UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	Civil Action No.
v.	
TEREX CORPORATION,	
Defendant.	

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

NATURE OF THE ACTION

1. The Commission brings this action against Terex Corporation ("Terex"), a global construction equipment manufacturer, for aiding and abetting a fraudulent accounting scheme, involving two sale-leaseback transactions, carried out between 2000 and 2002 by United Rentals, Inc. ("URI") and two of its senior officers. In addition, Terex fraudulently misstated its own financial statements in connection with those transactions. The Commission also brings this action against Terex for recording improper entries that misstated its earnings and concealed intercompany imbalances in its accounts. As a result of these acts, Terex materially misstated its financial condition and operating results in filings with the Commission. Terex subsequently filed a restatement correcting its financial statements from January 1, 2000, through June 30, 2004.

2. At year end 2000 and again at year end 2001, Terex, through its former Chief Financial Officer, Joseph Apuzzo ("Apuzzo"), fraudulently booked revenue from

two large sales of new equipment to URI and aided and abetted URI's fraud by substantially assisting URI in carrying out these transactions. Terex substantially assisted URI by, among other things, signing agreements with URI that it knew or was reckless in not knowing were designed to hide URI's continuing risks and financial obligations relating to the sale-leaseback transactions, issuing inflated invoices that it knew or was reckless in not knowing URI would use to inflate URI's gain on the transactions, and facilitating URI's concealment of fee payments to a financing company ("Financing Company") through undisclosed financial arrangements between Terex and the Financing Company.

3. Terex's participation in URI's fraudulent scheme was motivated by its desire to make large year-end sales of new equipment to URI, which Apuzzo used to improve Terex's financial results by prematurely recognizing the revenue from the sales.

4. In addition, from 2000 through June 2004, Terex's accounting staff failed to resolve imbalances arising from Terex's improper accounting for certain intercompany transactions. Instead of investigating and correcting the imbalances, Terex offset the imbalances with unsupported and improper entries to its currency translation account and other deferred liability account. As a result, costs were not recorded as expenses, and, on a consolidated basis, Terex appeared to be more profitable than it was.

5. By engaging in the conduct described herein with respect to the Terex-URI sale-leaseback transactions, Terex, directly or indirectly, violated, and unless restrained and enjoined, will continue to violate, Section 17(a)(1) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C.

§§78j(b), 78m(a) and 78m(b)(2)(A) and (B)], and Rules 10b-5, 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§240.10b-5, 12b-20, 13a-1 and 13a-13], thereunder, and to aid and abet URI's violations of Sections 10(b), 13(a), and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§78j(b), 78m(a) and 78m(b)(2)(A)], and Rules 10b-5 and 13a-1 [17 C.F.R. §240.10b-5 and 13a-1], thereunder.

6. By engaging in the conduct described herein with respect to the intercompany accounting issues, Terex, directly or indirectly, violated, and unless restrained and enjoined, will continue to violate, Section 17(a)(2) and (3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A) and (B)], and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§240.12b-20, 13a-1 and 13a-13], thereunder.

7. The Commission brings this action pursuant to Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§78u(d) and (e)] for an order permanently restraining and enjoining Terex, seeking disgorgement and a penalty, and granting other equitable relief.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(e) and 78aa]. Terex has, directly or indirectly, made use of the means or instrumentalities of interstate commerce and/or of the mails in connection with the transactions in this Complaint. Certain of the acts, practices and courses of business constituting the violations alleged herein occurred within this judicial district.

DEFENDANT

9. Terex Corporation is a Delaware corporation with headquarter offices located in Westport, Connecticut. Terex is a global manufacturer of heavy equipment primarily for the construction, infrastructure, and surface to mining industries. Terex's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. §78l(b)] and is listed on the New York Stock Exchange. Terex files periodic reports with the Commission pursuant to Section 13(a) of the Exchange Act.

RELATED PARTIES

10. United Rentals, Inc. is a Delaware corporation with headquarter offices located in Greenwich, Connecticut. URI is one of the largest equipment rental companies in the world. URI's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. §78l(b)] and listed on the New York Stock Exchange ("NYSE"). URI files periodic reports with the Commission pursuant to Section 13(a) of the Exchange Act.

11. Joseph F. Apuzzo, age 53, a resident of Connecticut, served as Chief Financial Officer of Terex from October 1998 to September 2002. Apuzzo served as President of Terex Financial Services, a division of Terex, from September 2002 to August 2005, when he resigned at the request of the Terex Board of Directors.

12. Michael J. Nolan, age 48, a resident of North Carolina, served as URI's Chief Financial Officer from the its formation in September 1997 until December 2002.

13. John N. Milne, age 49, a resident of Connecticut, served as Vice Chairman and Chief Acquisition Officer from URI's formation in September 1997. In June 2001,

Milne became the President of URI and beginning on December 9, 2002, he concurrently held the office of CFO.

FACTS

The Terex-URI Sale-Leaseback Transactions

14. In late December 2000 and again in late December 2001, as the fiscal years were ending for both Terex and URI, the companies engaged in two fraudulent sale-leaseback transactions designed to allow URI to recognize revenue prematurely and to inflate the profit generated from the sales.

15. The two sale-leaseback transactions were similarly structured. First, URI sold used equipment to the Financing Company and then leased it back for an 8-month period. To induce the Financing Company to participate in these transactions, URI paid the Financing Company a fee and arranged for Terex to remarket (re-sell) the equipment at the end of the lease period and to guarantee that the Financing Company would receive not less than 96% of the purchase price that it had paid URI for the used equipment (the "residual value guarantee"). At the same time, URI agreed to Terex's conditions that URI indemnify Terex against losses it might incur under its guarantee to the Financing Company, and make substantial purchases of new equipment from Terex.

16. Milne and Nolan purported to structure the transactions on behalf of URI as "minor sale-leasebacks," which under GAAP would allow URI to recognize immediately the profit generated by the sale of the equipment only if, among other criteria, the risks and rewards of ownership were transferred to the Financing Company. GAAP also requires that before revenue from the sale of equipment can be recognized, the sale price must be fixed and determinable. If any commitments related to the sales

remain unsettled, the sales price is not deemed to be fixed and determinable, and any gain from the sales must be deferred until the commitments are settled.

17. Because Milne and Nolan on behalf of URI had offered guarantees to Terex that URI would cover losses that Terex might incur under its remarketing agreements with the Financing Company, URI's obligations relating to the sale-leaseback agreements were not complete in the reporting period in which the agreements were executed. As a result, GAAP prohibited URI from recording any revenue in each of those reporting periods. With Terex's assistance, Milne and Nolan hid the interlocking agreements, and were able to prevent discovery of URI's continuing obligations under the three-party agreements, from URI's independent auditor. In addition, URI was able to inflate the gains that it recorded because it was able to hide the indemnification payments URI made to Terex.

18. Terex substantially assisted URI in its efforts to disguise the interlocking agreements and to conceal the indemnification payments URI made to Terex. In both 2000 and 2001, Apuzzo signed agreements with URI and/or the Financing Company that disguised URI's continuing risks and financial obligations under the three-party transactions. In addition, with Apuzzo's knowledge and/or approval, Terex issued inflated invoices on URI's purchase of new equipment from Terex that concealed URI's indemnification payments to Terex and thus allowed URI to inflate its gains on the sale-leaseback transactions.

The December 2000 Sale-Leaseback Transaction ("Terex I")

19. In an attempt to meet URI's announced earnings expectations for the fourth quarter and full fiscal year-ending 2000, Nolan contacted the Financing Company

and expressed interest in doing a short-term leasing that would allow URI to record an immediate gain. The Financing Company advised Nolan that to agree to do a sale-leaseback transaction with URI, it would require a third party to agree to remarket the equipment at the end of the lease period and to guarantee the Financing Company the residual value of the equipment. In addition, Nolan was advised that the Financing Company would charge URI a fee to participate in the sale-leaseback transaction.

20. Nolan explained the terms of the proposed transaction to Apuzzo who expressed a willingness to participate as long as Terex received protection from URI against any losses Terex might incur in providing guarantees to the Financing Company. In addition, Apuzzo required that URI make additional new equipment purchases from Terex in the current fiscal year in order to boost Terex's year-end financial results.

21. On December 29, 2000, URI executed a Master Lease Agreement ("MLA") with the Financing Company pursuant to which URI sold a fleet of used equipment to the Financing Company for $25.3 million and leased the equipment back for a period of 8 months. Simultaneously, the Financing Company and Terex entered into a Remarketing Agreement, signed by Apuzzo, pursuant to which Terex agreed to remarket the equipment at the end of the lease period and to pay the Financing Company for any shortfall between the residual value guarantee (no less than 96% of the price paid by the Financing Company) and the proceeds that were generated by the re-sale of the equipment. Terex also agreed that, at the Financing Company's option, Terex would be required to buy, at the guaranteed residual values, any equipment that remained unsold at the end of the remarketing period. Lastly, as a result of negotiations between Apuzzo, Nolan and Milne, URI agreed to purchase from Terex approximately $20 million of new

equipment before the end of the 2000 calendar year, and to pay Terex approximately $5 million immediately to cover Terex's anticipated losses from its residual value guarantee to the Financing Company. In accordance with the agreement between Apuzzo, Nolan and Milne, URI and Terex also executed a "backup" remarketing agreement, which Apuzzo also signed, under which URI effectively assumed Terex's remarketing obligations and guarantees to the Financing Company and agreed to cover any losses to Terex over the $5 million advance payment through guaranteed future purchases.

Terex Fraudulently Accounted for the Year-End Sale to URI

22. Terex, through Apuzzo, knew or was reckless in not knowing that certain terms of its agreement with URI, if fully disclosed to Terex's auditor, would prevent Terex from recording immediately the revenue generated from URI's purchase of new equipment.

23. URI agreed to purchase $20 million of new equipment from Terex and to pay Terex before year-end 2000 if the equipment could be delivered in 2001 rather than immediately. Apuzzo agreed to this and, in addition, provided assurances to URI that URI could substitute different equipment if needed, or otherwise return equipment for full credit if URI subsequently determined that it did not need the equipment.

24. Under GAAP, since Terex was unable to deliver the new equipment to URI before December 31, 2000, Terex could immediately recognize the revenue from the sale to URI if the transaction complied with "bill and hold" accounting guidance. Among other things, Apuzzo's agreement to allow URI to substitute or return equipment to Terex did not comply with those "bill and hold" requirements.

25. Apuzzo was able to avoid disclosing fully the terms of his agreement with URI. No purchase agreement was prepared between Terex and URI and URI did not issue any purchase orders. In addition, while Nolan and Milne reduced to writing URI's "right of return" on the new equipment it was purchasing, and sent it to Apuzzo along with the backup remarketing agreement, the document was described as a "Separate Agreement" and was not part of the backup remarketing agreement that URI and Terex executed and which Apuzzo signed.

26. Following URI's payment of $25 million to Terex on December 29, 2000, Terex improperly recorded $20 million of the payment as revenue for the fiscal year-ending December 31, 2000.

Concealing URI's Risks and Continuing Obligations

27. Terex, through Apuzzo, knew or was reckless in not knowing that disclosure of URI's commitment under the backup remarketing agreement to assume Terex's risks and obligations to the Financing Company would jeopardize URI's accounting for the transactions. Terex, through Apuzzo, substantially assisted Nolan and Milne's efforts to conceal URI's assumption of those risks and obligations from URI's auditor.

28. Apuzzo sent to Nolan an initial draft of the proposed backup agreement, explicitly describing Terex's residual value guarantee to the Financing Company on the fleet of equipment being leased by URI. The draft laid out URI's agreement to remarket that fleet of equipment and to indemnify Terex for any shortfalls (i.e. the difference between the resale price and the residual value guarantee) incurred in reselling the equipment.

29. However, in response to Apuzzo's initial draft, URI provided to Apuzzo a draft agreement that deleted all explicit references to the Financing Company and URI's agreement to remarket the fleet. In their place, the new draft referred to URI's obligation to remarket a fleet of equipment "which is typically in United Rentals rental fleet and is then owned by a leasing company which is not less than investment grade, and is required to be remarketed by Terex from such leasing company for a period commencing in August, 2001." Nowhere in the URI draft was any language identifying the name of the leasing company or the fact the fleet to be remarketed was the same fleet URI had sold to the Financing Company. In place of the residual value that Terex had agreed to pay the Financing Company, URI's revised draft referred to URI's guarantee to pay Terex "the total cost incurred or that would be incurred by Terex to purchase such equipment...."

30. Terex, through Apuzzo, executed the revised backup remarketing agreement knowing, or with reckless disregard for the truth, that Nolan and Milne were attempting to hide URI's risks and obligations under the three-party transaction.

Concealing the Inflated Valuations

31. Terex knew or was reckless in not knowing that the prices at which URI had sold the used equipment to the Financing Company were inflated above fair market values. Terex assisted URI in concealing the inflated valuations.

32. Before committing Terex to the residual value guarantees that the Financing Company required, Apuzzo sought an internal appraisal of the equipment URI was selling to the Financing Company. Based on that appraisal, Apuzzo knew that Terex's agreement to guarantee the Financing Company at least 96% of the valuations URI had placed on the equipment would likely cause Terex to incur substantial losses

when the equipment was resold. As a result, Apuzzo insisted that URI agree to indemnify Terex against any such loss.

33. Terex executed the Remarketing Agreement that guaranteed the Financing Company residual values that both Terex and URI understood would likely result in millions of dollars in losses to Terex. It did so, however, knowing that URI's commitment to indemnify Terex for such losses was confirmed in a separate document.

Concealing URI's Indemnification Payments to Terex

34. URI made two lump-sum indemnification payments to Terex in connection with the three-party transaction. The initial payment, for $5 million, was made simultaneously with the execution of the transaction documents. The second payment was made on January 2, 2003, pursuant to a final reconciliation among the Financing Company, Terex and URI.

35. Apuzzo and Nolan agreed that URI's indemnification payments to Terex would be made as undisclosed "premiums" to be paid on URI's purchase of new equipment from Terex. Terex, through Apuzzo, knew or was reckless in not knowing that any indemnification payment URI made, if disclosed, would reduce the gain that URI could record on the sale-leaseback transaction.

The Initial Payment of $5 Million

36. In accordance with the agreement between Apuzzo, Nolan and Milne, the initial $5 million indemnification payment was included as part of URI's purchase of approximately $20 million of new equipment from Terex before the end of the calendar year. Thus, on December 29, 2000, Terex issued two invoices that reflected an aggregate price of $25 million for new equipment that Terex internally valued as $20 million.

37. Notwithstanding the prices shown on the invoices, Terex recorded only $20 million of the $25 million as revenue for the year-ending 2000 and recorded the remaining $5 million overpayment as a reserve to be used to cover Terex's anticipated losses under its residual value guarantee. Contemporaneously, Nolan forwarded the inflated invoices to URI's accounting department, knowing that the accounting department would enter the incorrect prices in URI's books and records.

The Final Reconciliation Payment

38. During 2001 and 2002, as an industry recession continued, URI and Terex were unable to resell the equipment at or near the residual values that had been guaranteed to the Financing Company. The recession also generated losses even greater than the initial estimated $5 million shortfall. Towards the end of 2002, following extensions to the remarketing period contained in the original agreement between Terex and the Financing Company, the Financing Company prepared a final reconciliation of the remaining financial obligation owed by Terex under the residual value guarantee. Simultaneously, Terex and URI prepared a final reconciliation of URI's financial obligation under the 2000 backup remarketing agreement.

39. On December 31, 2002, Apuzzo signed a "Contract" between URI and Terex which purported to extend the remarketing and purchase agreements between the two companies that would otherwise expire. Further, the contract provided that URI "agrees" to make an $8 million "prepayment," to be applied as a "surcharge" on the purchase of additional equipment from Terex in the following 6 months. The contract specified that Terex could keep the prepayment even if URI failed to make those additional purchases.

40. Terex, through Apuzzo, knew or was reckless in not knowing that the contract purporting to characterize URI's $8 million payment as a "prepayment" and "a surcharge" on the purchase of new additional equipment was intended to disguise the real purpose of the payment, which was to cover Terex's losses under its Remarketing Agreement with the Financing Company.

41. On January 2, 2003, the Financing Company sent an email to both Terex and URI notifying them that a reimbursement for approximately $8.3 million was to be paid the same day to the Financing Company. Terex made the payment to the Financing Company and the next day URI made a final indemnification payment to Terex of approximately $8.7 million. URI improperly recorded the $8.7 million as expenses unrelated to the sale-leaseback transaction.

The December 2001 Sale-Leaseback Transaction ("Terex II")

42. In December 2001, as the fiscal year for both URI and Terex was coming to an end, Terex participated in a second fraudulent three-party sale-leaseback transaction, engineered to allow URI to meet its fourth quarter and year-end earnings guidance and to permit Terex to make a large, year-end sale of new equipment to URI. Specifically, on December 28, 2001, URI and the Financing Company entered into another sale-leaseback agreement pursuant to which URI sold used equipment to the Financing Company for $13.7 million and leased it back for 8 months. Terex agreed to remarket (re-sell) the equipment and provide the Financing Company with the same residual value guarantee as it had made the prior year. Terex insisted, and URI agreed, that URI would make an immediate indemnification payment of $4 million to Terex to cover the anticipated shortfall on Terex's residual value guarantee. The companies also

agreed that the indemnification payment would again be disguised as an undisclosed "premium." Terex and URI agreed that URI would pay Terex the $28 million, which included the $24 million for new equipment and the $4 million indemnification payment, in two equal payments in 2002.

43. As before, the Terex II agreements were structured to conceal the interlocking nature of the three-party transaction. In particular, the documents failed to disclose the effective *quid pro quo* between Terex's agreement to remarket the equipment and provide residual value guarantees to the Financing Company as well as URI's agreement both to indemnify Terex and to purchase new equipment from Terex.

44. Just as with Terex I, in which the transaction documents were edited to remove references to the interlocking agreements, Terex executed the Terex II Remarketing Agreement knowing that it contained no disclosures regarding URI's commitment to reimburse or indemnify Terex. Moreover, Terex, through Apuzzo, understood that URI continued to want the agreements to be kept separate. On December 19, 2001, Apuzzo received an email from the Terex sales manager engaged in the negotiations with URI, specifically noting that the URI sales manager wanted the transactions "on two separate documents." Consistent with this goal, URI's commitment to indemnify Terex was not disclosed in the "bill and hold" letter, dated December 21, 2001, URI sent in connection with its agreement to purchase new equipment from Terex.

45. Terex also knew or was reckless in not knowing that the Remarketing Agreement between Terex and the Financing Company, dated December 28, 2001, contained valuations attached to the used equipment that were likely to result in millions of dollars in losses for Terex, and consequently for URI, once the equipment was resold.

Prior to entering into the three-party transaction, Terex had determined that the valuations of the equipment being sold to the Financing Company by URI were above fair market values and would likely cause Terex losses in excess of $4 million as a result of Terex's promise to pay the Financing Company at least 96% of the price the Financing Company was paying to URI. Before agreeing to provide the Financing Company with the guarantee, Terex insisted that URI agree to indemnify Terex for this anticipated loss.

46. Terex executed the Remarketing Agreement between Terex and the Financing Company knowing that it did not disclose the materially lower appraisals that Terex had obtained, the likelihood of substantial losses being generated and URI's commitment to indemnify Terex for those losses.

47. Moreover, Terex, through Apuzzo, knew or was reckless in not knowing that the three-party transaction was designed to inflate the gain that URI would recognize from the sale-leaseback transaction by disguising the indemnification payment to Terex as an undisclosed "premium" on the purchase of new equipment. Apuzzo received internal Terex communications discussing the payment of a $4 million "premium" on the purchase of $24 million in new equipment. As in the Terex I transaction, Terex issued inflated invoices showing the aggregate purchase price of the new equipment to be $28 million, without disclosure of the purported "premium" being charged.

Terex Fraudulently Accounted for the Year-End Sale to URI

48. As in December 2000, the December 2001 sale to URI was structured to allow Terex to record prematurely in the current year revenue and cash generated by the sale in order to improve Terex's reported year-end financial results. Unlike the Terex I transaction, Terex's sale to URI at year-end 2001 was explicitly structured under bill-

and-hold accounting rules. Thus, on December 21, 2001, Terex's sales director sent URI a template of a buyer's written request for "bill-and-hold" accounting treatment on the purchase, which URI subsequently signed and submitted to Terex. Notwithstanding URI's written request, however, Terex knew, or was reckless in not knowing, that the sale to URI did not meet other essential requirements for bill-and-hold accounting treatment, such as having all the purchased equipment identified and segregated prior to recognizing revenue.

49. In a December 14, 2001, email, the Terex sales manager handling the sale to URI advised that the size of the transaction that was being negotiated was creating problems for Terex's ability to fill the order, and specifically noted that some of the equipment ordered by URI had not even been manufactured yet. The email suggested that equipment listed on the purchase orders would be substituted as the newly manufactured equipment became available. Later emails made clear that, consistent with the December 2001 agreement, but contrary to GAAP requirements, Terex had once again agreed (as it had in December 2000) that URI could substitute equipment on the purchase orders as needed

50. Terex also improperly booked as cash in 2001 $14 million of the $28 million that URI had agreed to pay in 2002. Under the terms that URI and Terex negotiated, URI was to make the $28 million payment in two equal tranches of $14 million each: the first, by January 2, 2002; the second, by the last business day of February 2002. While URI agreed to give the first check to Terex in late December 2001, the date on the check of January 1, 2002, made clear that URI considered the money was to remain on URI's books through year-end. Nevertheless, Terex knowingly

deposited the check in its bank account on or about December 28 and then improperly recorded the payment as cash on Terex's books for 2001.

Concealing URI's Fee Payment to the Financing Company

51. During the same period in which the Terex I transaction was negotiated, URI was simultaneously negotiating with the Financing Company the purchase of an unrelated equipment rental company in which the Financing Company had an ownership interest. In connection with that negotiation, URI made an advance payment of a $3.5 million fee, which was contingent upon URI's successful completion of the acquisition. URI agreed that if URI did not successfully complete the acquisition, the Financing Company would pay the $3.5 million to Terex instead of returning it to URI.

52. Although Terex had no involvement with the proposed acquisition, it agreed to include in the Terex I Remarketing Agreement a provision requiring the contingent fee that URI was paying to the Financing Company be repaid to Terex (if the URI acquisition was not completed).

53. Having executed the Remarketing Agreement in December 2000 requiring the $3.5 million to be paid to Terex, Terex agreed in June 2001 to amend the agreement to reduce that by approximately $1.25 million. The amendment served no purpose other than to allow URI and the Financing Company to conceal the $1.25 million in fees URI was being charged by the Financing Company in connection with new sale-leaseback transactions in which Terex had no financial or other involvement. In December 2001, Terex again agreed to amend the Terex I Remarketing Agreement, lowering the amount that the Financing Company was to pay Terex by an additional $277,000. As before, the amendment served no purpose other than for Terex to allow URI to use the $277,000 to

cover fees URI was being charged with in connection with the Terex I transaction, knowing that such fees may have precluded URI's ability to account for the Terex I transaction as it did.

54. As a result of the fraudulent accounting, the financial statements and results that URI incorporated into its periodic filings and other materials disseminated to the investing public were materially false and misleading.

Terex's Intercompany Accounting Issues

55. From 2000 through late 2003, during a time of rapid growth through acquisitions, Terex did not have an automated consolidation tool. Each of Terex's business units had its own controller or financial officer who reported to the head of that business unit and not to the Terex corporate accounting group. Many of the business units acquired by Terex during this time continued to use their pre-acquisition accounting software after their acquisition. Thus, the Terex corporate accounting group did not exercise adequate control over accounting decisions or records for its business units. Instead, Terex relied upon representation letters from the officers of its business units, who were required to certify that their financial statements were materially correct, to ensure compliance with GAAP. During this period, Terex improperly accounted for imbalances arising from intercompany transactions. Rather than investigating and correcting the imbalances, Terex "balanced" the intercompany accounts by offsetting credit imbalances against debit imbalances and making an unsupported and improper final entry to its currency translation account ("CTA") or its other deferred liability account ("ODL") during the monthly consolidation. The use of unsupported entries over a number of years created the potential for additional errors.

The Consolidation Process

56. Terex performed consolidations on a monthly basis. A Senior Analyst was primarily responsible for the consolidation of the income statement while the Accounting Manager was primarily responsible for the consolidation of the balance sheet accounts. Terex's Controller supervised the monthly consolidation process.

57. For the period from January 1, 2000 until August 2003, the controller or another designated member of the finance team at each of Terex's business units electronically submitted each month an Excel spreadsheet reflecting its trial balance to the Senior Analyst at Terex corporate who manually entered that information into the accounting system. The Accounting Manager then made a number of recurring journal entries for the balance sheet accounts while the Senior Analyst made the recurring entries for the income statement accounts. These entries had to be made manually each month because the accounting software that Terex had in place during that time did not perform automated entries, and could not "roll" entries from one period into the next. According to the Controller at the time, no one at Terex reviewed the recurring entries other than the persons making the entries.

58. The accounting system used by Terex at the time did not calculate any foreign currency exchange effects, so those adjustments were manually entered. The Accounting Manager did not manually calculate all of the currency adjustments for each business unit subject to currency fluctuations. Instead, she calculated the currency changes for the largest accounts subject to currency fluctuation, which she then entered into the CTA. She also made another unsupported "final" entry into the CTA, which was the exact amount needed to make the balance sheet accounts balance.

59. In August 2003, Terex began using a new accounting software system that was able to carry forward many of the recurring entries, reducing the number of manual entries made as part of the consolidation process. In addition, the new system automatically calculated currency translation adjustments. However, the Accounting Manager continued to make unsupported manual entries into the CTA account (the primary account used to "balance" the accounts).

60. One of the functions of the consolidation process was to eliminate profits and losses from the intercompany transactions. The monthly close also provided an opportunity to reconcile accounts and to determine how well the businesses were performing. Terex policy was to reconcile all accounts each quarter, but it did not do so. The accounts were not properly or timely reconciled until Terex restated its financial statements.

The Intercompany Accounts

61. Terex used intercompany accounts to make cashless settlements. These accounts were maintained between Terex's corporate office and its various subsidiary businesses and for transactions between business units.

62. Each of the business units had a current account with Terex's corporate office. These accounts were commonly used to charge the subsidiary businesses with an allocation of overhead expenses and other costs. Many of the manufacturing facilities in the United States also had a current account with a Terex distribution facility located in Mississippi. Those businesses that engaged in transactions between each other also maintained intercompany payable and intercompany receivable accounts. A few of the business units, including Terex's corporate office, had intercompany notes payable and

receivable accounts and intercompany interest expense or income accounts used for loans and investments between and among each other.

63. The intercompany accounts should have balanced. If these accounts did not balance, they should have been reconciled to determine the reason for the imbalance and then corrected.

The "Balancing" Entry

64. The Accounting Manager, who was responsible for the reconciliation of the intercompany accounts reflecting transactions between Terex and its subsidiaries and divisions, did not properly resolve the growing imbalances in these intercompany "current" accounts between the Terex parent company and its subsidiaries. Instead of investigating and correcting the problems giving rise to these imbalances, she offset the intercompany accounts that had debit imbalances against the intercompany accounts that had credit imbalances. To the extent that the accounts remained out of balance, she typically made an entry into CTA that was the exact amount needed to make the balance sheet accounts balance. In March 2003, Terex's Assistant Controller also made a similar entry to the ODL to balance Terex's balance sheet. The ODL entry was carried forward until May 2004, when it was transferred into CTA.

65. Terex knew, or should have known, of the entry the Accounting Manager made into the CTA and of the manner in which that entry was calculated. It was a recurring entry that was made every quarter and was not subject to review. Terex's personnel knew, or should have known, that the balancing entry was improper under Generally Accepted Accounting Principles ("GAAP") because that entry was not properly supported or calculated.

Internal Controls and Books and Records Violations

67. Terex's premature recognition of revenue for its 2000 and 2001 year-end sales of equipment to URI reflected deficiencies in Terex's internal controls and defects in its books and records at the time the transactions were completed. Among other things, throughout the course of the transactions, Terex did not have sufficient safeguards to ensure that its own internal policies relating to such things as bill and hold accounting were complied with. Terex and Apuzzo knew, or were reckless in not knowing, that Terex had not shipped all of the new equipment to URI by year end 2000 or that it had not otherwise complied with bill and hold accounting requirements. For the year-end 2001 transaction, while Terex obtained a written request from URI to treat the sale under bill and hold accounting, Terex and Apuzzo knew or were reckless in not knowing that requirements for such accounting had not been met by year-end.

68. With respect to its intercompany transactions, Terex had many deficiencies in its internal controls and recording keeping over the course of several years that facilitated its wrongful accounting for those transactions. Among other things, Terex failed to properly identify, record, and reconcile its intercompany imbalances, made incorrect entries into its CTA and ODL accounts that concealed the unreconciled amounts, and failed to implement proper internal controls to ensure that transactions were properly recorded.

Terex's False Filings

69. On March 22, 2001, Terex filed its FY2000 Form 10-K that contained the fraudulent financial results for the fourth quarter and full year 2000.

70. On March 28, 2002, Terex filed its Form 10-K for FY2001 that contained the fraudulent financial results for the fourth quarter and full year 2001.

71. In financial statements filed with the Commission from 2000 through 2003, Terex reported improper financial results as a result of its improper intercompany accounting practices.

72. In 2001 and 2002, Terex filed Forms S-4 and S-8 registration statements with the Commission that incorporated the materially misstated financial results from FY2000 and FY2001.

73. As a result of its fraud and improper accounting, the financial statements that Terex incorporated into its periodic filings and other materials disseminated to the investing public were materially false and misleading. Terex restated for these errors in its Form 10-K for FY2004 filed on February 17, 2006. As a result of the fraudulent revenue recognition in connection with the URI transactions, Terex improperly recorded pre-tax income for FY 2000 and FY 2001 of $3.1 million and $1.9 million, respectively. As a result of its intercompany accounting practices, Terex improperly recorded its pre-tax income from 2000 through 2003 by $5.7 million, $17.6 million, $30.3 million, and $16.6 million, respectively.

FIRST CLAIM FOR RELIEF
Violations of the Antifraud Provision of the Securities Act (Section 17(a)(1))

74. As set forth in paragraphs 1 through 54, which are realleged and incorporated by reference as if set forth fully herein, Terex fraudulently recognized revenue in violation of the Securities Act.

75. At the times alleged in this Complaint, Terex, in connection with the offer or sale of any security, and by the use of the means and instruments of transportation and communication in interstate commerce or by the use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud.

76. By reason of the conduct described above, Terex violated Section 17(a)(1) of the Securities Act of 1933 [15 U.S.C. §77q(a)(1)].

SECOND CLAIM FOR RELIEF
Violations of the Antifraud Provision of the Securities Act
(Section 17(a)(2) and (3))

77. As set forth in paragraphs 1 through 73, which are realleged and incorporated by reference as if set forth fully herein, Terex fraudulently recognized revenue in violation of the Securities Act.

78. At the times alleged in this Complaint, Terex, in connection with the offer or sale of any security, and by the use of the means and instruments of transportation and communication in interstate commerce or by the use of the mails, directly and indirectly, (a) obtained money or property by means of any untrue statement of material facts or omissions of material facts necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading; or (b) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

79. By reason of the conduct described above, Terex violated Sections 17(a)(2) and (3) of the Securities Act of 1933 [15 U.S.C. §77q(a)(2) and (3)].

THIRD CLAIM FOR RELIEF
Violations of the Antifraud Provision of the Exchange (Section 10(b) and Rule 10b-5 thereunder)

80. As set forth in paragraphs 1 through 54, which are realleged and incorporated by reference as if set forth fully herein, Terex fraudulently recognized revenue in violation of the Exchange Act.

81. At the times alleged in this Complaint, Terex, in connection with the purchase or sale of any security, by the use of the means and instruments of transportation and communication in interstate commerce or by the use of the mails, or of any facility of any national securities exchange, directly or indirectly: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

82. By reason of the conduct described above, Terex violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rule 10b-5 [17 C.F.R. §240.10b-5], thereunder.

FOURTH CLAIM FOR RELIEF
Violations of the Reporting Provisions of the Exchange Act (Section 13(a) and Rules 12b-20, 13a-1 and 13a-13 thereunder)

83. Paragraphs 1 through 73 are realleged and incorporated by reference as if set forth fully herein.

84. At the times alleged in this Complaint, Terex, whose securities were registered pursuant to Section 12 of the Exchange Act [15 U.S.C. §78l], failed to file

annual, current and quarterly reports with the Commission that were true and correct, and failed to include material information in its required statements and reports as was necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

85. By reason of the conduct described above, Terex violated Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)], and Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§240.12b-20, 13a-1 and 13a-13], thereunder.

FIFTH CLAIM FOR RELIEF
Violations of the Books and Records and Internal Control Provisions of the Exchange Act (Sections 13(b)(2)(A) and 13(b)(2)(B))

86. Paragraphs 1 through 73 are realleged and incorporated by reference as if set forth fully herein.

87. At the times alleged in this Complaint, Terex, whose securities were registered pursuant to Section 12 of the Exchange Act [15 U.S.C. §78l]:

a) failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets;

b) failed to devise and maintain a system of internal controls sufficient to provide reasonable assurances that (i) transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (ii) to maintain accountability for assets.

88. By reason of the conduct described above, Terex violated Sections 13(b)(2)(A) and (B) of the Exchange Act [15 U.S.C. §§78m(b)(2)(A) and (B)].

SIXTH CLAIM FOR RELIEF
Aiding and Abetting URI's Violations of the Antifraud Provisions of the Exchange Act (Section 10(b) and Rule 10b-5 thereunder)

89. Paragraphs 1 through 54 are re-alleged and incorporated by reference as if set forth fully herein.

90. As alleged more fully above, URI, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which there were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

91. URI engaged in the conduct alleged herein knowingly or with reckless disregard for the truth.

92. By reason of the conduct described above, URI violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5], thereunder.

93. Terex, through Apuzzo, knew, or was reckless in not knowing, that that its activity, as described more fully above, was part of an overall activity by URI that was improper.

94. Terex, through Apuzzo, knowingly provided substantial assistance to URI in the commission of some or all of the violations by URI of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5], thereunder.

95. By reason of the conduct described above, Terex, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)], aided and abetted URI's violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5], thereunder.

SEVENTH CLAIM FOR RELIEF
Aiding and Abetting URI's Violations of the Reporting Provisions of the Exchange Act (Section 13(a) and Rule 13a-1 thereunder)

96. Paragraphs 1 through 54 are realleged and incorporated by reference as if set forth fully herein.

97. At the times alleged in this Complaint, URI, whose securities were registered pursuant to Section 12 of the Exchange Act, failed to file annual reports with the Commission that were true and correct.

98. By reason of the conduct described above, URI violated Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 13a-1 [17 C.F.R. §§240.13a-1] thereunder.

99. Terex, through Apuzzo knew, or was reckless in not knowing, that its activity, as described more fully above, was part of an overall activity by URI that was improper.

100. Terex, through Apuzzo, knowingly provided substantial assistance to URI in the commission of some or all of the violations by URI of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rule 13a-1 [17 C.F.R. §240.13a-1] thereunder, as described more fully above.

101. By reason of the conduct described above, Terex, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)], aided and abetted URI's violations of

Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rule 13a-1 [17 C.F.R. §240.13a-1] thereunder.

EIGHTH CLAIM FOR RELIEF
Aiding and Abetting URI's Violations of the Books and Records Provisions of the Exchange Act (Section 13(b)(2)(A))

102. Paragraphs 1 through 54 are realleged and incorporated by reference as if set forth fully herein.

103. From at least 2000 to 2002, URI, whose securities were registered pursuant to Section 12 of the Exchange Act, failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets.

104. By reason of the conduct described above, URI violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)(A)].

105. Terex, through Apuzzo, knew or was reckless in its failure to know, that its activity, as described more fully above, was part of an overall activity by URI that was improper.

106. Terex, through Apuzzo knowingly provided substantial assistance to URI in the commission of some or all of the violations by URI of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)(A].

107. By reason of the conduct described above, Terex, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)], aided and abetted URI's violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)(A)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently restrain and enjoin Terex, its agents, officers, servants, employees, attorneys, assigns and all those persons in active concert or participations with them, who receive actual notice of the Judgment by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices and courses of business alleged above, or in conduct of similar purport and object, in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§78j(b), 78m(a) and 78m(b)(2)(A) and (B)], and Rules 10b-5, 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§240.10b-5, 12b-20, 13a-1 and 13a-13], thereunder, and from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§78j(b), 78m(a) and 78m(b)(2)(A)] and Exchange Act Rules 10b-5 and 13a-1 [17 C.F.R. §§240.10b-5 and 13a-1], thereunder;

II.

Order Terex to disgorge ill-gotten gains from the conduct alleged herein and to pay prejudgment interest thereon;

III.

Order Terex to pay a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)]; and

IV.

Grant such other relief as this Court may deem just and appropriate

Dated: August 12, 2009

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