counsel for the Receiver, *counsel for George T. Vassallo, and Joseph G. Vassallo, unrepresented*, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Renee McNish sworn March 27, 2009 filed:

1. THIS COURT ORDERS AND DECLARES that the time for service of the Notice of Motion and Motion Record in respect of this motion be and it is validated and abridged, if necessary, such that this Motion is properly returnable today.
2. THIS COURT ORDERS AND DECLARES that the Report, and the actions of the Receiver set out therein be and are hereby approved.
3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Debtor and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
4. THIS COURT ORDERS AND DECLARES that, subject to paragraph 5 of this Order, upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets referred to in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing:
 - (i) any encumbrances or charges created by the Order of the Honourable Madam Justice Pepall

dated March 2, 2009; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system.

5. THIS COURT ORDERS that in the event that the Purchaser fails to account for the sale proceeds as provided for in paragraph 10(e) of the Sale Agreement, all of the right, title and interest in and to the Purchased Assets that are unsold and remaining in the Purchaser's possession at such time, shall revert to the Receiver upon application to and approval by this Court.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

- 8. THIS COURT ORDERS that, notwithstanding:
 - (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement,

fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

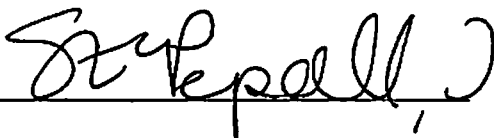
9. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

11. THIS COURT ORDERS that the unredacted copy of the Sale Agreement dated March 19, 2009, shall be treated as confidential and shall be segregated from the other documents filed in connection with this motion and shall be provided to the Court in a sealable envelope marked with the following label:

Pursuant to an order dated March 31, 2009 (the "Order"), this envelope shall be and remain sealed in the court file and shall not be opened until the closing of the Transaction pursuant to the Sale Agreement or upon further order of the Court.

and that the sealed envelope shall not be opened until the closing of the Transaction pursuant to the Sale Agreement or upon further order of the Court.



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

MAR 31 2009

PER / PAR: 

Schedule A – Form of Receiver’s Certificate

Court File No. CV-09-8035-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY

BETWEEN:

HSBC BANK CANADA

Applicant

and

HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Madam Justice Pepall of the Ontario Superior Court of Justice (the "Court") dated March 2, 2009, Deloitte & Touche Inc. was appointed as the interim receiver and receiver (the "Receiver") of the undertaking, property and assets of Harwell Hesco Electric Supply Co. Limited (the "Debtor").

B. Pursuant to an Order of the Court dated March 31, 2009, the Court approved the accepted liquidation proposal made as of March 19, 2009 (the "Sale Agreement") between the Receiver and Danbury Industrial (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming the payment of the deposit in the amount of \$125,000 by the Purchaser.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received a deposit in the amount of \$125,000 towards the Purchase Price for the Purchased Assets payable pursuant to the terms of the Sale Agreement; and
2. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**DELOITTE & TOUCHE INC., in its capacity
as Receiver of the undertaking, property and
assets of Harwell Hesco Electric Supply Co.
Limited, and not in its personal capacity**

Per: _____

Name:

Title:

HSBC BANK CANADA
Applicant

-and-

HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED
Respondent

Court File No. CV-09-8035-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
IN BANKRUPTCY AND INSOLVENCY
PROCEEDING COMMENCED AT
TORONTO**

APPROVAL AND VESTING ORDER

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Toronto, ON., M5J 2T3**

**J. Brian Casey (15895A)
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**David Gadsden (50749U)
Tel: (416) 865-6983**

Fax: (416) 863-6275

**Lawyers for the Receiver
Deloitte & Touche Inc.**

MOTION 1511.01

The Receiver seeks an order approving its 1st report + pending approval of its conditional acceptance of a sale transaction between it + Kimberly Industrial together with a vesting order. I am satisfied in the circumstances attained that the proposed purchase price is fair + commercially reasonable + represents the best recovery for creditors of Harwell. The senior secured creditor, HSBC Bank Canada, is owed approximately \$3 million + consents + no one with any economic interest is opposed. The benefits associated with the proposal are outlined in paragraph 26 of the 1st report.

I am also satisfied that the draft order presented should be signed including that portion which seals the copy of the sale agreement until closing or further order of the court. The contents of the agreement are obviously commercially sensitive + it is for the benefit of all creditors that it be sealed on these terms.

8749 poll, J.

HSBC BANK CANADA
Applicant

-and-
Respondent

HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED

31 MAR 2009
Court File No. CV-09-8035-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
IN BANKRUPTCY AND INSOLVENCY
PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
(Motion Returnable March 31, 2009)

BAKER & MCKENZIE LLP
Barristers & Solicitors
181 Bay Street, P.O. Box 874
Suite 2100
Toronto, ON, M5J 2T3

J. Brian Casey (15895A)
Tel: (416) 865-6979

David Gadsden (50749U)
Tel: (416) 865-6983

Fax: (416) 863-6275

Lawyers for the Receiver
Deloitte & Touche Inc.



RECEIVED

-08-26 2009

LEGAL DEPT.

CV-09-385806

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

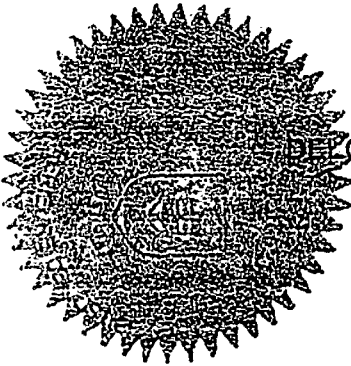
1416088 ONTARIO LIMITED, carrying on business as DANBURY INDUSTRIAL

Plaintiff

- and -

DELOITTE & TOUCHE INC. and HSBC BANK CANADA

Defendants



STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff(s) lawyer(s) or, where the Plaintiff(s) do(es) not have a lawyer, serve it on the Plaintiff(s), and file it, with proof of service, in this Court office WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU PAY THE PLAINTIFF'S CLAIM and \$1,000.00 for costs, within the time for serving and filing your statement of Defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for cost is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

M. Sagaria
Registrar

Date: 26 Aug. 2009

Issued by: Sagaria
Local Registrar

Address of the Court Office:
Superior Court of Justice
Court House
393 University Avenue
Toronto, Ontario
M5G 1E8

TO: **DELOITTE & TOUCHE INC.**
c/o Mary Clites
30 Wellington Street West
P.O. Box 400, Stn.
Commerce Court
Toronto, Ontario
M5L 1B1

AND TO: **HSBC BANK OF CANADA**
70 York Street
Toronto, Ontario
M5J 1S9

CLAIM

1. The Plaintiff claims:
 - a. damages in the amount of \$500,000;
 - b. pre-judgment and post-judgment interest on any sums awarded in favor of the Plaintiff pursuant to the terms of the *Courts of Justice Act*, R.S.O. 1990, c.C.43 (as amended);
 - c. its costs of this action;
 - d. payment of applicable Goods and Services Tax on any sums awarded in favor of the Plaintiff, including costs, pursuant to the terms of the *Excise Tax Act*, R.S.C. 1985, c. E-15; and
 - e. such further and other relief as counsel may advise and this Honourable Court may deem just.

2. The Plaintiff is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on the business of purchasing and re-selling assets by way of liquidation and/or auction from trustees, receivers and managers, corporations and others ("Danbury").

3. The Defendant, Deloitte & Touche Inc., is a corporation incorporated pursuant to the laws of Canada and carries on the business in Ontario as a professional consulting firm, trustee in bankruptcy, and receiver and manager (the "Receiver").
4. The Defendant, HSBC Bank Canada, is a federally and provincially incorporated chartered bank, with offices throughout Canada including the City of Toronto.
5. In or around the Fall of 2008, and pursuant to the provisions of a security agreement between, *inter alia*, Harwell Hesco Electric Supply Limited (the "Company") and its banker, HSBC Bank Canada (the "Bank"), the Receiver was appointed as monitor and/or private receiver of the Company as well as agent for HSBC (the "Private Appointment").
6. Thereafter, at all material times, the Receiver was the agent of the Bank. In this capacity, the Receiver on behalf of the Bank, entered into forbearance agreements with the Company that, *inter alia*, provided for the Company to sell substantially all its assets by March, 2009.
7. By court Order dated March 2, 2009 (the "Appointment Order"), upon the application of the Bank, the Receiver was appointed as court-appointed interim receiver and receiver of the Company (the "Court Appointment").
8. The Appointment Order requires the Receiver to obtain the approval of the Court with respect to sales of assets of the Company in excess of \$500,000.

9. The Receiver subsequently assigned the Company into bankruptcy and was appointed its trustee.
10. On or about March 2, 2009, the Receiver advised Danbury of its Court Appointment, and represented that it was seeking expressions of interest for the liquidation of the Company's assets, which included inventory of approximately \$5.8 million valued on a book-value basis.
11. On or after March 6, 2009, after further inventory analysis conducted by the Receiver or under its direction, the Receiver represented to Danbury that the book value of the inventory was now \$4,610,855 (the "Amended Book Value").
12. On March 13, 2009, and in reliance on the Receiver's representation that the book value of the inventory was \$4,610,855, Danbury delivered to the Receiver its proposal for the liquidation and sale of the Company's assets which proposal was subject to the approval of the Court (the "First Proposal").
13. The First Proposal provided for a net minimum guarantee (the "NMG") of payment to the Receiver in the amount of \$1,250,000 based on an inventory count of no less than the Amended Book Value.
14. By its terms, the First Proposal required an inventory analysis in order to verify the quantity, cost and the wholesale value of the inventory.

15. The Receiver was not willing to accept the First Proposal.

16. On March 19, 2009, Danbury delivered a revised proposal, which provided for a second NMG of \$1,147,000 based on an inventory of no less than the Amended Book Value and further, based on a final inventory verification being conducted no later than March 31, 2009 and subject to the approval of the Court (the "Second Proposal").

17. The Second Proposal further required that should an adjustment have to be made to the inventory, the gross recovery would be recalculated as 43.27% of the adjusted inventory at cost and the NMG recalculated as 46% of the revised net recovery.

18. The Second Proposal was accepted and signed by the Receiver.

19. By Order of the Court dated March 31, 2009, the Receiver obtained the approval of the Second Proposal including the vesting of the inventory in Danbury pursuant thereto.

20. Danbury was never advised by the Receiver that the Court had approved the terms of the Second Proposal which included a requirement for a complete inventory to verify quantity, cost, and wholesale value of the inventory as well as a formula for adjustment of same.

21. On or about March 24, 2009, and in accordance with the terms of the Second Proposal, Danbury conducted a sample count of the inventory for the purpose of verifying the quantity of the inventory (the "Sample Count").
22. The Sample Count revealed that the quantity of the inventory had been significantly overstated. Danbury advised the Receiver of this fact on or about March 27, 2009.
23. The Receiver was well aware that Danbury was unable to review the book value other than through the Receiver's lists and representations since the computer system of the Company was not operational at that time.
24. Danbury proposed to the Receiver that a full inventory or count be conducted in accordance with the Second Proposal. The Receiver refused and instead represented the book value of the inventory was accurate and that the book value of the inventory was in fact \$4,610,885.
25. By failing or refusing to proceed to conduct a full inventory analysis or adjustment as required by the Second Proposal, the Receiver is in breach of its contract with Danbury and as a result, caused damages to Danbury.
26. The Receiver was further aware through its long history with Danbury, some thirty years, that Danbury was utilizing the book value of the inventory in order to ascertain its NMG.

27. In the face of the Receiver's refusal to conduct a full inventory and its failure or refusal to advise that the Second Proposal which required such an inventory had been accepted, Danbury had no choice but to rely on the Receiver's representations as to the book value of the inventory.

28. On or about March 30, 2009, and as a result of the concerns raised by Danbury in respect of the quantity of the Company's inventory as revealed by the Sample Count, the parties stipulated a reduced NMG of \$840,000 (the "March 30th Agreement").

29. Danbury proceeded to sell the inventory of the Company including by way of liquidation and auction. The prices obtained represented approximately twenty percent (20%) of the alleged book value of the inventory and net of expenses represented approximately ten percent (10%) of the book value of the inventory.

30. Using the formula in the Second Proposal, the amount owing by Danbury (the NMG) would be reduced to \$497,000.

31. During the sale process, Danbury obtained access to the Company's computer system for the first time. When the computers became operational, it became apparent that:
 - (a) There were significant discrepancies in the manner by which the inventory was recorded and tracked by the Company, including a significant discrepancy between the book value recorded in some of the branch

operations, and the book value shown in the main Toronto branch of the Company;

- (b) The Company had no inventory control system, such that obsolete inventory was not being written off, but rather was being carried at cost;
- (c) The book value of inventory was significantly less than had been represented by the Receiver; and
- (d) The inventory supplied by the Receiver did not correspond to the representations made by the said Receiver.

32. It therefore became clear that the cost of the inventory had been significantly overstated by the Receiver, and that the representations made by the Receiver as to the cost of the inventory were false.

33. Subsequent to the execution of the Final Agreement and the sale of the Company's inventory by Danbury, Danbury learned that prior to the Court Appointment on March 2, 2009, the Receiver knew that the book value of the inventory and the information with respect thereto that it provided to prospective purchasers, including Danbury, was inaccurate and could not be relied on.

34. In particular, and without limiting the generality of the foregoing, during the period of the Private Appointment, the Receiver was aware that a number of prospective

purchasers had refused to complete a purchase of the assets of the Company, and specifically that a prospective purchaser of the Company's assets who had executed an agreement of purchase and sale had withdrawn due to material discrepancies in the inventory of the Company, including the book value thereof. The full particulars are known only to the Receiver and/or the Bank.

- 35. The Receiver, at that time was acting under the Private Appointment and as such was agent for the Bank. As such, the Bank is, in law, responsible for the actions, inactions, and/or misrepresentations of the Receiver. In the further alternative, the Bank is vicariously responsible for the conduct of the Receiver.

- 36. Additionally, the Bank had knowledge of material discrepancies with regard to the book value of the inventory.

- 37. The Bank provided its documents and all other file materials as well as knowledge of the material discrepancies in the inventory to the Receiver. Particulars of the information that was conveyed was only known to the Receiver and the Bank.

- 38. Danbury states that the Receiver knowingly withheld this information from prospective purchasers, including Danbury.

- 39. Danbury therefore states that when the Receiver represented to Danbury that (i) the book value of the inventory was \$4,610,885, and (ii) that the book value of the

inventory was accurate (the "Representations"), the Receiver knew that such Representations were false.

40. In the alternative, Danbury states that the Receiver was reckless and/or careless as to whether the Representations were true or false.

41. In the further alternative, Danbury states that the Representations were negligently made in circumstances when the Receiver knew and/or ought to have known that the Representations were untrue, and with the knowledge that Danbury would in fact rely upon them in purchasing the Company's assets.

42. Danbury states that it had a special relationship with the Receiver, such that the Receiver owed it a duty of care, by reason of, *inter alia*, the following facts:

- (a) The Representations were made to Danbury by an individual with whom Danbury had dealt for thirty (30) years;
- (b) The Receiver is a firm comprised of professional accountants and trustees in bankruptcy with expertise in the valuation and costing of inventory, and who are in the business of providing advice with respect to such matters; and,
- (c) The Receiver ought reasonably to have foreseen that Danbury would rely on its Representations.

43. Danbury pleads that representations made by the Receiver were negligent by virtue of, *inter alia*, the following:

(a) The Receiver owed a duty of care to Danbury by virtue of a "special relationship" between these parties;

(b) The representations made by the Receiver were untrue, inaccurate and/or misleading;

(c) The Receiver has acted negligently in make the representations to Danbury;

(d) Danbury relied on the representations, and did so in a reasonable manner; and

(e) Danbury has relied on the representations to its detriment, and as a result, has sustained damages.

44. In relying on the Representations, Danbury acted reasonably.

45. Danbury states that the Representations were made by the Receiver with the intention that they be relied upon by the Plaintiff in determining whether to purchase the inventory of the Company.

46. Danbury in fact relied detrimentally or otherwise upon the Representations in its decision to do so, and has suffered damages as a result, including loss of profits for which the Defendants are responsible.

47. Danbury proposes that the Trial of this Action take place in the City of Toronto.

26 Aug. 2009

BERKOW, COHEN LLP
Barristers
141 Adelaide Street West
Suite 400
Toronto, Ontario
M5H 3L5

Jack B. Berkow
LSUC No.: 15063 O

Tel: (416) 364-4900
Fax: (416) 364-3865

Lawyers for the Plaintiff

CU-09-385806

1416088 ONTARIO LIMITED, carrying on business as
DANBURY INDUSTRIAL
Plaintiff

- and -

DELOITTE & TOUCHE INC. et al
Defendants

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at
TORONTO

STATEMENT OF CLAIM

BERKOW COHEN LLP
Barristers
141 Adelaide Street West
Suite 400
Toronto, Ontario
M5H 3L5

JACK B. BERKOW
LSUC No. 15063 O

Tel: (416) 364-4900
Fax: (416) 364-3865

Lawyers for the Plaintiff

Commercial List No.: CV-09-8134-00CL



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

**IN THE MATTER OF THE BANKRUPTCY OF HARWELL HESCO
ELECTRIC SUPPLY CO. LIMITED**

THE HONOURABLE
JUSTICE NEWBOULD

)
)
)

FRIDAY, THE 17th DAY
OF APRIL, 2009

BETWEEN

DELOITTE & TOUCHE INC, in its capacity as Court-Appointed Interim Receiver and Receiver
of HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED

Applicant

and

LAURIE PHILIP VASSALLO

Respondent

ORDER

- Penal Notice -

If you, the Respondent, disobey this Order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized.

Any other person who knows of this order and does anything which helps or permits the Respondent to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS MOTION, made without notice by the Applicant, Deloitte & Touche Inc., as Receiver of the estate of Harwell Hesco Electric Supply Co. Limited, for an interim Order in the form of a *Mareva* injunction restraining the Respondent, Laurie Philip Vassallo, from dissipating his assets and other relief, was heard this day at Toronto, Ontario.

ON READING the Affidavit of Robert Bougie sworn April 15, 2009, on hearing the submissions of counsel for the Applicant, and on noting the undertaking of the Applicant to abide by any Order this Court may make concerning damages arising from the granting and enforcement of this Order,

Mareva Injunction

1. **THIS COURT ORDERS** that the Respondent, and his agents, assigns, and anyone else acting on his behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of the Respondent, wherever situate;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

2. **THIS COURT ORDERS** that paragraph 1 applies to all of the Respondent's assets whether or not they are in his own name and whether they are solely or jointly owned. For the purpose of this order, the Respondent's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the assets in accordance with his direct or indirect instructions.

3. **THIS COURT ORDERS** that if the total value free of charges or other securities of the Respondent's assets exceeds \$1,010,434.53, the Respondent may sell, remove, dissipate, alienate, transfer, assign, encumber, or similarly deal with them so long as the total unencumbered value of the Respondent's assets remains above \$1,010,434.53.

Ordinary Living Expenses

4. **THIS COURT ORDERS** that the Respondent may apply for an order, on at least twenty-four (24) hours notice to the Applicant, specifying the amount of funds which the Respondent is entitled to spend on ordinary living expenses and legal advice and representation.

Disclosure of Information

5. **THIS COURT ORDERS** that the Respondent prepare and provide to the Applicant within five (5) days of the date of service of this Order, a sworn statement describing the nature, value, and location of his assets worldwide, whether in his own name or not and whether solely or jointly owned.

6. **THIS COURT ORDERS** that the Respondent submit to examinations under oath within two (2) days of the delivery by the Respondent of the aforementioned sworn statements.

7. THIS COURT ORDERS that if the provision of any of this information is likely to incriminate the Respondent, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information referred to in paragraph 5 herein is contempt of court and may render the Respondent liable to be imprisoned, fined, or have his assets seized.

Third Parties

8. THIS COURT ORDERS all banks holding accounts in the name of the Respondent (the "Banks") to forthwith freeze and prevent any removal or transfer of monies or assets of the Respondent held in any account or on credit on behalf of the Respondent, with the Banks, until further Order of the Court.

9. THIS COURT ORDERS that the Banks forthwith disclose and deliver up to the Applicant any and all records held by the Banks concerning the Respondent's assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate, held on behalf of the Respondent by the Banks.

Alternative Payment of Security into Court

10. THIS COURT ORDERS that this Order will cease to have effect if the Respondent provides security by paying the sum of \$1,010,434.53 into Court, and the Accountant of the Superior Court of Justice is hereby directed to accept such payment.

Service

11. ~~THIS COURT ORDERS that the time for service of the Notice of Motion and Motion Record in respect of this motion be and it is validated and abridged, if necessary, such that this Motion is properly returnable today~~ *over I*

Variation, Discharge or Extension of Order

12. THIS COURT ORDERS that anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this order, on four (4) days notice to the Applicant.

13. THIS COURT ORDERS that the Applicant shall apply for an extension of this Order within ten (10) days hereof, failing which this Order will terminate.

[Signature]

*Let this order
issue
JMT*

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

APR 17 2009

PER / PAR: *[Signature]*

Court File No. CV-09-8134-00CL

IN THE MATTER OF THE BANKRUPTCY OF HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED

DELOITTE & TOUCHE INC., in its capacity as Court-Appointed Interim Receiver and Receiver of HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED **- and -** **LAURIE PHILIP VASSALLO**
 Applicant Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER

BAKER & MCKENZIE LLP
 Barristers & Solicitors
 181 Bay Street, P.O. Box 874
 Suite 2100
 Toronto, Ontario M5J 2T3

J. Brian Casey (15895A)
 Tel: (416) 865-6979

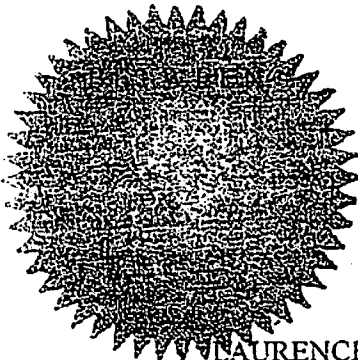
David Gadsden (50749U)
 Tel: (416) 865-6983
 Fax: (416) 863-6275

Solicitors for the Applicant

CV-09-381391

Court File

ONTARIO
SUPERIOR COURT OF JUSTICE



ANGELA VASSALLO

Plaintiff

-and-

LAURENCE P. VASSALLO, DELOITTE & TOUCHE Inc. as TRUSTEE
IN BANKRUPTCY FOR THE ESTATE OF HARWELL HESCO
ELECTRIC CO. LIMITED a Bankrupt, HSBC Bank Canada,
GEORGE VASSALLO, JOSEPH VASSALLO, JOLAGE LIMITED, and
DELOITTE & TOUCHE INC., in its capacity as court appointed interim receiver and
receiver of HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you
must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure,
serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the
plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after
this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of
America, the period for serving and filing your statement of defence is forty days. If you are
served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent
to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten
more days within which to serve and file your statement of defence.

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IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,500.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$500.00 for costs and have the costs assessed by the court.

Date 19 June 2009

Issued by: Sopario M. Sagaria Registrar
Local Registrar
393 University Ave. -
10th Fl.
Toronto, Ontario
M5G 1E6

TO: LAURENCE P. VASSALLO
c/o Aylesworth LLP
Barristers & Solicitors
Ernst & Young Tower
Toronto-Dominion Centre
222 Bay Street
Toronto, ON M5K 1H1

Steven Gray
Tel: 416-777-4032
Fax: 416-865-1398

AND TO: DELOITTE & TOUCHE INC.
as Trustee in Bankruptcy for the
Estate of Harwell Hesco Electric Co.
Limited
c/o Baker & McKenzie LLP
Barrister & Solicitors
181 Bay Street, Suite 2100
Toronto, ON
M5J 2Y3

David Gadsden
Tel: 416-865-6983
Fax: 416-863-6275

AND TO: HSBC BANK CANADA
c/o Baker & McKenzie LLP
Barrister & Solicitors
181 Bay Street, Suite 2100
Toronto, ON
M5J 2Y3

David Gadsden
Tel: 416-865-6983
Fax: 416-863-6275

AND TO: DELOITTE & TOUCHE INC.
Court Interim Receiver
c/o Baker & McKenzie LLP
Barrister & Solicitors
181 Bay Street, Suite 2100
Toronto, ON
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David Gadsden
Tel: 416-865-6983
Fax: 416-863-6275

AND TO: GEORGE VASSALLO
c/o Bennett Jones LLP
3400 One First Canadian Place
Toronto, ON
M5X 1A4

Gavin H. Finlayson
Tel: 416-863-1200
Fax: 416-863-1716

AND TO JOSEPH VASSALLO
c/o Aylesworth LLP
Barristers & Solicitors
Ernst & Young Tower
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222 Bay Street
Toronto, ON M5K 1H1

Steven Gray
Tel: 416-777-4032
Fax: 416-865-1398

AND TO: JOLAGE LIMITED
c/o Aylesworth LLP
Barristers & Solicitors
Ernst & Young Tower
Toronto-Dominion Centre
222 Bay Street
Toronto, ON M5K 1H1

Steven Gray
Tel: 416-777-4032
Fax: 416-865-1398

CLAIM

1. The Plaintiff, Angela Vassallo, claims:

(a) Dependent's support in the sum of \$1,400,000.00, pursuant to the provisions of the *Succession Law Reform Act*, R.S.O. 1990 chapter S26;

(b) In the alternative:

- i. An Order declaring that at all material times, Laurence Michael Vassallo was the beneficial owner of the two policies of insurance herein described;
- ii. An Order declaring that the Plaintiff is the beneficiary of a Resulting Trust involving the proceeds of two insurance policies as herein described totaling the sum of \$1,400,000.00;
- iii. An Order directing that the proceeds of the said insurance policies be paid to the Plaintiff.

(c) In the further alternative:

- iv. An Order declaring that at all material times, Laurence Michael Vassallo was the beneficial owner of the two policies of insurance herein described;
- v. An Order declaring that the Plaintiff is the beneficiary of a Constructive Trust involving the proceeds of two insurance policies as herein described totaling the sum of \$1,400,000.00;
- vi. An Order directing that the proceeds of the said insurance policies be paid to the Plaintiff;

(d) In the further alternative:

- i. An Order declaring that the Plaintiff has a secured interest in the policy of insurance in the sum of \$1,000,000.00 as herein described together with the

Defendants, Joseph Vassallo and George Vassallo and subject only to the secured interest of the Defendant, HSBC Bank Canada;

- ii. An Order requiring that the Defendants HSBC Bank Canada, Deloitte & Touche Inc. in its capacity as court appointed Interim Receiver and Receiver of Harwell Hesco Electric Supply Co. Limited and Deloitte & Touche Inc. as Trustee in Bankruptcy for the Estate of Harwell Hesco Co. Limited, a bankrupt, and Laurence P. Vassallo, or any of them pay to the Plaintiff, Angela Vassallo, together with the Defendants Joseph Vassallo and George Vassallo the sum of \$1,000,000.00, or such other sum as may be properly due to those parties, after proper deduction therefrom, if any, of monies properly due to the Defendant HSBC Bank Canada.

PARTIES AND BACKGROUND

2. The Plaintiff, Angela Vassallo, is the Estate Trustee and beneficiary of the estate of Laurence Michael Vassallo, deceased. Angela Vassallo (Angela) and Laurence Michael Vassallo (Laurie Jr.) were husband and wife for 30 years. Laurie Jr. died on September 24th, 2008. His Last Will and Testament named Angela as his Estate Trustee and as his sole beneficiary. A Certificate of Appointment of Estate Trustee with a Will was issued to Angela on the 22nd day of January 2009.
3. The Defendants Joseph Vassallo (Joseph) and George Vassallo (George) are the brothers of Laurie Jr.

4. The Defendant Laurence P. Vassallo (Laurie Sr.) is the father of Laurie Jr., Joseph and George, as well as three other daughters. Laurie Sr. was at all material times the sole shareholder of Harwell Hesco Electric Co. Limited (Harwell Hesco).

5. The Defendant Harwell Hesco Electric Supply Co. Ltd. (Harwell Hesco) is a company incorporated pursuant to the laws of the Province of Ontario, and at all material times operated as an electrical contractor from various premises, including premises in:
 - a) Toronto, Ontario;
 - b) Hamilton, Ontario;
 - c) Burlington, Ontario.

6. Harwell Hesco began operations as an electrical equipment business over fifty years ago and was owned and operated by Laurie Sr. and his brother until approximately 1990.

7. In 1990, Laurie Sr. became the sole shareholder of Harwell Hesco, and appointed Laurie Jr. as President of the company.

8. Laurie Jr. worked with Harwell Hesco from the mid-1970's until the date of his death, namely September 24, 2008.

9. Joseph worked with Harwell Hesco from the mid-1970's until the company's bankruptcy on March 3, 2009.

10. George worked for Harwell Hesco from the mid-1970's until approximately 2006, when he left Harwell Hesco to form his own business.

11. Harwell Hesco required infusions of capital from time to time, and each of Laurie Jr., Joseph and George would advance money by way of secured loans to Harwell Hesco. The Security Agreements obtained by Laurie Jr., Joseph and George for these loans were subject to the Security Agreements provided by Harwell Hesco to HSBC Bank Canada.
12. Harwell Hesco filed an Assignment in Bankruptcy on March 3rd, 2009 and the Defendant Deloitte & Touche Inc. as Trustee in Bankruptcy for the Estate of Harwell Hesco Electrical Co. Ltd., a bankrupt, was appointed the Trustee in Bankruptcy.
13. The Defendant, HSBC Bank Canada (HSBC), is a bank carrying on business in Canada, and at all material times was retained by Harwell Hesco for its normal banking and financing needs.
14. Prior to the bankruptcy of Harwell Hesco, HSBC, pursuant to certain Security Agreements that were made between Harwell Hesco and HSBC, appointed Deloitte & Touche Inc. as the Receiver and Manager of the assets of Harwell Hesco. That appointment occurred in or about the fall 2008. Subsequently, Deloitte & Touche Inc. became the court appointed Interim Receiver and Receiver of Harwell Hesco Supply Co. Limited.
15. The Defendant, Jolage Limited, (Jolage) is a company incorporated pursuant to the laws of the Province of Ontario. At all material times, the shareholders of Jolage were Laurie Sr., Laurie Jr., Joseph and George, together with Patricia Vassallo, the spouse of Laurie Sr. Included among the properties owned by Jolage were the properties from which Harwell Hesco operated its business in Burlington, Hamilton and Toronto.

16. Laurie Sr. controlled Jolage Ltd. ("Jolage").
17. During his ownership of Harwell Hesco, Laurie Sr. treated Harwell Hesco as his personal vehicle, with little or no regard to proper delineation between his personal affairs and the corporate affairs of Harwell Hesco.
18. It was always the desire and intention of Laurie Sr. that Laurie Jr. would own Harwell Hesco.

\$1,000,000.00 LIFE INSURANCE POLICY

19. In or about 1990, Harwell Hesco purchased life insurance policies on the lives of Laurie Jr., Joseph and George.
20. The policy of insurance taken out on the life of Laurie Jr. was in the sum of \$1,000,000.00, and Harwell Hesco was named as the beneficiary of the policy. Harwell Hesco paid the annual premiums relating to the policy.
21. The policies of insurance taken out on the lives of Laurie Jr., Joseph and George by Harwell Hesco were always intended to be for the benefit of Laurie Jr., Joseph and George respectively, notwithstanding the ownership of the policies, the payments of the premiums and the designation of the beneficiaries.
22. Laurie Jr. died on September 24, 2008, and on October 17, 2008, Harwell Hesco received the proceeds from the \$1,000,000.00 life insurance policy taken out on the life of Laurie Jr.

23. The full amount of the insurance proceeds were paid by Harwell Hesco to Laurie Sr. and Joseph. The proceeds of the said policy of insurance are the subject matter of an application bearing Court File No. CV-09-8134-00CL brought by Deloitte & Touche Inc. in its capacity as court appointed interim receiver and receiver of Harwell Hesco Electric Supply Co. Ltd., and the funds are now subject to a Court Order in that application.

\$400,000.00 LIFE INSURANCE POLICY

24. In a similar manner to that of Harwell Hesco, Jolage maintained a policy of insurance on the life of Laurie Jr. in the principal sum of \$400,000.00.

25. Again, in a similar manner to that of Harwell Hesco, the policy of insurance was owned by Jolage, the premiums were paid by Jolage and the beneficiary of the policy was Jolage. Notwithstanding, it was always the intention of Laurie Sr. and Jolage that the policy of insurance would be for the benefit of Laurie Jr.

26. Jolage has applied for and received the proceeds of insurance, totaling approximately \$400,000.00.

27. In or about the fall 2008, after the death of Laurie Jr., Laurie Sr. transferred control of Jolage to Joseph.

28. Laurie Sr., before transferring control of Jolage to Joseph, made payments from Jolage to Angela and to Joseph, using the proceeds of insurance, and characterizing the payment to Angela as "*assistance*".

DEPENDANT'S RELIEF CLAIM

29. Pursuant to the provisions of the *Succession Law Reform Act*, Angela makes claim for dependant's relief.
30. Angela states that at all material times, Laurie Jr. was the beneficial owner of the policy of insurance in the sum of \$1,000,000.00 owned by Harwell Hesco.
31. Angela states that at all material times Laurie Jr. was the beneficial owner of the policy of insurance in the sum of \$400,000.00 owned by Jolage.
32. Prior to the death of Laurie Jr., Laurie Jr. and Angela were the registered owners, as joint tenants, of the property municipally known as 1327 Deerwood Trail, Oakville, Ontario.
33. As referenced herein, Laurie Jr. advanced funds from time to time to Harwell Hesco, and in so doing, Laurie Jr., together with Angela, obtained a line of credit loan from the Toronto Dominion Bank in the principal sum of \$642,500.00, secured by way of a mortgage registered against the property municipally known as 1327 Deerwood Trail, Oakville, Ontario.
34. On the date of the death of Laurie Jr., the approximate amount outstanding pursuant to the line of credit mortgage was in the sum of \$642,500.00.
35. On the date of his death Laurie Jr. was owed approximately \$750,000.00 by Harwell Hesco, representing the funds advanced by Laurie Jr. to Harwell Hesco from time to time.

36. Angela states that at all times prior to his death, Laurie Jr. assured her that she would be "looked after" in the event of his death.

RESULTING TRUST

37. In the event that Angela is not awarded dependent's support pursuant to the provisions of the *Succession Law Reform Act* as set out hereinbefore, then Angela states that she is the beneficiary of two Resulting Trusts in connection with the \$1,000,000.00 life insurance policy owned by Harwell Hesco and the \$400,000.00 life insurance policy owned by Jolage.

38. Angela states that the \$1,000,000.00 policy of insurance was taken out by Harwell Hesco for the benefit of Laurie Jr., not for the benefit of Harwell Hesco. In that regard, Laurie Jr. advanced funds to Harwell Hesco from time to time for the purpose of allowing Harwell Hesco to continue to operate. Harwell Hesco made use of the funds advanced by Laurie Jr. and included among the payments made by Harwell Hesco were payments made on account of the premiums necessary to ensure that the \$1,000,000.00 policy of insurance remained in good standing.

39. Angela states that at all times, Harwell Hesco maintained the \$1,000,000.00 policy of insurance as trustee for Laurie Jr. and it was always understood and agreed that any proceeds of insurance paid out under the \$1,000,000.00 policy of insurance would be paid to and held in trust by Harwell Hesco for the benefit of Angela.

40. Angela states that the \$400,000.00 policy of insurance was taken out by Jolage for the benefit of Laurie Jr., not for the benefit of Jolage. In that regard, Laurie Jr. advanced

funds to Jolage from time to time for the purpose of allowing Jolage to continue to operate. Jolage made use of the funds advanced by Laurie Jr., and included among the payments made by Jolage were payments made on account of the premiums necessary to ensure that the \$400,000.00 policy of insurance remained in good standing.

41. Angela states that at all times, Jolage maintained the \$400,000.00 policy of insurance as trustee for Laurie Jr. and it was always understood and agreed that any proceeds of insurance paid out under the \$400,000.00 policy of insurance would be paid to and held in trust by Jolage for the benefit of Angela.

CONSTRUCTIVE TRUST

42. In the event that Angela is not awarded dependent's support pursuant to the provisions of the *Succession Law Reform Act* as set out hereinbefore and in the event that this Court does not find that a resulting trust exists, then Angela states that she is the beneficiary of two Constructive Trusts in connection with the \$1,000,000.00 life insurance policy owned by Harwell Hesco and the \$400,000.00 life insurance policy owned by Jolage.

43. Angela states that at all times it was the intention of Laurie Sr., Laurie Jr. and Harwell Hesco that the proceeds of the \$1,000,000.00 policy of insurance would be for her benefit, not for the benefit of Harwell Hesco.

44. Laurie Sr. was still actively involved with Harwell Hesco at the time of the death of Laurie Jr. He was the sole shareholder of Harwell Hesco at the time of the death of Laurie Jr. As such, Harwell Hesco was unjustly enriched when it received the proceeds from the \$1,000,000.00 life insurance policy.

45. Angela states that she remains liable to the Toronto Dominion Bank for the line of credit taken out on 1327 Deerwood Trail, Oakville, Ontario, that she has not received any monies in connection with loan advances made by Laurie Jr. to Harwell Hesco and that Harwell Hesco has accordingly been unjustly enriched as a result of the payment of the life insurance policy to it.

46. Although Laurie Jr. was an employee of Harwell Hesco, he was not its founder nor its directing mind. Laurie Sr. was its founder and sole directing mind up to and after, the date of death of Laurie Jr. As such, the payment of the \$1,000,000.00 insurance policy to Harwell Hesco is without juristic reason.

47. Angela therefore states that the necessary factors for a constructive trust have been established and accordingly she is the beneficiary of the proceeds of the \$1,000,000.00 policy of insurance.

48. Angela states that at all times it was the intention of Laurie Sr., Laurie Jr. and Jolage that the proceeds of the \$400,000.00 policy of insurance would be for her benefit, not for the benefit of Jolage.

49. Laurie Sr. was still actively involved with Jolage at the time of the death of Laurie Jr. He was the controlling shareholder of Jolage at the time of the death of Laurie Jr. As such, Jolage was unjustly enriched when it received the proceeds from the \$400,000.00 life insurance policy.

50. Angela states that she remains liable to the Toronto Dominion Bank for the line of credit taken out on 1327 Deerwood Trail, Oakville, Ontario, that she has not received any monies in connection with loan advances made by Laurie Jr. to Jolage and that Jolage has accordingly been unjustly enriched as a result of the payment of the life insurance policy to it.

51. Although Laurie Jr. was a shareholder of Jolage, he was not its founder nor its directing mind. Laurie Sr. was its founder and directing mind up to and after, the date of death of Laurie Jr. As such, the payment of the \$400,000.00 insurance policy to Jolage is without juristic reason.

52. Angela therefore states that the necessary factors for a constructive trust have been established and accordingly she is the beneficiary of the proceeds of the \$400,000.00 policy of insurance.

SECURITY INTEREST

53. In the event that Angela is not awarded dependent's support pursuant to the provisions of the *Succession Law Reform Act* as set out hereinbefore, and in the event that this Court does not find that a resulting trust or constructive trust exists, then Angela states that she, Joseph and George have a security interest over the said proceeds of insurance payable to Harwell Hesco in the sum of \$1,000,000.00.

54. Angela states that the loans advanced by Laurie Jr., Joseph and George were secured by way of a Security Agreement provided by Harwell Hesco to them.

55. Angela states that the proceeds of insurance in the sum of \$1,000,000.00 paid to Harwell Hesco were subject only to the general Security Agreement given by Harwell Hesco to HSBC. Accordingly Angela, Joseph and George have a second priority claim against the said life insurance policy, or against such sum as may be remaining after the amounts properly due to HSBC had been deducted therefrom.

June 19, 2009

RITCHIE KETCHESON HART
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Solicitors for the Plaintiff

Court File No.

ANGELA VASSALLO

and

LAURENCE P. VASSALLO E AL

CJ-09-381391

Plaintiff

Defendants

Ontario
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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Solicitors for the Plaintiff

EXHIBIT F

DELOITTE & TOUCHE INC., COURT-APPOINT INTERIM RECEIVER AND RECEIVER OF
HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED
INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD MARCH 2, 2009 TO SEPTEMBER 30, 2009

Receipts	
Cash	\$ 49,424
A/R collections	1,272,164
Life insurance proceeds	800,000
Sale of inventory and fixed assets	360,000
Sale of Maple Leaf Seat License	27,000
GST collected	1,802
Other	8,632
Total receipts	<u>\$ 2,519,023</u>
Less: S81.4 super priority (WEPPA) claim	39,832
Net receipts after priority claims	<u>\$ 2,479,190</u>
Disbursements	
Administrative, taking possession and other	4,227
Bankruptcy administration costs	22,510
Commission on collection of A/R	48,016
Contractors/consulting fees	4,091
Lease payments	6,624
Payroll	7,719
Receiver's fees	275,191
Rent	33,330
Other operating expenses	3,663
Security	702
Telephone and utilities	20,788
GST and PST paid	23,993
Total disbursements	<u>\$ 450,854</u>
Excess of Cash Receipts over Disbursements	<u><u>\$ 2,028,337</u></u>

AIRD & BERLIS LLP

Barristers and Solicitors

D. Robb English
Direct: 416.866.4748
E-mail: renglish@airdberlis.com

March 18, 2009

VIA EMAIL – rbougie@deloitte.ca and brewong@deloitte.ca

HSBC Bank Canada
c/o Deloitte & Touche Inc.
In its capacity as Court Appointed Receiver
181 Bay Street, Bay Wellington Tower
Suite 1400
Toronto, ON M5J 2V1

Attention: Mr. Bob Bougie / Ms. Brenda Wong

Dear Bob & Brenda:

Re: Receivership of Harwell Hesco Electric Supply Co. Limited ("Harwell")

We confirm that we have reviewed copies of the non-negotiable security held by HSBC Bank Canada ("HSBC") from this customer and we wish to report on the status of the security as follows:

Security:

General Security Agreement dated August 14, 2001 granted by Harwell to HSBC (the "GSA")

We have reviewed the GSA and note that it is apparently properly executed and delivered on behalf of the grantor by Laurie P. Vassallo in her capacity as Chief Executive Officer (the "CEO"). The GSA is not accompanied by the standard authorizing resolution. We would expect the GSA to be enforceable in accordance with its terms.

The GSA appears to have been perfected through registration on August 9, 2001 under Reference File No. 875221866, Registration No. 20010809 1715 1462 4110 with a 5 year registration period and renewed for an additional 5 year term in favour of HSBC. This registration is essentially in good order. We would therefore conclude that this GSA represents a valid and perfected first ranking security interest in the assets and undertaking of Harwell.

The details of the PPSA search of Harwell are more particularly set out in the search summary attached to this reporting letter as Schedule "A".

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Note: According to the Facility Letter dated May 27, 2008, the limited corporate guarantee given by Jolage Limited ("Jolage") (reviewed below) is supposed to be supported by a general security agreement. We have not been provided with this general security agreement and as such have not reviewed same. We do note however that a search conducted at the registration system maintained pursuant to the *Personal Property Security Act* (the "PPSA") indicates that a general security type registration was registered against Jolage.

The GSA appears to have been perfected through registration on August 9, 2001 under Reference File No. 875221875, Registration No. 20010809 1715 1462 41111 with a 5 year registration period and renewed for an additional 5 year term in favour of HSBC. This registration is essentially in good order. This GSA, if it exists would be a perfected security interest in the assets and undertaking of Harwell, but we have not seen evidence of the security interest.

For a more detailed report on the results against Jolage please refer to the summary in Schedule "A" attached to this reporting letter.

General Assignment of Book Debts dated August 14, 2001 granted by Harwell (the "GABD")

We have reviewed the GABD and note that it is apparently properly executed and delivered on behalf of the grantor by the CEO. We would expect that the GABD would be enforceable in accordance with its terms.

The GABD was perfected through registration on August 9, 2001 as Reference File No. 875221866, Registration No. 20010809 1715 1462 4110 with a 5 year registration period and renewed for an additional 5 year term in favour of HSBC. This registration is essentially in good order. We would therefore conclude that this GABD represents a valid and perfected security interest.

Bank Act Security granted by Harwell to HSBC

- (a) Notice of Intention to Give Security under section 427 of the *Bank Act* dated June 9, 2006 and filed June 14, 2006;
- (b) Security under section 427 of the *Bank Act* dated June 15, 2006;
- (c) Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts, or Security under section 427 dated June 15, 2006; and
- (d) Agreement as to Loans and Advances and Security therefore dated June 15, 2006.

All of the *Bank Act* security appears to be properly executed and delivered on behalf of the grantor by the President. The corporate seal does not appear to have been affixed nor have the words "I/We have authority to bind the Corporation" been applied under the signature; however this should not affect the validity of the documents.



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In addition, the above *Bank Act* documentation appears to replace *Bank Act* documentation that was initially registered with the Bank of Canada on August 15, 2001 and expired December 31, 2006 (please note that we do not have copies of this old *Bank Act* security and presume that it was replaced with the aforementioned existing security above. The new *Bank Act* security was registered within 6 months of the old security so there was no lapse in *Bank Act* security.

Guarantee:

Guarantee from Jolage dated August 14, 2001 – Limited to \$1,000,000

We have reviewed the Guarantee granted to HSBC and note that it was apparently properly executed on behalf of the grantor by the President. This Guarantee is subject to the limitation set out above. In addition, this Guarantee contains standard assignment and postponement language. This Guarantee is not accompanied by the standard authorizing resolution. In addition, this Guarantee is accompanied by an undertaking from Jolage not to encumber its assets without the Bank's prior written consent. We see no irregularity in the Guarantee and would expect that the Guarantee is enforceable in accordance with its terms.

As it is unnecessary to register a guarantee under the PPSA we ordinarily would not order a PPSA search against Jolage. However as noted above, the Facility Letter indicated that this Guarantee was to be supported by a general security agreement so we took the liberty of ordering a PPSA search. Please refer to Schedule "A" below for details of this search.

Personal Guarantee from Laurie P. Vassallo dated August 14, 2001 – Limited to \$500,000

We have reviewed the Guarantee granted to HSBC and note that it was apparently properly witnessed and executed by Laurie P. Vassallo. This Guarantee is subject to the limitation set out above. In addition, this Guarantee contains standard assignment and postponement language. In addition, this Guarantee is accompanied by an undertaking from Ms. Vassallo to either provide tangible security or inject personal funds to ensure compliance with margin conditions and covenants. We see no irregularity in the Guarantee and would expect that the Guarantee is enforceable in accordance with its terms.

Assignment and Postponement from Laurie P. Vassallo dated August 14, 2001

We have reviewed the Assignment and Postponement and note that it is apparently properly witnessed and executed by Laurie P. Vassallo and acknowledged by Harwell. I see no irregularity in the Assignment and Postponement and would expect that it is enforceable in accordance with its terms. While it is unnecessary to register an Assignment and Postponement under the PPSA a registration was made on August 29, 2001 as Reference File No. 875771811, Registration No. 20010829 1424 1462 0566 with a 5 year registration period and renewed for an additional 5 year term in favour of HSBC. This registration is essentially in good order provided Ms. Vassallo's name and date of

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birth are correct on the registration. As we have not been provided with copies of identification we are unable to verify this information.

Assignment and Postponement from Laurence M. Vassallo ("Laurence") dated August 14, 2001

We have reviewed the Assignment and Postponement and note that it is apparently properly witnessed and executed by Laurence M. Vassallo and acknowledged by Harwell. I see no irregularity in the Assignment and Postponement and would expect that it is enforceable in accordance with its terms. While it is unnecessary to register an Assignment and Postponement under the PPSA a registration was made on August 29, 2001 as Reference File No. 875771793, Registration No. 20010829 1424 1462 0564 with a 5 year registration period and renewed for an additional 5 year term in favour of HSBC. This registration is essentially in good order provided Laurence's name and date of birth are correct on the registration. As we have not been provided with copies of identification we are unable to verify this information.

Assignment and Postponement from Joseph Vassallo ("Joseph") dated August 14, 2001

We have reviewed the Assignment and Postponement and note that it is apparently properly witnessed and executed by Joseph Vassallo and acknowledged by Harwell. I see no irregularity in the Assignment and Postponement and would expect that it is enforceable in accordance with its terms. While it is unnecessary to register an Assignment and Postponement under the PPSA a registration was made on August 29, 2001 as Reference File No. 875771802, Registration No. 20010829 1424 1462 0565 with a 5 year registration period and renewed for an additional 5 year term in favour of HSBC. This registration is essentially in good order provided Joseph's name and date of birth are correct on the registration. As we have not been provided with copies of identification we are unable to verify this information.

Assignment and Postponement from George Vassallo ("George") dated August 14, 2001

We have reviewed the Assignment and Postponement and note that it is apparently properly witnessed and executed by George Vassallo and acknowledged by Harwell. I see no irregularity in the Assignment and Postponement and would expect that it is enforceable in accordance with its terms. While it is unnecessary to register an Assignment and Postponement under the PPSA a registration was made on August 29, 2001 as Reference File No. 875771829, Registration No. 20010829 1424 1462 0567 with a 5 year registration period and renewed for an additional 5 year term in favour of HSBC. This registration is essentially in good order provided George's name and date of birth are correct on the registration. As we have not been provided with copies of identification we are unable to verify this information.

Assignment and Postponement from Jolage dated May 31, 2007

We have reviewed the Assignment and Postponement and note that it is apparently properly executed and delivered by an authorized signing officer of Jolage and

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acknowledged by Harwell. While it is not necessary to have corporate signatures witnessed I do note that both signatures are witnessed by David Bernardo in his capacity as Senior Account Manager, Commercial Financial Services. I see no irregularity in the Assignment and Postponement and would expect that it is enforceable in accordance with its terms. As it is unnecessary to register an Assignment and Postponement under the PPSA we would not customarily order a PPSA search. However, as previously stated, we did order a PPSA search against Jolage to see if there was a registration dealing with the general security agreement noted in the Facility Letter. In our review of this search we see that there are three separate PPSA registrations that could potentially deal with this Assignment and Postponement. Please refer to Schedule "A" attached for more details.

Please note that other than the PPSA search conducted against Jolage we have not performed any other PPSA searches against the individual postponers above so please advise if you would like us to do so.

Other Registrations

There appears to be a General Assignment of Rents registered under the PPSA against Jolage and Patricia Vassallo in favour of HSBC covering Accounts and Other and specifically over 2755 - 2783 Barton Street East, Hamilton, Ontario. This may not be related to the security given by Harwell but we wanted to bring it to your attention. We have not been provided with this General Assignment of Rents and as such have not reviewed same.

Please note that on the attached search summary there is a RSLA (*Repair and Storage Lien Act*) registration which may in certain circumstances have priority over the prior registered HSBC security.

If you have any further questions arising from the items set forth in this report please contact me at your convenience.

Yours very truly,
AIRD & BERLIS LLP


D. Robb English
DRE:sm
Attachment

AIRD & BERLIS LLP

Barristers and Solicitors

SCHEDULE "A" Summary of Searches

BANK ACT REGISTRATION

Registration No.	Registration Date	Expiry Date	Debtor	Creditor
1. 01197105	June 14, 2006	December 31, 2011	Harwell Hesco Electric Supply Co. Limited	HSBC Bank Canada

PPSA REGISTRATIONS

Harwell Hesco Electric Supply Co. Limited

Registration No.	Reference File No.	Exp. Date	Debtor	Secured Party	General/General Description
20010809 1715 1462 4110 Renewed for 5 years by 20060719 1845 1531 4268	875221868	August 9, 2011	Harwell Hesco Electric Supply Co. Limited	HSBC Bank Canada	I, E, A, O and MV
20030115 1839 1530 2563 Renewed for 10 years by 20081203 0857 5064 7541	890900433	January 16, 2019	Harwell Hesco Electric Supply Co. Limited	Jim Peplinski's LeaseMASTER National Humberview Motors Incorporated	E, O and MV Amount: \$62,985 Date of Maturity: 31Jan2008 MV details provided
20070228 1451 1530 6545 Amended by 20070423 1452 1530 4931	633060252	February 26, 2011	Harwell Hesco Electric Supply Co. Limited [2 locations] Hesco Electric Supply Co. Ltd. [2 locations]	Ryder Finance Corporation	E, O and MV MV details provided
20070302 1046 1529 1562	633179853	March 2, 2011	Harwell Hesco Electric Supply Co. Limited	BMW Canada Inc.	E, O and MV Amount: \$73,100 No Fixed Maturity Date MV details provided
20070430 1528 0043 7440 Amended by 20090205 1234 1862 9958	087320891	April 30, 2012	Harwell Hesco Electric Supply Co. Limited	George Vassallo T. Laurie Vassallo P.	I, E, A and O GCD: General Security Agreement

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Page 7

Registration No.	Reference File No.	Event Date	Debtor	Secured Party	Collateral/Guarantee
				Joseph G. Vassallo Estate of Laurie M. Vassallo	
20071123 1402 1462 6491	640912401	November 23, 2009	Harwell Hesco Electric Supply Co. Ltd.	Car Source Toronto Limited	CG and MV Amount: 25,333 Date of Maturity: 30Nov2010 MV details provided
20080411 1943 1531 4310	644151816	April 11, 2013	Harwell Hesco Electric Supply Co. Limited Hesco Electric Supply Co. Ltd.	Ryder Finance Corporation	E, O and MV MV Details provided
20080804 1049 1529 6699 Amended by 20080618 1054 1529 0785	645756372	June 4, 2012	Harwell Hesco Electric Supply Co. Limited Harwell Hesco Electric Supply Hesco Electric Supply	DCFS Canada Corp. Mercedes-Benz Financial	E, O and MV MV details provided
20081002 1450 1530 0986	648975915	October 2, 2012	Harwell Hesco Electric Supply Co. Limited	IBM Canada Limited	E, A and O GCD: All present and after-acquired goods supplied, leased or financed by the secured party, including but not limited to, all office machines, office equipment, computer hardware, software

Registration No.	Registration Date	Debtor	Creditor	Collateral
20090205 1348 1862 9962	February 5, 2012	Harwell Electric Supply Co. Limited	Joseph G. Vassallo	GCD: All of the assets, property and undertaking of the Estate of Laurie M. Vassallo
20090206 1031 1036 0443	February 6, 2010	Harwell Electric Supply Co. Limited	Harwell Electric Supply Co. Ltd. Trailer Repair & Truck Marshall	MV GCD: Complete with all present and future attachments, accessories, exchanges, replacement parts, repairs, additions and all proceeds thereof.
20090205 1348 1862 9962	February 5, 2012	Harwell Electric Supply Co. Limited	Laurie P. Vassallo	and all other equipment of any kind whatsoever as well as all ancillary products related thereto, and all upgrades, additions, and subventions and acccessions thereon and all proceeds therefrom of every kind and description.
651410082	February 6, 2010	Harwell Electric Supply Co. Limited	Harwell Motors Inc.	
651397275	February 5, 2012	Harwell Electric Supply Co. Limited	Harwell Motors Inc.	

Jolage Limited

Registration No.	Registration Date	Debtor	Creditor	Collateral
20010809 1715 1462 4111	August 9, 2011	Jolage Limited	HSBC Bank Canada	I, E, A, O and MV
20060719 1502 1630 2403	August 3, 2009	Jolage Limited	HSBC Bank Canada	A and O
20040803 1546 1793 9365	August 3, 2009	Jolage Limited	HSBC Bank Canada	GCD: General Assignment of Rents with respect to 2755-

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Barristers and Solicitors

Registration No.	Reference No.	Exp. Date	Debtor	Secured	Collateral/General
20081101 1205 1295 3737	630247635	November 1, 2012	Jomeva Limited Jolage Limited	CIBC Mortgages Inc.	2783 Barton Street East, Hamilton, ON I, E, A, O and MV GCD: General Security Agreement relating to 4375 Mainway Drive, Burlington only, plus proceeds
20081101 1208 1295 3738	630247698	November 1, 2012	Jomeva Limited Jolage Limited	CIBC Mortgages Inc.	A and O GCD: General Assignment of Rents relating to 4375 Mainway Drive, Burlington only, plus proceeds
20081101 1212 1295 3739	630247734	November 1, 2012	Jomeva Limited Jolage Limited	CIBC Mortgages Inc.	A and O GCD: Specific assignment of lease relating to 4375 Mainway Drive, Burlington only, plus proceeds
20070804 1944 1531 1800	635971041	June 4, 2012	Jolage Limited	HSBC Bank Canada	A and O
20081112 0924 1862 3261	649858401	November 12, 2013	Jolage Limited	HSBC Bank Canada	A and O
20090106 1314 1862 7287	650852568	January 6, 2014	Jolage Limited	HSBC Bank Canada	A and O

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE) WEDNESDAY, THE 28th DAY
JUSTICE) OF OCTOBER, 2009
)

BETWEEN

HSBC BANK CANADA

Applicant

and

HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED

Respondent

ORDER

THIS MOTION, made by Deloitte & Touche Inc., in its capacity as court-appointed interim receiver under section 47(1) of the *Bankruptcy and Insolvency Act* and interim receiver under section 101 of the *Courts of Justice Act* (the "Receiver") without security, of all of the assets, undertakings and properties of Harwell Hesco Electric Supply Co. Limited ("Harwell") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and Second Report of the Receiver filed, and on hearing the submissions of counsel for the Receiver and HSBC Bank Canada and such other counsel as were present,

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Second Report of the Receiver and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.
 2. THIS COURT ORDERS that the Second Report of the Receiver is hereby approved and the activities of the Receiver as set out therein be and hereby are approved.
 3. THIS COURT ORDERS that the Receiver's Interim Statement of Receipts and Disbursements for the period March 2 to September 30, 2009 be and hereby is approved.
 4. THIS COURT ORDERS that the proposed Scheme of Distribution set out in the Second Report of the Receiver be and hereby is approved.
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HSBC BANK CANADA
Applicant

-and-

HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED
Respondent

Court File No. CV-09-8035-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

ORDER

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Deloitte & Touche Inc.

HSBC BANK CANADA
Applicant

-and-

HARWELL HESCO ELECTRIC SUPPLY CO. LIMITED
Respondent

Court File No. CV-09-8035-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

MOTION RECORD
(Returnable October 28, 2009)

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