**IN THE UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF DELAWARE**

In re:

HAYES LEMMERZ INTERNATIONAL, INC., et al.,

Reorganized Debtors.

Chapter 11

Case No. 01-11490 (MFW)

Jointly Administered

Related to Docket No. 3813

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# REORGANIZED DEBTORS' POST-TRIAL BRIEF

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## INTRODUCTION

After a five-day trial, nine live witnesses, and hundreds of exhibits, General Electric Capital Corporation ("GECC") has utterly failed to prove its claims to an administrative expense based upon its equipment lease ("Lease") with Reorganized Debtors Hayes Lemmerz International, Inc., and certain of its subsidiaries and affiliates ("Hayes"). GECC's administrative claims, therefore, should be denied.

GECC asks this Court to award it, pursuant to 11 U.S.C. §365(d)(10), the Stipulated Loss Value ("SLV") of forty-one of the fifty machines listed on rejected Lease Schedules, a claim that amounts to $6.1 million. To obtain that extraordinary relief, GECC asserts two theories.

First, it alleges that each of these forty-one machines (which GECC calls the "Group I Machines") sustained a "Casualty Occurrence" as defined in the Lease, thereby permitting it to recover the SLVs under Section VIII of the Lease. To prove that each of the Group I Machines sustained a Casualty Occurrence, GECC must establish that each machine was "irreparably damaged", "permanently rendered unfit for use" or "worn out". Furthermore, it must prove that the machine first got into that condition from or after the sixtieth day after the Petition Date and before the applicable rejection date.

GECC barely tried to prove a Casualty Occurrence, let alone that any such event took place during the requisite time period. It offered not a single live witness with personal knowledge of the condition of the machines. Its expert reviewed not a single inspection report, deposition or any other document revealing the condition of the machines. All it came up with were the sales prices, received largely from dealers, and a $1,900 appraisal that used only two comparables for fifty machines. Indeed, GECC did not even have inspection

reports for half of the machines; and it had no marketing materials and no documentation of asking prices or quotes.

It is then no wonder that Hayes's proofs eviscerated GECC's case. In stark contrast to GECC, Hayes presented testimony live and by deposition of witnesses with hands-on, day-to-day knowledge of the machines; and it presented an expert who reviewed all of the inspection reports and all of the depositions of witnesses with personal knowledge of the machines' condition. That testimony proved that nearly two-thirds of the Group I Machines were in operating condition when they were returned to GECC, making it inconceivable that they had sustained a Casualty Occurrence. Although the remaining Group I Machines were not operable upon their return because they were missing parts, both Hayes's expert, Frederick Kucklick, and its lay witnesses testified that missing parts is a repairable condition. *This testimony stands unrebutted.*

GECC's other theory to recover the SLV asserts that Hayes "defaulted" on the Lease by failing to comply with its maintenance and return provisions, thereby entitling GECC to recover the SLV as a default remedy under Section XII of the Lease. This theory is a belated afterthought of GECC — there is barely a whisper of it in GECC's two applications. GECC pushed this theory to center stage in its Pre-Trial Brief, realizing the weakness of its Casualty Occurrence claim, a claim that included dozens of indisputably operable machines.

But its new theory affords GECC no relief. Before GECC can recover the SLV as a default remedy, it must give Hayes a written declaration of default after notice of the specific breach and thirty days to cure it. As notice, GECC can point only to its objections to Hayes's rejection motions. But they were inadequate notice since they failed to identify a single machine that lacked maintenance and the specific repair that Hayes failed to provide.

Furthermore, there is no evidence whatsoever of a separate declaration of default.

Even if GECC cleared the declaration and notice hurdles (which it did not), it stumbled on the remaining barriers to securing its default remedy. It failed to show that Hayes actually breached its maintenance and return obligations during the requisite time period. As indicated above, Hayes returned nearly two-thirds of the Group I Machines in operating condition. Other machines were returned with some parts missing; but there is no evidence that the parts were removed from these machines during the prescribed period.

The claim that Hayes breached the return obligation also fails. GECC restricts this claim to the three machines whose base lease terms expired prior to rejection. After such expiration, however, the Lease continued month-to-month, ending only upon rejection. Thus, the time for Hayes to perform its return obligation arose only upon rejection, giving rise only to rejection damages, which cannot form the basis of an administrative claim.

Finally, GECC asserts only a 11 U.S.C. §503(b)(1) claim regarding Machine Nos. 3–11 (which GECC calls the "Group II Machines"). GECC contends that Hayes committed a tort by taking parts from this equipment. Tort damages are recoverable under §503(b)(1) only if the tort took place in the course of the debtor's business. Here, the evidence is that all parts were removed from the Group II Machines *before* the Petition Date. Thus, GECC's §503(b)(1) claims fails.

## DISCUSSION

### I. GECC'S BURDEN OF PROOF MUST BE STRICTLY ENFORCED.

GECC has the burden of proof on its administrative expense claims. *In re Lason, Inc.*, 314 B.R. 296 (Bankr. D. Del. 2004), citing *In re Smith Corona Corp.*, 210 B.R. 243, 245 (Bankr. D. Del. 1997). This burden is strictly enforced. "Given the purpose of administrative expenses and the effect that their allowance has on the general creditors,"

courts should not "speculate" in the absence of sufficient evidence of an entitlement to an administrative expense. *In re Patient Educ. Media*, 221 B.R. 97, 104 n.7 (Bankr. S.D.N.Y. 1998). As one other court has said, "The allowance of an administrative claim should not be an exercise in conjecture." *In re Kmart Corp.*, 290 B.R. 614, 622 (Bankr. N.D. Ill. 2003). As detailed below, GECC has failed to meet its burden of proof on its administrative claims.

## II. GECC CANNOT RECOVER THE STIPULATED LOSS VALUES OF THE GROUP I MACHINES UNDER SECTION 365(d)(10).

GECC contends that it is entitled to recover the SLVs of the Group I Machines (Machine Nos. 1, 2, 12–48, 50 and 51) pursuant to Section 365(d)(10) under Sections VIII and XII of the Lease.[1] Under Section VIII, GECC says, Hayes must pay the SLVs of the Group I Machines because each machine sustained a "Casualty Occurrence" as that term is defined in the Lease. GECC claims that Section XII authorizes payment of the SLVs as a default remedy because Hayes defaulted on its maintenance and return obligations. As demonstrated below, GECC may not recover the SLVs pursuant to §365(d)(10) under either Lease provision.

### A. The Limited Scope of Section 365(d)(10).

The scope of §365(d)(10) is limited in determining a debtor's administrative liability for breach of a personal property lease. Section 365(d)(10) provides in relevant part as follows:

> The trustee shall timely perform all of the obligations of the debtor . . . first arising from or after 60 days after the order for

[1]The SLVs proposed by GECC in Ex. M-264A were incorrectly calculated. GECC calculated the underlying rental periods incorrectly, resulting in rental periods that are one month lower than the correct period. A lower rental period means a higher SLV. The correct total is $6,059,944.04 as demonstrated in Exhibit A. This total agrees with the amounts set forth in GECC's applications.

> relief in a case under chapter 11 of this title under an unexpired lease of personal property . . . until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title.

In *In re Muma Services*, 279 B.R. 478, 487 (Bankr. D. Del. 2002), this Court denied many of the claimed expenses for breach of the equipment lease, holding that §365(d)(10) requires timely payment of a lease obligation only "to the extent that obligations arise after the sixtieth day of [the] case and prior to rejection" of the lease. Accordingly, to recover the SLV as a §365(d)(10) expense, GECC must establish that Hayes's obligation to pay the SLV under Section VIII or that its breach of its maintenance and return obligations first occurred on or after the sixtieth day following the December 5, 2001 Petition Date — which is February 3, 2002— and before the applicable Lease Schedule rejection date ("Exposure Period").

### B. GECC Cannot Recover the SLV of any Group I Machine Pursuant to Section VIII of the Lease.

To show that it is entitled to the SLVs as a §365(d)(10) expense for the breach of Section VIII, GECC must establish two things: (1) that each Group I Machine suffered a "Casualty Occurrence", and (2) that its right to payment of the SLV under Section VIII first arose during the Exposure Period. It has failed to meet its burden on both elements.

"Casualty Occurrence" is a defined term in the Lease. In the context of this matter, it occurs only if equipment "shall be or become worn out, . . . irreparably damaged in the reasonable determination of Lessee, or permanently rendered unfit for use . . . ." (Lease, §VIII). Thus, GECC must show that each Group I Machine became "worn out," "irreparably damaged in the reasonable determination of Lessee," or "permanently rendered unfit for use."

GECC has tried to ease its burden in establishing a Casualty Occurrence by asserting

incorrectly that "worn out" refers to a condition less serious than what is described by the other terms. The construction of a contract term is for this Court. *Roberts v. Fleet Bank*, 342 F.3d 260, 270 (3d Cir. 2003). In construing the term, this Court may refer to the dictionary definition. *First Bank & Trust v. Firstar Info. Servs. Corp.*, 276 F.3d 317, 323 (7th Cir. 2001). Merriam–Webster Online Dictionary gives just one definition of "worn out": "*exhausted or used up* by or as if by wear." (www.merriamwebster.com) (Emphasis added.) Thus, a "worn out" machine is more than simply broken or missing a part, as suggested by GECC[2]; it is "used up". In fact, GECC offered an exhibit using the *same definition*, thus conceding its accuracy.[3] (Ex. M-273.)

This definition of "worn out" is bolstered by application of the maxim *noscitur a sociis*. This maxim instructs that the "meaning of a word is or may be known from the accompanying words." *Singh v. Ashcroft*, 383 F.3d 144, 164 (3d Cir. 2004), quoting *Black's Law Dictionary* 1060 (6th ed. 1990). The Third Circuit has applied this maxim to construction of contracts. *See, e.g., New Castle County v. Nat'l Union Fire Ins. Co.*, 243 F.3d 744, 757 (3d Cir. 2001) (construing insurance policy). The dictionary definition of "worn out" comports with the other terms in that Lease provision — "lost, stolen, destroyed, irreparably damaged in the reasonable determination of Lessee, or permanently rendered unfit for use" — all of which suggest that the machine is beyond recovery.

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[2] GECC has suggested that synonyms for "worn out" are "disrepair" and "broken." (1/31/05 Tr. at 136:23–137:3.) This construction leads to absurd results. Under it, a brand new machine missing an essential part would be "worn out" even if the part was easily replaceable. Machine No. 17 is a real life example of such a machine. Its damaged transformer could be replaced for only $1,000; yet GECC claims it was "worn out", entitling it to an SLV of $342,980.

[3] GECC has suggested that the *definition* of "worn out" is "overused." (1/31/05 Tr. at 136:19–22.) But according to GECC's own Ex. M-273, "overused" is a *synonym* rather than a definition of the term.

In addition to proving a Casualty Occurrence, GECC must establish that Hayes's obligation to pay the SLV under Section VIII first arose during the Exposure Period. Any such obligation could arise only *after* that machine had sustained a Casualty Occurrence: "On the rental payment date *next succeeding a Casualty Occurrence* (the "Payment Date"), Lessee shall pay Lessor the sum of [the SLV plus any unpaid rent]." (Lease, §VIII; emphasis supplied.) Thus, GECC must prove that a Casualty Occurrence took place that resulted in a Payment Date during the Exposure Period.

GECC has not met its two-fold burden. Nearly two-thirds of the Group I Machines sustained no Casualty Occurrence at all because they were in operable condition on the applicable rejection date as well as at the time that they were returned to GECC. Any deficiencies in the remaining Group I Machines do not amount to a Casualty Occurrence since these machines could be restored to operating condition. Furthermore, there is no evidence that they got into a state of disrepair during the Exposure Period.

### 1. Twenty-Six Group I Machines Did Not Sustain a Casualty Occurrence During the Exposure Period Because They Were in Operating Condition.

Twenty-six Group I Machines were in operating condition on the Petition Date, the applicable rejection date as well as on the date of their return to GECC. Machine Nos. 1, 2, 14–19, 25, 28, 30, 35, 37–43, 46-48, 50 and 51[4] are in this category.[5] These machines were in operating condition throughout the Exposure Period. As Hayes's expert stated in his report and testimony, operable machines did not become irreparably damaged, permanently

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[4] The "Machine List" attached to the Joint Pretrial Stipulation, which identifies the machines by their assigned machine numbers, is appended to this brief as Exhibit B.

[5] The one exception is Machine No. 17, which was in operating condition on its rejection date, but not on its return date.

rendered unfit for use or worn out.[6] (*See* Ex. D-251 at 4; 1/31/05 Tr. at 86:3-12.) Thus, they did not sustain a "Casualty Occurrence" during the Exposure Period.

**a. Machine Nos. 1, 2, 12 and 14–19**

These machines were located at Hayes's Gainesville, Georgia facility when they were returned to GECC. The evidence of their condition consists of the deposition testimony of John Stinchcomb, the Gainesville plant's facility manager, and David McKinney, the plant's controller; Hayes's interrogatory answers; Gainesville's preventive maintenance and repair records; and various inspection reports. This evidence proves that these machines were operational throughout the Exposure Period.

**Machine No. 1**: This Okuma and Howa lathe was listed on Schedule 32, which was rejected on March 7, 2002. (DF 10, 11.)[7] It was in operating condition on the Petition Date. (DF 14.) The machine was inspected two weeks after Schedule 32's rejection date. (DF 15.) The inspection report indicates nothing suggesting that the machine was inoperable at the time of the inspection. (DF 15.) Machine No. 1 was in operating condition when it was returned to GECC. (DF 16.) Thus, Machine No. 1 was in operating condition during the Exposure Period. (DF 19.)

**Machine No. 2**: This Okuma and Howa lathe was listed on Schedule 37, which was

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[6]GECC objects that Kucklick's report and the supplements to it (Exs. D-251, 275 and 276) do not fall within the scope of Fed. R. Evid. 704. This objection should be overruled. These exhibits state and explain Kucklick's opinion that none of the machines was irreparably damaged, permanently rendered unfit for use or worn out. These are *fact* issues that are ultimately for this Court to decide as the trier of fact. "Testimony about 'an ultimate issue to be decided by the trier of fact' is generally admissible" under Fed. R. Evid. 704. *United States v. Polishan*, 336 F.3d 234, 242 (3d Cir. 2003). It is only inadmissible with respect to expert testimony on the "mental state or condition of a defendant in a criminal case." *Id.* Thus, Kucklick's report and its supplements are admissible under Rule 704.

[7] Throughout this brief, "DF" refers to Hayes's Proposed Findings of Fact.

rejected on February 14, 2002, just ten days after the opening of the Exposure Period. (DF 20, 21.) Machine No. 2 was in operating condition on the Petition Date. (DF 25 .) It was inspected on March 21, 2002, five weeks after the rejection date. (DF 24.) Nothing in the inspection report suggests that the machine was inoperable. (DF 24 .) Machine No. 2 remained operational up until its return to GECC. (DF 26 .) Thus, Machine No. 2 was operational throughout the Exposure Period. (DF 28.)

**Machine No. 12**: This Niigata drill was listed on Schedule 59, which was rejected on April 3, 2002. (DF 55, 56) It was operational on the Petition Date. (DF 58) At the time of its removal from the Gainesville facility, Machine No. 12 was approaching the time that it needed a motor replacement; nevertheless, it remained operational. (DF 64 .) Thus, Machine No. 12 was operational throughout the Exposure Period. (DF 66.)

**Machine Nos. 14 and 15**: These two Niigata drills were listed on Schedule 47 as amended by Schedule 97, which was rejected on May 12, 2003. (DF 67, 68, 76, 77) These machines were running in production on the Petition Date and when they were inspected on September 4, 2002. (DF 71, 72, 80, 81) GECC sold these machines to Rank International, a used machinery dealer. (DF 73, 82) Rank then re-sold them to Hayes for double the price. (DF 74, 83.) Machine Nos. 14 and 15 never left the Gainesville facility and have been continuously running in production there since the Petition Date. (DF 74, 75, 83, 84.)

**Machine No. 16**: This Okuma and Howa lathe was listed on Schedule 43 as amended by Schedule 98, which was rejected on February 28, 2003. (DF 85, 86 .) The machine was in production on the Petition Date and when it was inspected on September 4, 2002. (DF 88, 89.) It was in operating condition when it was returned to GECC. (DF 90) Thus, Machine No. 16 was in operating condition throughout the Exposure Period. (DF 93.)

**Machine No. 17**: This Okuma and Howa lathe was listed on Schedule 41 as amended by Schedule 102, which was rejected on March 24, 2003. (DF 94, 95.) Machine No. 17 was in production on the Petition Date, during its September 4, 2002 inspection, and on its rejection date. (DF 97, 98, 100.) After the rejection date, the machine's transformer was damaged, rendering the machine inoperable. (DF 101.) However, the transformer was replaceable for a cost of $1,000. (DF 102.) Thus, Machine No. 17 was operating through the Exposure Period and sustained damage at a later time that was repairable. (DF 104.)

**Machine No. 18**: This is another Okuma and Howa lathe that was listed on Schedule 41 as amended by Schedule 102. (DF 105 .) Machine No. 18 was in production on the Petition Date, during its September 4, 2002 inspection, on the rejection date and when the machine was returned to GECC. (DF 108, 111, 112 .) Thus, Machine No. 18 was in operating condition during the Exposure Period. (DF 114.)

**Machine No. 19**: This Okuma and Howa lathe was also listed on Schedule 41 as amended by Schedule 102. (DF 115.) Machine No. 19 was operating on the Petition Date, at its September 4, 2002 inspection, and when it was returned to GECC. (DF 118, 120, 122) Thus, this machine was in operating condition throughout the Exposure Period. (DF 124.)

**b. Machine Nos. 25, 28, 30 and 35**

These machines were located at Hayes's LaMirada, California facility. The evidence of the condition of these and the other machines at LaMirada consists of the live testimony of José Almeida, the day-shift team leader; the depositions of Thomas Bressler, Facilities Manager and Geoffrey Horsfield, the plant's Controller; LaMirada's maintenance records; Hayes's interrogatory answers; various inspection reports; and the deposition testimony of Russell Maynard, an inspector. This evidence proves that Machine Nos. 25, 28, 30 and 35

were in operating condition throughout the Exposure Period.

**Machine No. 25**: This Okuma lathe was listed on Schedule 31, which was rejected on July 19, 2002. (DF 189, 190.) Almeida testified that this machine was in operating condition on the Petition Date. (DF 193 .) The maintenance records show that it was operating on March 13, 2002. (DF 194.) Almeida also testified that Machine No. 25 was in operating condition when it was removed from the LaMirada facility. (DF 196.) There was no inspection report on this machine, and GECC offered no evidence rebutting Hayes's proofs. (DF 191.) Thus, Machine No. 25 was in operating condition throughout the Exposure Period. (DF 198.)

**Machine No. 28**: This Okuma lathe was listed on Schedule 34. The base term of Schedule 34 expired on February 14, 2003, and the Schedule was rejected on June 13, 2003. (DF 220, 221.) Almeida testified that Machine No. 28 was in operating condition on the Petition Date and upon its removal from the plant. (DF 224, 227 .) The machine was inspected on July 9, 2003. Although the inspection report noted various problems with the machine, the inspector testified that he made no determination that any such problem rendered the machine inoperable. (DF 231 .) The inspection report indicates that the machine could be restored as a "roughing" machine, which was in fact the role that it performed at LaMirada. (DF 230.) Thus, Machine No. 28 was in operating condition throughout the Exposure Period. (DF 229.)

**Machine No. 30**: This Emco drill was listed on Schedule 35, which was rejected on February 14, 2002, just ten days after the opening of the Exposure Period. (DF 245, 246.) Almeida testified that Machine No. 30 was operational on the Petition Date and that, according to the repair records, it was in production after March 24, 2002. (DF 249, 250.)

The inspection report confirms that the machine was "running in cell" on the date of the inspection, May 7, 2002, several months after the rejection date. (DF 251 .) Further, this machine was in operating condition when it was removed from LaMirada. (DF 253.) Thus, Machine No. 30 was in operating condition during the ten-day Exposure Period. (DF 255.)

**Machine No. 35**: This is an Okuma lathe that was listed on Schedule 62, which was rejected on July 19, 2002. (DF 296, 297.) Almeida testified that Machine No. 35 was operating on the Petition Date. (DF 300.) The repair records show that it was operating on March 23, 2002. (DF 301.) The machine was inspected on August 23, 2002, five weeks after the rejection date. Nothing in the report suggests that the machine was inoperable; indeed, it shows that the machine was under power when it was inspected. (DF 302 .) Finally, this machine was operable when it was removed from the LaMirada facility. (DF 304.) Thus, Machine No. 35 was in operating condition throughout the Exposure Period. (DF 306.)

**c. Machine Nos. 37–43, 48**

These machines were located at the Hayes's Somerset, Kentucky facility. Machine Nos. 37–43 were on Schedule 92, which was rejected on March 2, 2002, creating a 26-day Exposure Period. (DF 324, 325.) Machine No. 48 was on Schedule 32, which was rejected on March 7, 2002, creating a 31-day Exposure Period. (DF 376, 377.) The evidence concerning the condition of these and the other machines at Somerset consisted of the live testimony of Martin Asberry, the plant's facilities manager; various inspection reports; and the deposition testimony of the inspector, Lawrence Lundquist. This evidence proves that these machines were in operating condition throughout the Exposure Periods, which lasted less than five weeks.

**Machine No. 37**: Asberry testified that this Enshu drill was in production on the Petition Date and on February 15, 2002, the last day of production at the Somerset facility. (DF 328, 329.) The machine was inspected on March 15, 2002, thirteen days after the rejection date. (DF 330.) Nothing in the report suggests that the machine was not operable. The report mentions that three pockets were missing from the tool changer. But both Hayes's expert, Frederick Kucklick, and the inspector testified that the machine could operate without them. (DF 330 .) The report also noted that the pallet changer needed "minor" work, but that condition did not affect the functioning of the machine. (DF 330.) Upon its removal from the plant, the drill was in operating condition. (DF 333 .) Thus, Machine No. 37 was in operating condition throughout the Exposure Period. (DF 335.)

**Machine No. 38**: Asberry testified that this Okuma LAW 2S lathe was in production on the Petition Date and on February 15, 2002. (DF 340, 341.) The machine was inspected on March 15, 2002, thirteen days after the rejection date. (DF 343.) The inspection report does not identify any missing parts or any condition suggesting that the machine is not operational. (DF 343.) This lathe was capable of making wheels when it was removed from the Somerset facility. (DF 346 .) Thus, Machine No. 38 was operational throughout the Exposure Period. (DF 348.)

**Machine Nos. 39–43**: Asberry testified that these five Okuma LAW-F lathes were missing no parts and required no repair on the Petition Date. (DF 354 .) Asberry further testified that these machines were capable of making wheels when they were removed from the plant. (DF 358.) There are no inspection reports for Machine Nos. 39–43, and GECC has offered no evidence rebutting Asberry's testimony. (DF 352.) Thus, that testimony establishes that Machine Nos. 39-43 were in operating condition during the Exposure Period.

(DF 360.)

**Machine No. 48**: This machine is a Motch lathe that was moved to Somerset from the Huntington, Indiana plant in late 2000. (DF 379.) The lathe was not used in production at Somerset; rather, it was operated as a stand-alone machine performing the flange cut. (DF 379.) It was not used after the Petition Date. (DF 381 .) On that date, however, it was in operating condition and it was in the same condition upon its removal from Somerset. (DF 380, 383.) There is no inspection report on this machine. (DF 378.) Thus, Machine No. 48 was in operating condition during the Exposure Period. (DF 386.)

**d. Machine Nos. 46 and 47**

These are two Motch lathes that were located at the Huntington facility. The evidence of their conditions consists of the deposition testimony of Larry Kissinger, the Huntington maintenance supervisor; Huntington's maintenance and repair records; Hayes's interrogatory answers; an inspection report; and the deposition testimony of the inspector, Dwight Lanman. This evidence proves that Machine Nos. 46 and 47 were in operating condition during the Exposure Period.

**Machine No. 46**: This Motch was listed on Schedule 83. The base term of this Schedule expired on October 15, 2002. (DF 412, 413) The machine was sold by GECC on January 31, 2003. (DF 420.) Schedule 83 was rejected on June 13, 2003. (DF 413.) The repair records indicate that the machine was running in production on the Petition Date. (DF 416.) It continued to be used in production until November 15, 2002, when it was prepared for removal from the plant. (DF 418) The lathe was inspected on January 28, 2003, merely three days before it was sold by GECC. Nothing in the inspection report suggests that the machine is inoperable. (DF 419.) Moreover, there is no evidence of any damage to the

machine between November 15, 2002, when it was taken out of production, and the sale date. (DF 419.) Thus, Machine No. 46 was operational from the Petition Date through the expiration of the Schedule and until it was removed from the Huntington plant. (DF 241.)

**Machine No. 47**: This machine was listed on Schedule 32, which was rejected on March 7, 2002. (DF 422, 423.) It was running in production on both the Petition Date and the rejection date. (DF 426.) GECC sold Machine No. 47 to J. R. Engineering on May 22, 2002. Hayes then leased the machine from J. R. Engineering and continued to use it in production until September 6, 2002. (DF 429 .) There is no inspection report for this machine. (DF 424.) Thus, the evidence proves that Machine No. 47 was continuously running in production through the Exposure Period, through its sale by GECC and beyond. (DF 430.)

**e. Machine Nos. 50 and 51**

These are two Kira drills that were located at Hayes's facility in Howell, Michigan. They were listed on Schedule 35, which was rejected on February 14, 2002, creating a ten-day Exposure Period for each machine. (DF 434, 435, 437, 438.) The evidence of the condition of these machines consists of the testimony of Billy Little, the plant's project engineer; inspection reports; and the deposition testimony of the inspector, Lawrence Lundquist.

Little testified that these machines were delivered to the Howell facility in late 1995 or 1996. (DF 440.) They were taken out of production after two years because they could not be used in the automated cells being implemented at Howell. (DF 441, 442.) The Kiras were placed in a nearby warehouse that was heated and dry. (DF 443.) Little testified that, when they were warehoused, the machines were operational. (DF 445, 446.) They remained operational until they were picked up by GECC's buyer. (DF 449, 450.) The machines were

inspected on May 1, 2002, ten weeks after the rejection date. The inspection reports reveal no missing parts nor suggest that the machines were inoperable. (DF 447, 448 .) Thus, Machine Nos. 50 and 51 were operational during the ten-day Exposure Period. (DF 454.)

**2. Fifteen Group I Machines that were not in Operating Condition upon their Return to GECC did not Sustain a Casualty Occurrence During the Exposure Period.**

Fifteen Group I Machines were not in operating condition when they were returned to GECC because they were missing parts. These are Machine Nos. 13, 20-24, 26, 27, 31-34, 36, 44 and 45. None of these machines was irreparably damaged, permanently rendered unfit for use or worn out because, in each case, the machine could be restored to operating condition by simply replacing the missing parts. Therefore, none of these machines sustained a Casualty Occurrence. Moreover, even if the condition of these machines amounted to a Casualty Occurrence, there is no evidence that the machine first got into that condition during the Exposure Period. In either situation, GECC has failed to establish that these machines sustained a Casualty Occurrence during the Exposure Period.

**a. <u>Machine No. 13</u>**

This is a Chiron drill that was delivered to the Somerset facility from the Huntington facility in late 2000 or early 2001. (DF 371 .) It was listed on Schedule 59, which was rejected on April 3, 2002. (DF 368, 369.) This machine was never used at Somerset. (DF 371.) Certain parts were removed from this machine before the Petition Date, but no parts were removed thereafter. (DF 372, 373) Kucklick testified that this machine, like the others that were missing parts, could be restored to operating condition by replacing the parts. (DF 375.) In any case, since all of the parts were removed from this machine pre-petition, it did not sustain a Casualty Occurrence during the two-month Exposure Period. (DF 375.)

### b. Machine Nos. 20–24, 26, 27, 29, 31–34 and 36

These machines were located at the LaMirada plant. Each machine was missing some parts upon its removal from LaMirada. Both Almeida and Kucklick testified that replacing the parts would have restored the machines to operating condition. In addition, there is no evidence that the parts were removed during the Exposure Period. Thus, these machines did not sustain a Casualty Occurrence or, even if they did, that event did not occur during the Exposure Period.

**Machine No. 20**: This Okuma LAW-S lathe was listed on Schedule 30, which was rejected on July 19, 2002. (DF 135, 136.) Almeida testified that this machine was missing some guards and an input shaft from the headstock when it was removed from the plant. (DF 143.) There is no inspection report on this machine nor other evidence of its condition upon removal. (DF 137.) Almeida further testified that this machine, like the others at LaMirada that lacked parts, would have operated if the missing parts had been replaced, a conclusion confirmed by Kucklick. (DF 145 .) Consequently, Machine No. 20 was not irreparably damaged, permanently rendered unfit for use or worn out. Moreover, even if it were in such a condition when it left LaMirada, there is no evidence that the guards and input shaft were removed during the Exposure Period. (DF 144.)

**Machine No. 21**: This Okuma LAW-S lathe was listed on Schedule 30. (DF 146.) Repair records show that the machine was operating in production as late as February 25, 2002. (DF 150) Almeida testified that this lathe lacked some unspecified small parts when it was removed from the LaMirada facility. (DF 153.) There is no inspection report for this machine nor other testimony about its condition. (DF 148.) There is no evidence that the parts were removed between February 25, 2002, and the close of the Exposure Period on July

19, 2002. (DF 154, 155.)

**Machine No. 22**: This is another Okuma LAW-S lathe that was listed on Schedule 30. (DF 156, 157.) Repair records show that Machine No. 22 was in production on March 23, 2002. (DF 161.) Almeida testified that there were some unspecified parts missing from this machine when it was returned to GECC. (DF 164) There is no inspection report on this machine or any other testimony about its condition. (DF 158) There is no evidence that the parts were removed between March 23, 2002, and the close of the Exposure Period on July 19, 2002. (DF 165, 166.)

**Machine No. 23**: This Okuma LB35 lathe was listed on Schedule 31, which was rejected on July 19, 2002. (DF 166, 167.) Almeida testified that this machine was missing a spindle drive when it was removed from the plant. (DF 175.) There is no inspection report on this machine nor other evidence of its condition. (DF 169.) There is no evidence that the spindle drive was removed within the Exposure Period. (DF 176, 177.)

**Machine No. 24**: This is another Okuma LB35 lathe that was listed on Schedule 31. (DF 178, 179.) Repair records show that this machine was in production on March 23, 2002. (DF 183.) Almeida testified that this machine was taken out of production in May or June 2002. (DF 184.) He also testified that, when this machine was returned to GECC, it was missing certain unspecified parts. (DF 186.) There is no inspection report on this machine and no other testimony about its condition. (DF 180.) Almeida could not recall when the parts were removed, and there is no evidence that they were removed between May or June 2002 and the close of the Exposure Period on July 19, 2002. (DF 187, 188.)

**Machine No. 26**: This is another Okuma LB35 lathe that is listed on Schedule 31. (DF 199, 200.) Repair records show that it was in production on March 18, 2002. (DF 204

Almeida testified that unspecified small parts were missing from the machine when it was removed from LaMirada. (DF 207.) There is no inspection report on this machine or other testimony about its condition. (DF 201.) There is no evidence that the parts were removed between March 18, 2002, and the close of the Exposure Period on July 19, 2002. (DF 208, 209.)

**Machine No. 27**: This is another Okuma LB35 lathe that was listed on Schedule 31. (DF 210, 211.) Repair records show that it was operating on February 15, 2002. (DF 215) Almeida testified that this machine was missing some unspecified parts when it was removed from LaMirada. (DF 218 .) There is no inspection report on this machine and no other testimony about its condition. (DF 212.) There is no evidence that these parts were removed between February 15, 2002, and the close of the Exposure Period on July 19, 2002. (DF218, 219.)

**Machine No. 29**: This Okuma LB35 lathe was listed on Schedule 34. The base term of Schedule 34 expired on February 14, 2003, and the Schedule was rejected on June 13, 2003. (DF 232, 233.) This machine was inspected on July 9, 2003, nearly one month after its rejection. (DF 242) The only part identified by the report as missing was guarding. (DF 242.) Kucklick testified that guarding can be replaced. (DF 242) The report identified rust on various components of the machine. Kucklick testified that the rust can be removed and explained how it is done. (DF 242 .) The inspector conceded that Machine No. 29 "technically . . . could have been restored." (DF 243, 244.)

**Machine No. 31**: This is an Emco drill that was listed on Schedule 37, which was rejected on July 19, 2002. (DF 256, 257 .) Repair records show that this machine was in production as late as March 24, 2002. (DF 261.) This machine was inspected on February

24, 2003. (DF 265.) The report states that the doors and covers are damaged, the controller is not functional, and that the spindle unit and tool changer are missing. (DF 265.) Kucklick testified that doors and covers can be repaired and that the controller, spindle and tool changer are replaceable parts. (DF 265.) The inspection was done nine months after the rejection date. There is no evidence that the machine got into the described condition between March 24, 2002, which is the last known date of operation, and the close of the Exposure Period on July 19, 2002. (DF 263, 266.)

**Machine No. 32**: This Emco drill was listed on Schedule 48, which was rejected on July 19, 2002. (DF 267, 268 .) Repair records show that the machine was operating on February 5, 2002. (DF 272.) The machine was inspected on February 24, 2003. (DF 276) The report shows that it was missing various parts, all of which are replaceable. (DF 276.) The inspection was done nine months after the rejection date. There is no evidence that the machine got into the described condition before the rejection date. (DF 275, 277.)

**Machine No. 33**: This Emco drill was listed on Schedule 48. (DF 278, 279.) Repair records show that this machine was in production on March 12, 2002. (DF 283 .) This machine was inspected on February 24, 2003. (DF 286.) The report shows that the machine was missing various parts, all of which are replaceable. (*Id.*) There is no evidence the machine got into this condition between March 12, 2002, the last known date of production, and July 19, 2002. (DF 286, 287.)

**Machine No. 34**: This Emco drill was listed on Schedule 62, which was rejected on July 19, 2002. (DF 288, 289) This machine was taken out of production before the Petition Date. (DF 292.) A couple of drives were removed post-petition. (DF 293.) However, the August 23, 2002 inspection report does not mention that any drives are missing. (DF 293.)

Thus, the drives were removed after the inspection, which was itself after the rejection date. Thus, the condition of the machine did not change between the Petition Date and the rejection date. In any event, Machine No. 34 did not sustain a Casualty Occurrence because missing parts is a repairable condition. (DF 295.)

**Machine No. 36**: This Okuma LAW-2S lathe was listed on Schedule 62. (DF 307, 308.) Hayes stopped using this machine in 2000. (DF 311 .) On the Petition Date, this machine was missing some ballscrews, motors and the lower turret. (DF 311 .) Several drives were removed post-petition. (DF 313) There is no inspection report for this machine and no other testimony about its condition. (DF 309.) There is no evidence that the drives were removed during the Exposure Period. (DF 313, 314.)

**c. Machine Nos. 44 and 45**

These Motch lathes, located in Sedalia, Missouri, were listed on Schedule 80, which was rejected on July 19, 2002. (DF 387, 388.) These machines were brought to Sedalia in May 2000 but were never put into production. (DF 395, 396, 398.) When they were inspected on February 3, 2003, nine months after the rejection date, Machine Nos. 44 and 45 were both missing a CRT monitor and an MDI panel; Machine No. 45 was also missing a blower motor. (DF 401, 406, 407 .) There is no evidence that any of these parts were removed during the Exposure Period. (DF 402, 408.) In any case, removal of the parts did not render Machine Nos. 44 and 45 irreparably damaged, permanently unfit for use or worn out since missing parts is a repairable condition. (DF 404, 410.)

**C. GECC Cannot Recover the SLV of any Group I Machine under Section 365(d)(10) Pursuant to Section XII of the Lease.**

GECC contends that it is entitled to recover the SLV of each machine under Section XII of the Lease due to Hayes's alleged breach of its maintenance and return obligations

pertaining to each machine. GECC has not succeeded in proving this theory.

Section XII, the default provision of the Lease, specifies the conditions that must be satisfied before Hayes may be declared in default of the Lease:

> (a) Lessor *may* in writing declare this Agreement in default if: Lessee breaches its obligations to pay rent or any other sum when due and fails to cure the breach within ten (10) days; Lessee breaches any of its insurance obligations under Section X; Lessee breaches any of its other obligations and fails to cure that breach within thirty (30) days *after written notice thereof*[.]

(Lease, §XII(a), emphasis added). The default provision permits GECC to declare a default of three types of obligations: (1) a monetary obligation, such as rent; (2) an insurance obligation; and (3) all other obligations. GECC alleges a breach of Hayes's obligation to maintain and return each machine in good operating order, which falls into the third category. With respect to such alleged breaches, GECC "may" choose to declare a default only if: (1) GECC gives Hayes written notice of the breach of the obligation; (2) Hayes fails to cure the breach within thirty days after receiving notice of the breach; and (3) GECC declares a default in writing. Only if these three conditions are satisfied and GECC declares a default, may GECC, under the terms of the Lease, recover the SLV of the machine as a default remedy. *See* Lease, §XII(b) (SLV is "calculated as of the rental next preceding the *declaration of default*[.]") (Emphasis supplied.)

For a variety of reasons, GECC will not be able to recover this default remedy as a §365(d)(10) expense.

### 1. Payment of the SLV As a Remedy Is Not an "Obligation" Within the Meaning of §365(d)(10).

Initially, the default remedy may not form the basis of a §365(d)(10) expense because an obligation to pay a default remedy is not an "obligation" within the meaning of

§365(d)(10). In *In re Food City*, 95 B.R. 451 (Bankr. W.D. Tex. 1988), the court held that a commercial lease provision requiring the payment of a $250,000 fee if the lessee breached its obligation to continually occupy the premises was not a separate "obligation" under §365(d)(3).[8] The court reasoned as follows:

> [T]he "obligation" in question is not to pay the fee, but to keep the store open, i.e., not to "go dark." It was the obligation which, when breached raised the issue of the charge. The fee itself is merely the *remedy* for failure to perform, i.e., for not keeping the store open and operating. In this regard, the "going dark" fee differs fundamentally from other rights to payment under the lease. Rents, for example, are not a remedy for breach of an obligation. They *are* the obligation. The same is true for such other items as common area maintenance charges, utilities and even taxes. Section 365(d)(3) may compel timely performance of obligations due under the lease, such as the obligation to pay rent. It does not, in this court's view, compel the timely payment of the default remedy for failure to timely perform an obligation due under the lease, such as the obligation to keep the store open. *Id.* at 455 (emphasis in original; citation omitted).

The same reasoning applies here. Hayes's *obligation* is to maintain each machine in operating order. GECC's default *remedy* for a breach of that obligation (after notice and an opportunity to cure) is payment of the SLV. Thus, Hayes's obligation to pay the SLV as a default remedy is not the type of "obligation" that must be timely performed under §365(d)(10)[9].

**2. GECC Is Not Entitled to the SLV as a Remedy for Default Because It Failed To Serve the Required Declaration and Notice on Hayes.**

Even if the obligation to pay the SLV as the default remedy is within the purview of §365(d)(10), GECC is not entitled to that remedy under the terms of the Lease. As explained

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[8] Cases decided under §365(d)(3) are useful in resolving issues under §365(d)(10). *See In re Muma Services,* 229 B.R. at 209.

[9] At most, GECC's §365(d)(10) claim for breach of the maintenance obligation is one for actual damages; but GECC has introduced no evidence on such damages.

above, GECC may recover the SLV as a remedy only if it declares a default in writing after giving Hayes written notice of the breached obligation and an opportunity to cure the breach. GECC simply did not fulfill those conditions.

Initially, the automatic stay did not prevent GECC from serving a notice of default. A default notice is permitted if it is not used to obtain possession of the debtor's property.

> [T]he automatic stay of Section 362 prevents any act to obtain possession of the property of the estate. Does this include the giving of notices of default? The answer is that *so long as there is no attempt to obtain possession a notice may be given to alert a debtor lessee of breach of the terms of the lease.*

*In re Sixteen to One Mining Corp.*, 9 B.R. 636, 638 (Bankr. D. Nev. 1981) (emphasis added).[10] Here, the remedy that is conditioned on the declaration and notice of default is payment of the SLV, not obtaining possession of the machines. Thus, the required declaration and notice of default were not prohibited by the automatic stay.

GECC did not give Hayes written notice that it breached its maintenance or return obligations and did not give it an opportunity to cure the alleged breach. Unquestionably, GECC itself did not serve a notice of default on Hayes. Lawrence Kovacs, the GECC manager responsible for the Hayes account, admitted that GECC did not send a notice of default to Hayes. (DF 498.) Indeed, GECC has a policy prohibiting the sending of notices of default to customers in bankruptcy, apparently leaving that task to its outside counsel.

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[10] *Accord LTV Corp. v. Gulf States Steel, Inc.*, 969 F.2d 1050, 1059 (D.C. Cir. 1992) (automatic stay did not prevent service of notice of claim required to trigger indemnification obligation); *Am-Haul Carting, Inc. v. Contractors Casualty and Surety Co.*, 33 F.Supp. 2d 235, 242 (S.D.N.Y. 1998) (automatic stay did not preclude general contractor from serving on debtor subcontractor notice of default that was required to trigger surety's obligation on performance bond. The court held that there was "no reason why the default notice should be prohibited" since "[i]n the case before us there has been no attempt by [the general contractor] to obtain possession of the property of the debtor.")

(DF 498.)

GECC argues that its counsel gave Hayes the required notice in the form of various papers they filed with this Court throughout the bankruptcy. In response to Hayes's Motion for Partial Summary Judgment, GECC only pointed to Paragraph 15 of its Objection to Debtors' Second Motion for Order Authorizing Rejection of Executory Contracts, which states that GECC "believes" that every machine on sixty-one schedules has not been maintained and serviced in accordance with the Lease provisions. (DF 501.) GECC has now offered into evidence two additional responses to rejection motions filed by Hayes during the Chapter 11 cases. One of these contains the same language and the other refers to GECC's continuing objections about compliance with the maintenance and return provisions. (DF 504, 507.) The three filings discussed above will be referred to collectively as the "Responses."[11]

The Responses are not notices of default. "Given the consequences that follow a declaration of default, it is *vital* that the declaration be made in terms sufficiently *clear, direct and unequivocal* to inform the breaching party that it has defaulted on its obligations." *Central Louisiana Electric Co., Inc. v. Dolet Hills Mining Venture*, 116 F. Supp. 2d 726, 738 (W.D. La. 2000) (first emphasis in original). The Responses merely state that GECC "believes" that every machine on sixty-one schedules (most of which are not in dispute here) has been poorly maintained and serviced. (DF 501.) Thus, none of the Responses "clearly, directly or unequivocally" notified Hayes that it breached the Lease or is in default.

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[11] GE offered into evidence two additional pleadings filed in response to later Hayes rejection motions. These responses, however, state only that any rejection order should preserve GECC's ability to apply for an administrative expense priority based on Hayes's compliance with the return and maintenance provisions of the Lease. (DF 510, 513.) Nothing in these pleadings even vaguely suggests that Hayes has not complied with its return and maintenance obligations.

Furthermore, none of the Responses gave Hayes any of the information needed to cure any asserted default. "Inherent in the opportunity to cure a default is knowledge of what is in default. *Absent knowledge of what must be corrected in order to avoid the specified penalty, the right to cure the default becomes a meaningless guessing game.*" *In re Valley View Shopping Center, L.P.*, 233 B.R. 120, 124 (Bankr. D. Kan. 1999) quoting *Gallagher v. Borden, Inc.*, 616 N.E.2d 577 (Ohio App. 1992) (emphasis supplied). GECC's Responses do not describe with any particularity the maintenance that was required nor any specific machine that required it. Without such information, Hayes did not have a meaningful opportunity to cure any alleged breach.

Finally, after giving a notice of default and thirty days to cure, GECC must provide Hayes with a separate written *declaration* of default. There is no evidence of any such declaration.

Since GECC failed to give Hayes any written notice of breach, opportunity to cure, or written declaration of default, it may not recover the SLV as a default remedy under the express terms of Section XII.

### D. GECC Did Not Prove that Hayes Breached its Maintenance and Return Obligations During the Exposure Period with Respect to the Group I Machines.

Even if GECC had proven that it gave Hayes the required declaration and notice of default, which it did not, it would still be required under §365(d)(10) to establish that Hayes breached its maintenance and return obligations during the Exposure Period. GECC has failed to submit such proof.[12]

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[12]For the same reason, GECC cannot recover actual damages for the breach of these obligations as a §365(d)(10) expense. To obtain that relief, it would have to show that the breaches (continued...)

### 1. Maintenance Provision.

Section VII(a) of the Lease provides in relevant part that "Lessee will, at its sole expense, maintain each unit of Equipment in good operating order, repair, condition and appearance in accordance with manufacturer's recommendations, normal wear and tear excepted." In order to establish that Hayes breached this maintenance obligation with regard to a particular Group I Machine during the Exposure Period, GECC must prove (1) the maintenance for that machine that was recommended by the machine's manufacturer; (2) that Hayes first breached its obligation to perform the recommended maintenance during the Exposure Period; and (3) that the machine was not in good operating order, repair, condition or appearance because of Hayes's failure to perform the recommended maintenance during the Exposure Period rather than as a result of normal wear and tear.

GECC has not proven these elements with respect to each Group I Machine. First, there is virtually no evidence of the manufacturer's recommended maintenance for any machine. Although GECC put on its exhibit list many manufacturer's operating manuals, GECC chose not to offer a single one into evidence. As a result, there is virtually no evidence of the maintenance that is recommended by the manufacturer of any machine.[13]

Without evidence of the manufacturer's recommended maintenance, there can be

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[12](...continued)
occurred during the Exposure Period. As shown below, GECC failed to present such proof.

[13] The only evidence is Kucklick's statement on cross-examination that storing the hydraulic unit of Machine No. 46 outside and away from the machine is not in accordance with the manufacturer's recommendations. (1/31/05 Tr. at 172:18-173:5.) But Kucklick also testified that storage of the unit outside does not render it inoperable since the unit is "weather resistant". (1/31/05 Tr. at 104:15-105:13.) Thus, Hayes did not breach its maintenance obligation with respect to Machine No. 46 since the machine remained in good operating order despite exposure of the hydraulic unit to the weather.

(and was) no proof of Hayes's failure to perform such maintenance. Indeed, the evidence proves that Hayes provided the machines with appropriate maintenance.

- Preventive maintenance programs established by the manufacturer's representatives were set up and followed at LaMirada, Somerset, Howell and Huntington. (DF 127–134, 315–320, 417, 427, 432, and 433.) Preventive maintenance programs were also in place at Sedalia and Gainesville. (DF 38, 398.) Preventive maintenance included daily, quarterly and semi-annual servicing. (*See, e.g.,* DF 128-130, 316–318.) Asberry and Almeida testified that, at their facilities, chips were removed between one and three times in an eight-hour shift. (DF 128, 318.)

- Although automobile parts suppliers generally operate "24/7", Hayes typically operated its plants 24 hours per day, five days each week. (*See, e.g.,* DF 4, 126, 321.) There is no evidence that Hayes's plants were consistently operated on a "24/7" schedule, as GECC contends.

- When the machines were moved within a facility or to an offsite storage location, professional riggers were used. (*See, e.g.,* DF 13, 141, 399, 443.) Machines located outside were tarped to protect them from the weather. (See, e.g., 141, 399.)

This consistent maintenance resulted in nearly two-thirds of the Group I Machines being in good operating order, repair, condition and appearance when they were returned to GECC. Machine Nos. 14, 15, 25, 28, 30, 35, 37–43, 46–48, 50 and 51 were in operating condition and required no repair whatsoever at the time that they were returned to GECC.[14] (*See* Part II.B.1, *supra.*) Other operable machines (Nos. 1, 2, 16, 18 and 19) required repair to or replacement of either the slides, covers, doors, motor or chip augur. But there is no evidence that these conditions were caused by a failure to maintain these machines during the Exposure Period in accordance with the manufacturer's recommendations rather than

[14]Machine Nos. 37–43 were located at Somerset, where preventive maintenance was performed on an "as-needed" basis after mid-2001. (DF 320.) There is no evidence that the actual maintenance performed did not comply with the manufacturer's recommendations. Furthermore, the maintenance performed did not damage any of these machines since they remained operational without need of repair.

caused by normal wear and tear.

Finally, there is no evidence that Hayes breached its maintenance obligation during the Exposure Period with respect to the fifteen Group I Machines that were not in operating condition upon their return to GECC. These machines were inoperable because they were missing parts. There is no evidence that any parts were removed from these machines during the Exposure Period.

Machine Nos. 13, 34 and 36 were missing parts pre-petition, but no more parts were removed prior to the applicable rejection date. (DF 293, 313, 373.) GECC's position in its pre-trial brief that the failure to restore the parts post-petition constitutes breach of an obligation required to be performed under §365(d)(10) is incorrect. Any breach of the lease obligation to maintain those machines did not *first* arise during the Exposure Period, as required by §365(d)(10). *See In re Pan American Airways Corp.*, 245 B.R. 897, 899 (Bankr. S.D. Fla. 2000) (the "plain language of §365(d)(10) refers explicitly to obligations 'first arising from or after 60 days after the order for relief.'"). Before the Petition Date, Hayes's liability for breach of Section VII(a) with respect to these three machines would have been no different than the liability now being asserted by GECC. Section 365(d)(10) is not intended to cover such a liability that clearly arose pre-petition. *See In re Ames Department Stores, Inc.*, 306 B.R. 43, 61 (Bankr. S.D.N.Y. 2004) (where pre-petition liability for cost of cleaning up premises was no different than liability asserted in landlord's administrative expense claim under §365(d)(3), cleanup obligation is not covered by §365(d)(3)).

**2. Return Provision**

GECC maintains that Hayes breached its return obligation with respect to only Machine Nos. 28, 29 and 46, which were on Schedules 34 and 83. GECC limits its claim

to those machines because they are the only ones that are on Schedules whose base lease terms expired before rejection. Pursuant to Section XI(b) of the Lease, these Schedules continued month to month until they were rejected.

GECC is not entitled to an administrative expense for breach of the return provision because any damages caused by such a breach must be classified as rejection damages, which are not entitled to an administrative priority. *See* 11 U.S.C. §§ 365(g), 502(a); *In re Templeton*, 154 B.R. 930, 935 (Bankr. W.D. Tex. 1993). ("The Bankruptcy Code provides that damages from the rejection of an unexpired lease are treated as general unsecured claims, not as priority claims.") In *Muma Services*, this Court held that charges for the early return of leased containers were rejection damages: "[T]hese are not . . . current charges for use of the Containers but are, rather, a payment due only for early return of the Containers, which, in this case is due to NPR's rejection of the Transamerica Leases." 279 B.R. at 487. Thus, the charges "arise only as a result of NPR's rejection of these leases and are, therefore, rejection damages." *Id.*

This case presents an analogous situation. Section XI(a) of the Lease requires Hayes to return the machines in good working order, normal wear and tear excepted, upon expiration or termination *of the Lease*. When the base terms of Schedules 34 and 83 expired, the Lease "continue[d] from month to month notwithstanding any expiration or termination of the lease term". (Lease, §XI(b).) The Lease recognizes this as a "continued leasehold interest". (Lease, §XI(b).)

Here, although the base lease terms of Schedules 34 and 83 had expired, Hayes's leasehold interest continued month to month thereafter. Accordingly, Hayes's leasehold interest did not terminate before rejection. (DF 221, 413) Any return obligation would have

arisen only upon the rejection of the Schedules. Damages resulting from any non-compliance with that provision must be viewed as rejection damages, which cannot be recovered as an administrative expense.

## III. THE DIFFERENCE BETWEEN THE SALE PRICE AND THE ORDERLY LIQUIDATION VALUE OR FAIR MARKET VALUE IS NOT PROBATIVE OF THE CONDITION OF THE MACHINE.

As evidence of a Casualty Occurrence or poor maintenance of the machines, GECC relies on the difference between the price that it received for a machine and the "desktop" Orderly Liquidation Value ("OLV") or Fair Market Value ("FMV") of a machine provided by its appraiser, Thomas Hazelhurst.[15] This theory has no force and cannot withstand the compelling testimony of Hayes's witnesses that two-thirds of the Group I Machines were in operating condition when they were returned to GECC.

Initially, GECC's theory depends entirely on Hazelhurst's appraisal. That appraisal is completely unreliable. Hazelhurst's values are no more than guess work. (DF 471–489) Although this was Hazelhurst's first retrospective appraisal, he neither researched nor employed the proper methodology for such an analysis. He had virtually no comparables even though the market approach he used called for them. Instead, Hazelhurst utilized the values provided by the two salesmen who worked for him and an outside used machinery vendor. (DF 485, 486.) Their values were widely divergent from Hazelhurst's own appraisal; but Hazelhurst had absolutely no explanation for how he got from their views to his own. (DF 486.) Finally, Hazelhurst failed to disclose that he had a conflict of interest —his employer had a contract to sell GECC's machines, earning it $200,000 in commissions

[15] A desktop appraisal does not value the actual machine, but a machine of the same make, model and vintage assumed to be in reasonable condition. (DF 475.)

in the year before Hazelhurst issued his report. (DF 477.)

Aside from Hazelhurst's unreliable appraisal, GECC's theory still fails. The evidence disproves its basic premise that the condition of a machine dictates its price. First, GECC's buyers re-sold several machines for profits ranging from 100% to 1000% even though the machines' condition had not changed. Three Somerset machines fall into this category:

- GECC sold Machine No. 38 for $10,000. The machine sat at Somerset for three weeks undergoing no repair because it needed none. Then, the buyer re-sold the machine "F.O.B. Somerset" for $96,000, a nearly ten-fold increase over GECC's price. (DF 349.)

- GECC sold Machine No. 42 for $10,000. The buyer did not service the machine and re-sold it for $80,000. (DF 361, 362.)

- Machine No. 43 was sold by GECC for $10,000. Prior to resale, the machine was not repaired. The buyer re-sold it for $105,000, reaping a handsome 1000% profit. (DF 365, 366.)

Two Niigatas at Gainesville also were re-sold for substantially more than what GECC received. GECC sold Machine Nos. 14 and 15 to Rank International for $9,000 apiece. (DF 73, 82.) Rank re-sold them to Hayes for twice that amount. (DF 74, 83.) The machines never left the shop floor at Gainesville.

Second, GECC accepted prices for many machines that it knew were in operating condition. Inspection reports for the machines were provided to GECC by Meritage. Many of these inspection reports affirmatively state that the machine was actually operating at the time of inspection. *See* inspection reports for Machine Nos. 14, 15, 16, 18 and 30. (Exs. D-205, D-41, D-43, D-47, D-219.) Clearly, GECC set the price of these machines knowing that they were in operating condition. It cannot argue now that these prices, even though lower than the "desktop" values, show that the machines were not in operating condition.

Next, the prices for many machines were depressed because they were purchased by

used machinery dealers. GECC has admitted that the price paid by such dealers does not reflect the value of the equipment. The Lease defines "fair market value" as "the price which a willing buyer (who is neither a lessee in possession *nor a used machinery dealer*) would pay for the Equipment in an arm's-length transaction to a willing seller under no compulsion to sell . . . ." (Lease, §XIX(a), emphasis supplied.) Hazelhurst's definition of "fair market value" also excludes sales to dealers. (1/12/05 Tr. at 142:9–11.) More than half of the Group I Machines were purchased by used machinery dealers ACT and Rank.[16] Thus, any differences between those sales prices and Hazelhurst's fair market values are meaningless.

As this evidence indicates, the fatal defect in GECC's theory is that many factors affect price besides condition. GECC's own expert admitted this point at trial:

> A: **[By Hayes's counsel reading from Hazelhurst's deposition testimony]** "Price is determined by availability, condition, market, comparables, a buyer's need versus a buyer's want, all of the marketing issues that we talked about. *That's a multitude of issues that drive price*."
>
> Q: Do you agree with that statement?
>
> A: **[By Hazelhurst at trial]** Yes. (1/13/05 Tr. at 26:3–10; emphasis supplied.)

One of the "multitude of issues [that] drive price" according to Hazelhurst is the "market". Witness after witness testified that the market for used CNC machines in 2002 and 2003, when the machines at issue went onto that market, was abysmal. Meritage's Cynthia Borgardt acknowledged that those were "very difficult years for selling used machine tools[.]" (DF 466.) According to GECC's John Josko, the market "was in a decline

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[16]ACT purchased Machine Nos. 13, 23-27, 34–43, which were located at Somerset. Rank purchased Machine Nos. 14, 15 and 17-19, the Niigata drills used at Gainesville, and Machine Nos. 50 and 51, the two Kira drills that had been warehoused by the Howell facility. (DF 73, 82, 92, 103, 113, 123, 174, 185, 195, 206, 217, 294, 303, 312, 332, 349, 361, 362, 365, 374, 449; M-81.)

state" and "depressed". (DF 492, 493.) And Hazelhurst agreed that the market was "very low" having "peaked in 1997 and declined through 2003" when it "reached its low level[.]" (1/12/05 Tr. at 139:1–7.) Clearly, the poor state of the market could only drive down the prices that GECC received for the machines.

Because the market and many other factors affect price, the condition of the machine cannot be inferred solely from the price. In fact, one cannot know how condition influenced the price *unless one already knows the condition of the machine*. Hazelhurst confirmed this fact. He was asked if the condition of Machine Nos. 28 and 29, which his company Machinery Systems, Inc., sold on behalf of GECC, determined their $9,500 price. Hazelhurst could not answer because he had never seen the machines.

> Q: **[By Hayes's counsel]** And the price that was paid for those machines, $9,500, can you say that was solely reflective of the condition of the machines?
>
> A: **[By Hazelhurst]** I can't say that because *I did not see those machines*. (1/13/05 Tr. at 24:16–19; emphasis supplied.)

If Hazelhurst could not decide whether the price for the machines received *by his own company* was determined by condition, there is certainly no basis for this Court to do so for these or any other machines. Too many factors besides condition are at play. Elevating condition above all the others, as GECC asks this Court to do, is indulging in speculation. But "the allowance of an administrative claim should not be an exercise in conjecture." *In re Kmart Corp.*, 290 B.R. 614, 622 (Bankr. N.D. Ill. 2003).

## IV. GECC IS NOT ENTITLED TO RECEIVE THE STIPULATED LOSS VALUES AS AN ADMINISTRATIVE PRIORITY UNDER SECTION 365(d)(10) BECAUSE THEY ARE EXCESSIVE LIQUIDATED DAMAGES.

If this Court were to conclude that the fifteen Group I Machines that were missing

parts upon their return to GECC sustained a Casualty Occurrence during the Exposure Period or that GECC met the conditions for obtaining the default remedy for these machines, this Court should not award GECC their SLVs as an administrative expense. Such an award is inequitable since the SLV vastly exceeds any actual damages sustained by GECC.

The SLVs are liquidated damages that were not intended to approximate the actual damages sustained by GECC. Kovacs testified that the SLV is merely GECC's capitalized cost multiplied by a table percentage. (1/12/05 Tr. at 50:14-21.) Furthermore, the SLV is much greater than the OLV, which is offered by GECC as representing what it should have received for the machine. The total OLVs are *less than 40%* of the total SLVs.[17]

Section 365(d)(10)'s express language allows the Court to deny an award of liquidated damages to a lessor even if required by the language of the Lease. The statute explicitly allows the Court to relieve the debtor of timely compliance with a lease obligation in light of "the equities of the case." *See* 11 U.S.C. §365(d)(10); *In re Fleming Cos.*, 308 B.R. 689, 692 (Bankr. D. Del. 2004) (explaining that section 365(d)(10) requires payment of lease obligations "unless the court provides otherwise based on the equities of the case") (citing *Muma Servs.*, 279 B.R. at 487).

An award of the SLV as liquidated damages would be inequitable. Courts have rejected claims for administrative expenses based on liquidated damages when they are not sufficiently related to any actual damages. *See In re America West Airlines, Inc.*, 166 B.R. 908, 912–13 (Bankr. D. Ariz. 1994); *In re Hupp Indus.*, 140 B.R. 191, 196 (Bankr. N.D. Ohio 1992). Here, the evidence clearly establishes that the SLV far exceeds any actual

[17]In its two applications GECC set forth a total SLV for all 50 machines of $8,112,893.59. Hazelhurst's total OLV for all 50 machines is $3,045,000.00, which is 37.5% of the total SLV.

damages sustained by GECC.

The appropriate measure of GECC's actual damages for the fifteen machines with parts that became missing during the Exposure Period (and there is no such proof) is the cost of replacing the parts. *See In re Atlantic Container Corp.*, 133 B.R. 980, 992 (Bankr. N.D. Ill. 1992) ("Only the costs of remedying damages to the Premises which actually occurred after the filing of the bankruptcy petition may be treated as administrative expenses."), *In re United Trucking Serv. Inc.*, 851 F.2d 159, 164 (6th Cir. 1988) (applying the bankruptcy court's measure of damages to damaged trailers, which was the reasonable cost of making repairs required under the lease, limited by the amount of the trailers' diminution in value). Comparing the cost of replacing missing parts with the SLV dramatically illustrates how awarding the SLV would give GECC a windfall. Here are some examples:

- Machine No. 17 required replacement of its transformer. (DF 101.) The cost of the transformer is $1000. (DF 102.) However, the claimed SLV for this machine is $342,980. (*See* Ex. M-264A.)

- Machine No. 23 was missing a spindle drive. The cost of replacing that part is $3,780. (Ex. D-251 at 17, item 16a.) Yet the claimed SLV for this machine is $54,489. (Ex. M-264A.)

- Machine No. 29 was missing some guards, also known as covers, which serve to protect the ball screws. The approximate cost of replacing a cover *and the ball screw* is no greater than $3,170. (Ex D-251 at 16, items 11a-d.) The claimed SLV is $68,181. (Ex. M-264-A.)

For all these reasons, the Court should exercise its discretion under §365(d)(10) based on the equities of this case to deny GECC's claim for the SLVs as an administrative expense.

## V. GECC HAS FAILED TO PROVE THAT IT IS ENTITLED TO AN ADMINISTRATIVE EXPENSE UNDER SECTION 503(b)(1) FOR THE GROUP II MACHINES BASED ON HAYES'S ALLEGED TORTIOUS CONDUCT.

GECC claims that it is entitled to an administrative expense under §503(b)(1) for only the nine Group II Machines which were all located at Gainesville. GECC contends that

Hayes's removal of parts from these machines is a "tort" and that it may recover as an administrative expense the damages it sustained as a result. GECC has failed to prove this claim.

Initially, parts were not removed from all nine Group II Machines. Two of the machines were operational on the Petition Date and upon their removal from Gainesville. Thus, only seven were missing parts. (DF 33.)

GECC cannot recover an administrative expense on the basis that removal of parts from these seven machines is a tort. GECC's tort claim is based on *Reading Co. v. Brown*, 391 U.S. 471 (1968). In that case, a fire destroyed the debtor's building and then spread to and destroyed adjoining property owned by the Reading Company during the bankruptcy case. The damage to Reading's property was due to the receiver's negligence. The Supreme Court held that "damages resulting from the negligence of a receiver acting within the scope of his authority as receiver give rise to 'actual and necessary costs' [under] Chapter XI." *Id.*

*Reading* is distinguishable from GECC's tort claim. First, *Reading* does not apply to a "right to payment originating in a prepetition contract with the debtor." *In re Hemingway Transport, Inc. v. Kahn*, 954 F.2d 1, 7 (1st Cir. 1992). Any obligation to refrain from removing a part from a machine originated in the maintenance obligations contained in Hayes's pre-petition Lease with GECC. Thus, GECC's "tort" claim is nothing other than a dressed-up claim for breach of a pre-petition contract.

Second, even if the alleged conduct amounted to a tort, it must have arisen from the operation of the Debtors' business in order to form the basis of an administrative expense. As this Court has recognized, *Reading* does not apply to a tort that "did not arise from the operation of the Debtors' business." *In re Unidigital, Inc.*, 262 B.R. 283, 290 (Bankr. D.

Del. 2001). The seven Motches, along with the other two, were removed from production *before* the Petition Date. (DF 33.) The seven Motches were missing some inexpensive parts on the Petition Date. (DF 33.) No parts were removed after the Petition Date. (DF 34.) If the removal of the parts constitutes a tort, then that tort occurred before the Petition Date. Consequently, the alleged tort "did not arise from the operation of the Debtors' business." *In re Unidigital*, 262 B.R. at 290. For that reason, GECC has no claim for an administrative expense under *Reading*.

Finally, even if GECC has surmounted these hurdles, it has not proven its damages. The Group II Machines were located in Georgia. The measure of tort damages for injury to personal property under Georgia law is the difference between the market value of the property before and after the injury. *Southern Railway Co. v. Malone Freight Lines, Inc.*, 174 Ga. App. 405, 410; 330 S.E.2d 371, 378 (1985) ("In a suit for damages to personal property, the measure of damages is the market value of the property before and after the damage to such property.") There is absolutely no evidence of the market value of any Group II Machine either before or after the removal of any parts. Thus, GECC did not prove its damages.

## CONCLUSION

GECC's applications for allowance of an administrative expense priority arising under the Lease and based on §§365(d)(10) and 503(b)(1) should be denied in their entirety.

Respectfully Submitted,

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Dated: March 17, 2005

tcavalier\0290875.01

**EXHIBIT A**

## Hayes's Objection to M264A: "Machine Stipulated Loss Value Calculation"

| Mach. No. (Schedule) | Rental No. (Corrected) | SLV (Corrected) |
|---|---|---|
| 1 (Sch. 32) | 77 | 138,270.00 |
| 2 (Sch. 37) | 64 | 142,326.53 |
| 12 (Sch. 59) | 40 | 225,301.80 |
| 13 (Sch. 59) | 40 | 159,016.56 |
| 14 (Sch. 97/47) | 60 | 249,399.00 |
| 15 (Sch. 97/47) | 60 | 249,399.00 |
| 16 (Sch. 98/43) | 67 | 122,955.84 |
| 17 (Sch. 102/41) | 70 | 336,532.07 |
| 18 (Sch 102/41) | 70 | 336,532.07 |
| 19 (Sch. 102/41) | 70 | 336,532.07 |
| 20 (Sch.30) | 88 | 83,697.69 |
| 21 (Sch.30) | 88 | 83,697.69 |
| 22 (Sch. 30) | 88 | 83,697.69 |
| 23 (Sch. 31) | 89 | 54,489.26 |
| 24 (Sch. 31) | 89 | 54,489.26 |
| 25 (Sch. 31) | 89 | 54,489.26 |
| 26 (Sch.31) | 89 | 54,489.26 |
| 27 (Sch. 31) | 89 | 54,489.26 |
| 28 (Sch. 34) | 87 | 93,932.84 |
| 29 (Sch. 34) | 87 | 68,181.26 |
| 30 (Sch. 35) | 71 | 60,457.18 |

| No. (Schedule) | Rental No. (Corrected) | SLV (Corrected) |
|---|---|---|
| 31 (Sch. 36) | 75 | 57,792.83 |
| 32 (Sch. 48) | 48 | 127,925.95 |
| 33 (Sch. 48) | 48 | 127,925.95 |
| 34 (Sch. 62) | 42 | 147,551.79 |
| 35 (Sch. 62) | 42 | 253,532.32 |
| 36 (Sch. 62) | 42 | 253,532.32 |
| 37 (Sch. 92) | 16 | 280,386.02 |
| 38 (Sch. 92) | 16 | 266,314.16 |
| 39 (Sch. 92) | 16 | 200,650.99 |
| 40 (Sch. 92) | 16 | 200,650.99 |
| 41 (Sch. 92) | 16 | 200,650.99 |
| 42 (Sch. 92) | 16 | 200,650.99 |
| 43 (Sch. 92) | 16 | 200,650.99 |
| 44 (Sch. 80) | 32 | 76,069.97 |
| 45 (Sch. 80) | 32 | 76,069.97 |
| 46 (Sch. 83) | 39 | 48,240.74 |
| 47 (Sch. 32) | 77 | 97,064.49 |
| 48 (Sch. 32) | 77 | 97,064.49 |
| 50 (Sch. 35) | 71 | 52,421.25 |
| 51 (Sch. 35) | 71 | 52,421.25 |
| **Total** | | **$6,059,944.04** |

**EXHIBIT B**

# Machine List

| No. | Make | Description | Model | Serial Number | Schedule | Rejection Date |
|---|---|---|---|---|---|---|
| 1 | Okuma & Howa | Vertical Turning Center | ACT 2SP-V5 | 6744 | 32 | 03/07/02 |
| 2 | Okuma & Howa | Vertical Turning Center | Millac 511V | 159 | 37 | 02/14/02 |
| 3 | Motch | Turning Center | MVSL450CNC | VT-2960901-97 | 38 | 01/15/02 |
| 4 | Motch | Turning Center | MVSL450CNC | VT-2960902-97 | 38 | 01/15/02 |
| 5 | Motch | Turning Center | MVSL450CNC | VT-2960903-97 | 38 | 01/15/02 |
| 6 | Motch | Turning Center | MVSL450CNC | VT-2961001-97 | 38 | 01/15/02 |
| 7 | Motch | Turning Center | MVSL450CNC | VT-2961002-97 | 38 | 01/15/02 |
| 8 | Motch | Turning Center | MVSL450CNC | VT-2961003-97 | 38 | 01/15/02 |
| 9 | Motch | Turning Center | MVSL450CNC | VT-2961101-97 | 40 | 01/15/02 |
| 10 | Motch | Turning Center | MVSL450CNC | VT-2961102-97 | 40 | 01/15/02 |
| 11 | Motch | Turning Center | MVSL450CNC | VT-2961103-97 | 40 | 01/15/02 |
| 12 | Niigata | Horizontal Machining Center | SPN 40 | 46680086 | 59 | 04/03/02 |
| 13 | Chiron | Wheel Drilling Machine | WM-02 | 448-23 | 59 | 04/03/02 |
| 14 | Niigata | Horizontal Machining Center | SPN 40 | 46680079 | 47(97) | 05/12/03 |
| 15 | Niigata | Horizontal Machining Center | SPN 40 | 46680084 | 47(97) | 05/12/03 |
| 16 | Okuma & Howa | Vertical Machining Center | Millac 511V | 346 | 43(98) | 02/28/03 |
| 17 | Okuma & Howa | Twin Spindle Vertical Turning Center | ACT 2SP-V55 | 55065 | 41(102) | 03/24/03 |
| 18 | Okuma & Howa | Twin Spindle Vertical Turning Center | ACT 2SP-V55 | 55066 | 41(102) | 03/24/03 |
| 19 | Okuma & Howa | Twin Spindle Vertical Turning Center | ACT 2SP-V55 | 55067 | 41(102) | 03/24/03 |
| 20 | Okuma | Horizontal Turning Center | LAW-S | 1190 | 30 | 07/19/02 |
| 21 | Okuma | Horizontal Turning Center | LAW-S | 1203 | 30 | 07/19/02 |
| 22 | Okuma | Horizontal Turning Center | LAW-S | 1212 | 30 | 07/19/02 |
| 23 | Okuma | Horizontal Turning Center | LB35II/850 | 148 | 31 | 07/19/02 |
| 24 | Okuma | Horizontal Turning Center | LB35II/850 | 150 | 31 | 07/19/02 |
| 25 | Okuma | Horizontal Turning Center | LB35II/850 | 173 | 31 | 07/19/02 |
| 26 | Okuma | Horizontal Turning Center | LB35II/850 | 175 | 31 | 07/19/02 |
| 27 | Okuma | Horizontal Turning Center | LB35II/850 | 184 | 31 | 07/19/02 |

## Machine List

| | | | | | | |
|---|---|---|---|---|---|---|
| 28 | Okuma | Horizontal Turning Center | LAW-S | 1223 | 34 | 06/13/03 |
| 29 | Okuma | Horizontal Turning Center | LB35II/850 | 312 | 34 | 06/13/03 |
| 30 | Emco | Drilling Center | HWC-15 | R0400695 | 35 | 02/14/02 |
| 31 | Emco | Drilling Center | HWC-15 | R0400895 | 36 | 07/19/02 |
| 32 | Emco | Wheel Drilling Center | HWC-15 | RO5B-007-98 | 48 | 07/19/02 |
| 33 | Emco | Wheel Drilling Center | HWC-15 | RO5B-009-98 | 48 | 07/19/02 |
| 34 | Emco | Drilling Machine | HWC-15 | RO5C-016-98 | 62 | 07/19/02 |
| 35 | Okuma | Turning Center | LAW-2S | 2202 | 62 | 07/19/02 |
| 36 | Okuma | Turning Center | LAW-2S | 2203 | 62 | 07/19/02 |
| 37 | Enshu | Lathe | JE-80 | 143 | 92 | 03/07/02 |
| 38 | Okuma | Lathe | LAW-2S | 593.2317 | 92 | 03/07/02 |
| 39 | Okuma | Lathe | LAW-F | 597.0287 | 92 | 03/07/02 |
| 40 | Okuma | Lathe | LAW-F | 597.0288 | 92 | 03/07/02 |
| 41 | Okuma | Lathe | LAW-F | 597.0291 | 92 | 03/07/02 |
| 42 | Okuma | Lathe | LAW-F | 597.0292 | 92 | 03/07/02 |
| 43 | Okuma | Lathe | LAW-F | 597.0296 | 92 | 03/07/02 |
| 44 | Motch | Spindle Vertical Chucker | 219D-VNC | VT2939493 | 80 | 07/19/02 |
| 45 | Motch | Spindle Vertical Chucker | 219D-VNC | VT2939290 | 80 | 07/19/02 |
| 46 | Motch | Vertical Numerical Chucker | 119L-VNC | VT29550194 | 83 | 06/13/03 |
| 47 | Motch | Vertical Turning Center | 120 VTC | VT2958395 | 32 | 03/07/02 |
| 48 | Motch | Vertical Turning Center | 120 VTC | VT2958295 | 32 | 03/07/02 |
| 49 | Hess | Assembly Welding Station | MAW-3FFM | 657 | 42(78) | 02/14/02 |
| 50 | Kira | Machining Center | KN-30-HS | B-0114 | 35 | 02/14/02 |
| 51 | Kira | Machining Center | KN-30-VS | CO-128 | 35 | 02/14/02 |