

No. 40821-0-II

FILED  
COURT OF APPEALS  
NOV 13 2013  
BY: *SW*

COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

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RONALD GARNER and MARILYN GARNER, husband and wife,

Appellants,

v.

THE ESTATE OF JOLYN HAMILTON,

Respondent.

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**APPELLANTS' OPENING BRIEF**

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I.

**ASSIGNMENTS OF ERROR**

Appellants Ronald and Marilyn Garner (hereinafter the “Garners”) assign error to the Findings of Fact, Conclusions of Law and the Judgment entered in the above entitled matter on May 7, 2010 (CP 40-51) and the Order Denying Reconsideration filed June 1, 2010 (CP 83), and specifically as follows:

1. Finding of Fact 10 that the net amount of accounts receivable due to the Garners as agreed at trial was \$41,025.00.
2. Finding of Fact 11 that the net unaccounted overdraft in the Garner Trucking, Inc.’s checking account at closing was \$54,000.00.
3. Finding of Fact 17(b) that The Estate of Hamilton (“Hamilton”) proved damages of \$34,233.00 for Truck 201.
4. Finding of Fact 17(c) that Hamilton proved damages of \$30,912.00 for Truck 251.
5. Finding of Fact 17(d) that Hamilton proved damages of \$21,288.00 for Trailers 5517 and 5518.
6. Finding of Fact 17(e) that Hamilton proved damages of \$31,504.00 for Trailers 5521 and 5522.
7. Finding of Fact 18 that the Garners were entitled to only \$41,025.00 as the net amount of accounts receivable due after closing.
8. Conclusion of Law 1 that the Garners were only entitled to judgment against Hamilton in the amount of \$41,025.00 on their claims under the Stock Purchase Agreement.

9. Conclusion of Law 2 that Hamilton was entitled to judgment against the Garners in the amount of \$54,000.00 for overdraft of the checking account, and \$142,245.48 on their breach of contract claims.
10. Conclusion of Law 3 that Hamilton was entitled to a net judgment against the Garners in the amount of \$72,567.93.
11. The Judgment entered in favor of Hamilton in the amount of \$72,576.93.

#### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Did the trial court err in finding that the net amount of accounts receivable due to the Garners was \$41,025.00, when the actual amount reflected in the summary provided by Gary Hamilton at trial was \$53,992.11?
2. Did the trial court err in finding that the net unaccounted overdraft in Garner Trucking's checking account at closing was \$54,000.00, when the actual figure was \$13,245.96?
3. Did the trial court err in finding that Hamilton proved damages of \$34,233.00 for Truck 201 and \$30,912.00 for Truck 251?
4. Did the trial court err in finding that Hamilton proved damages of \$21,288.00 for Trailers 5517 and 5518 and damages of \$31,504.00 for Trailers 5521 and 5522?
5. Did the trial court err in not determining that Hamilton had failed to mitigate its claimed damages?
6. Did the trial court err in entering judgment against the Garners in the above referenced amounts?
7. Did the trial court err in denying the Garners' motion for reconsideration?

**II.**  
**STATEMENT OF THE CASE**

In 2002 the Garners, who had owned and operated trucking companies since 1964 decided to get out of the commercial trucking business and so marketed Garner Trucking for sale. (March 29<sup>th</sup> RP 4, 6) In early 2006 Jolyn Hamilton (the original defendant in this lawsuit but who died prior to trial and whose estate was substituted in her stead) and her husband Gary Hamilton decided they were interested in buying Garner Trucking, and in May 2006 the parties entered into a letter of intent regarding the possible sale. (Ex. 14.2)

During the time between the parties' signing of the letter of intent in May and the closing of the transaction in July, the assets and liabilities of Garner Trucking changed in the ordinary course of business. (March 29<sup>th</sup> RP 13, 14) Accounts receivable were collected and new accounts receivable accrued, and accounts payable were paid and new accounts payable were accrued. The company also purchased two new trucks and financed the repair of trailers by selling and leasing back the trailers on TRAC leases. All of these changes in assets and liabilities were reflected in the closing documents. (Ex. 14)

Shortly before the closing of the parties' transaction, Mr. Garner and Mr. Hamilton met with CPA Robin Nichols to determine the net additional amount that would be due to the Garners for the balance of the company's accounts receivable over accounts payable as set forth in the purchase and sale agreement. (March 29<sup>th</sup> RP 21, March 30<sup>th</sup> RP 47-48) CPA Nichols calculated that the additional sum that would be paid to the Garners, in the amount of \$130,874.82. (Page 5 of Ex. 39) (Copies of this and other important trial exhibits relevant to the Garners' appeal are appended to this brief for ease of reference.)

The parties anticipated an overdraft in the Company's checking account at closing in the amount of \$40,675.03, as reflected in the Leadsheet Grouping the parties reviewed with CPA Nichols prior to closing. (Page 3 of Ex. 39, March 31<sup>st</sup> RP 122) However, shortly after closing the parties discovered that there was an additional overdraft of \$43,079.01 caused by Mr. Garner cashing a check mistakenly calculated to compensate the Garners for monies owed them by the Company. (Ex. 18, March 29<sup>th</sup> RP 26-27, March 31<sup>st</sup> RP 122-123)

Also shortly after closing, Mr. Hamilton raised via letters to Mr. Garner a number of complaints regarding various assets and

liabilities of the company that he claimed had not been adequately disclosed prior to closing. (Exs. 4 and 6) Mr. Hamilton further prepared a handwritten accounting of amounts he believed should be deducted from the \$130,874.82 owed to the Garners for net accounts receivable following closing. (Page 1 of Ex. 39, March 31<sup>st</sup> RP 99, 103) The parties ultimately were not able to resolve the issues raised by Mr. Hamilton.

Because Mrs. Hamilton made no payment toward the net balance owed for the company's receivables following closing, in 2007 the Garners initiated this action. (CP 1-2) The Garners amended their complaint in January 2008. (CP 17-19) In August 2007 Mrs. Hamilton filed her answer and counterclaim, in which she claimed various breaches of contract, misrepresentation and fraud. (CP 20-27) Mrs. Hamilton claimed damages under her breach of contract and misrepresentation claims, and damages and rescission under the fraud claim, though at no time did Mrs. Hamilton ever tender the business back to the Garners or attempt to rescind the parties' transaction.

At trial, Mr. Garner testified that the \$67,840.06 originally prayed for in the Garners' complaint for net accounts receivable due reflected a deduction from the \$130,874.82 reported by CPA

Nichols of the \$43,079.01 check cashed by the Garners after closing. (March 29<sup>th</sup> RP 28-29) Mr. Hamilton testified that he accounted for this additional overdraft, beyond the expected overdraft of \$40,675.03 reflected in the Leadsheet Grouping reviewed prior to closing, in his handwritten calculations shown on page 1 of Exhibit 39. (March 31<sup>st</sup> RP 5-6)

Mr. Hamilton testified at trial that the Hamiltons had not been informed of the Company's purchase of trucks 201 and 251 prior to closing. Hamilton thus claimed damages for all payments on the purchase loan for trucks 201 and 251 made by the Company after closing, though Mr. Hamilton acknowledged that they used the trucks in the Company's business operations without ever raising any complaint regarding the trucks to the Garners after closing. (March 31<sup>st</sup> RP 111-113, 118-119)

Mr. Hamilton further testified that, though the closing documents submitted at trial reflected that trailers 5517, 5518, 5521 and 5522 were leased equipment and not owned by the Company, he and his wife had not been aware at closing that the trailers had been sold and TRAC leased because the relevant documents had not been available for their review at closing. (March 31<sup>st</sup> RP 29, 36-38) However, on cross examination Mr. Hamilton admitted that

he and his wife had actually initialed documentation reflecting the TRAC leases of those trailers. (March 31<sup>st</sup> RP 113-115, Ex. 14.26)

Following trial, the trial court found that, despite the parties having submitted two differing figures for the net amounts of accounts receivable owed to the Garners, the parties had agreed at trial that the net amount owed to the Garners was \$41,025.00. (Finding of Fact 10 at CP 44) And, despite the parties having clearly accounted for both the initially expected overdraft of \$40,675.03 and the subsequent overdraft of \$43,079.01 caused by the check cashed after closing, the trial court found that only \$43,000.00 had been accounted for by the parties, leaving \$54,000.00 of the actual \$97,000.00 overdraft unaccounted for. (Finding of Fact 11 at CP 44).

The trial court further found that Hamilton had proven damages of \$34,233.00 for Truck 201 and \$30,912.00 for Truck 251, damages of \$21,288.00 for Trailers 5517 and 5518 and damages of \$31,504.00 for Trailers 5521 and 5522. (Findings of Fact 17(b), (c), (d) and (e) at CP 46) The Garners asked for reconsideration of these issues, but the trial court denied the Garners motion on June 1, 2010. (CP 83)

### III.

#### ARGUMENT

Appellate Courts review de novo questions of law and a trial court's conclusions of law. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wash.2d 873, 880, 73 P.3d 369 (2003). Appellate Courts review findings of fact "under a substantial evidence standard." *Pardee v. Jolly*, 163 Wash.2d 558, 566, 182 P.3d 967 (2008). "Substantial evidence is evidence that would persuade a fair-minded person of the truth of the statement asserted." *Cingular Wireless, L.L. C. v. Thurston County*, 131 Wash.App. 756, 768, 129 P.3d 300 (2006). In the end "[a] trial court's findings of fact must justify its conclusions of law." *Hegwine v. Longview Fibre Co.*, 162 Wash.2d 340, 353, 172 P.3d 688 (2007).

**A. The net amount of accounts receivable due to the Garners, as reflected in the summary provided at trial by Gary Hamilton, was \$53,992.11.**

The trial court found that the parties agreed at trial that the net accounts receivable at closing due to the Garners was \$41,025.00. However, there is no support in the record for this finding.

The Garners complaint sought \$67,840.06 as the net accounts receivable due after closing under the parties' purchase and sale agreement. (CP 1-2, 17-19) Mr. Garner testified at trial

that this was the net amount due after crediting an additional unanticipated overdraft and some monies owed to Garner Trucking by the Garners' separate company, Quality Hay. (March 29<sup>th</sup> RP 28-30) Mr. Hamilton presented an alternative figure at trial in Exhibit 39, which were the result of his handwritten calculations made to account for problems he noticed after closing. (March 31<sup>st</sup> RP 4-5) The net amount due to the Garners as shown in Ex. 39 was \$41,675.49. At no time did either Mr. Garner or Mr. Hamilton ever testify that they agreed to the alternative figure found by the trial court of \$41,025.00.

Taking the evidence most favorable to Hamilton, the actual figure as calculated by Mr. Hamilton in Ex. 39 was \$41,675.49. Mr. Hamilton's testimony on cross examination demonstrated, however, that the last line item deduction contained in Ex. 39, in the amount of \$12,316.62, was a double deduction of certain accounts payable from page 2 of the Leadsheet Grouping (pages 2 and 3 of Ex. 39) listed as "O/O Reserve" items, which had already been deducted by CPA Robin Nichols prior to closing. Crediting back that improper deduction, the evidence submitted by Hamilton shows that the net accounts receivable owed to the Garners should have been \$53,992.11.

Mr. Hamilton's Ex. 39 calculations started at \$130,874.82, which was the net amount that had been determined to be owed the Garners by CPA Nichols as reflected on page 5 of Exhibit 39, which was an e-mail from CPA Nichols to Mr. Hamilton and Mr. Garner and stated that the "revised balance due Ron" was \$130,874.82. In reaching that figure, CPA Nichols had gone through the Leadsheet Grouping (pages 2 and 3 of Ex. 39) and, as reflected on the adding machine tape found at page 4 of Ex. 39, added accounts receivable and other assets, then subtracted all liabilities, to reach the net amount due the Garners. The initial calculation on page 4 of Ex. 39 was \$129,357.35, though she shortly thereafter amended that figure in her e-mail message found on page 5 of Ex. 39.

Mr. Hamilton, in his Ex. 39 handwritten calculations, made a deduction of \$12,316.62. He acknowledged on cross-examination that this deduction was for the certain items listed under the heading "0/0 Reserve" on the Leadsheet Grouping. (March 31<sup>st</sup> RP 100-101). However, those same numbers had already been deducted by CPA Nichols as reflected on the adding tape on page 4 of Ex. 39, as Mr. Hamilton admitted on cross-examination. (March 31<sup>st</sup> RP 101-102). The entire section of the Leadsheet

Grouping in which the "0/0 Reserve" entries are listed totaled \$256,566.25 as reflected on page 2 of Ex. 39, and the adding tape on page 4 of Ex. 39 lists a deduction for the entire section, in the amount of \$256,566.25.

The documentation clearly demonstrates that Mr. Hamilton erroneously deducted "0/0 Reserve" entries that had already been deducted and were reflected in the starting number of his calculations, \$130,874.82. Adding back the erroneously deducted \$12,316.62 to the \$41,675.49 net total calculated by Mr. Hamilton thus results in a correct net total due to the Garners, according to the figures presented at trial by Mr. Hamilton, of \$53,992.11.

**B. The net unaccounted overdraft in the Company's checking account at closing was \$13,245.96, not the \$54,000.00 found by the trial court.**

The trial court found at Finding of Fact 11 that Hamilton had presented evidence that there was an overdraft in the Company's checking account after closing in the amount of \$97,000.00. The trial court went on to find that the parties had accounted for \$43,000.00 of that overdraft, leaving an unaccounted for overdraft of \$54,000.00. However, the evidence at trial conclusively demonstrated that \$84,746.52 of the overdraft, not just the \$43,000.00 found by the Court, was accounted for by the parties.

Mr. Garner and Mr. Hamilton both testified that the Leadsheet Grouping (found in Ex. 39) was reviewed by Mr. Hamilton, Mr. Garner and CPA Robin Nichols shortly before closing. (March 29<sup>th</sup> RP 21, March 30<sup>th</sup> RP 47-48) At the top of the first page of that document, the "Checking Account" entry reflected an overdraft of \$40,675.03. Mr. Hamilton thus testified that he was aware of that portion of the overdraft prior to closing. (March 31<sup>st</sup> RP 122) Moreover, that overdraft amount was accounted for in the adding machine calculations done by CPA Nichols found at page 4 of Exhibit 39 to reach the net accounts receivable figure she reported in her July 14, 2006 e-mail to the parties (page 5 of Ex. 39) of \$130,874.82.

There also is no dispute that after closing Mr. Hamilton discovered that there was an additional \$43,079.01 overdraft due to checks made out to Mr. Garner prior to closing but cashed after closing. (Ex. 18) Mr. Hamilton deducted this amount in his Ex. 39 hand written accounting from the \$130,874.82 reported by Ms. Nichols in arriving at his net accounts receivable figure of \$41,675.49. Those deductions are the first two line item deductions found on page one of Exhibit 39. (March 31<sup>st</sup> RP 5-6)

Thus, in determining the net amount of accounts receivable

due to the Garners, CPA Nichols had prior to closing accounted for \$40,675.03 of the checking account overdraft. After closing, Mr. Hamilton in his Ex. 39 further accounted for the \$43,079.01 additional overdraft caused by the checks to Mr. Garner cashed at closing. Thus a total of \$83,754.04 of the overdraft was accounted for in arriving at the net accounts receivable owed to the Garners, not the \$43,000.00 found by the trial court in Finding of Fact 11. The net unaccounted for overdraft is thus actually \$13,245.96 (\$97,000.00 - \$83,754.04), not the \$54,000.00 found by the trial court and awarded to Hamilton.

**C. Hamilton failed to prove damages, or to mitigate its claimed damages, related to Trucks 201 and 251 and should not have been awarded any damages for those trucks.**

Mr. Hamilton claimed at trial that he had not known prior to closing that the Company had purchased Trucks 201 and 251. However, he acknowledged on cross examination that he never complained about these two trucks (201 and 251) to Mr. Garner at any time after closing. (March 31<sup>st</sup> RP 111-113, 118-119)

That testimony comports with the documentary evidence, which shows that he never complained about the trucks or asked the Garners to take them back or otherwise remove them from Garner Trucking. Instead, in Exs. 4 and 6, Mr. Hamilton's letters to

Mr. Garner shortly after closing, Mr. Hamilton complained about a host of issues he believed he had discovered after closing, including the trailers, but never mentioned the trucks.

The Garners raised the affirmative defense of failure to mitigate damages in their answer to Hamilton's counterclaim. Washington law on mitigation of damages requires that a party exercise reasonable efforts to mitigate their damages. *Kloss v. Honeywell, Inc.*, 77 Wn. App. 294, 890 P.2d 480 (1995). Yet the undisputed evidence at trial was that the Hamiltons kept Trucks 201 and 251, using them in their business to generate revenue as they thought fit, without raising any complaint or seeking to dispose of them.

Mr. Garner testified that he could have arranged to transfer the trucks to other trucking companies owned by friends of his had Mr. Hamilton complained about the trucks or asked him to take them back. (March 29<sup>th</sup> RP 59) Instead, the Hamiltons kept the trucks, used them in their business and made 29 monthly payments on the trucks. Only two and a half years later did the Hamiltons decide to return the trucks to PACCAR and seek damages from the Garners in the amount of all 29 monthly payments. Under their theory, had they decided to keep the trucks another six months, or

even an additional twelve months, the Garners would have been responsible for another six months - or twelve months – of damages, at the whim of the Hamiltons.

A party cannot accept the benefit provided by an asset – in this case two trucks - for over two years without complaint and then change its mind and seek damages for all payments made during the intervening years. A party ratifies a contract if, after discovery of facts that would warrant rescission, that party remains silent or continues to accept benefits under the contract. *Hooper v. Yakima County*, 79 Wash.App. 770, 775-76, 904 P.2d 1193 (1995), overruled on other grounds by *Del Rosario v. Del Rosario*, 152 Wash.2d 375, 97 P.3d 11 (2004).

Moreover, by accepting the benefit of the trucks for 29 months, continuing to make payments on the trucks without any objection or to ask the Garners to take the trucks back if they were not wanted, the Hamiltons clearly failed to make any effort to mitigate their claimed damages. Indeed, by keeping and using the trucks for over two years, it is doubtful the Hamiltons even were damaged. In any event, 29 months of voluntary lease payments cannot form a legitimate basis for an award of damages against the Garners.

D. **The evidence at trial conclusively demonstrated that Hamilton was, despite its initial claims to the contrary, aware of the leases for trailers 5517, 5518, 5521 and 5522 prior to closing.**

Hamilton's claims related to the trailers was based on Mr. Hamilton's assertion that, although Exhibit A to the Purchase and Sale Agreement (Ex. 14.6(A)) clearly listed trailers 5517, 5518, 5521 and 5522 as TRAC leased equipment, that exhibit was not available at closing. (March 31<sup>st</sup> RP 29, 36-38) Mr. Hamilton thus claimed that the Hamiltons were not aware of the changed status of the trailers - from owned trailers to TRAC leased trailers - prior to closing. However, on cross examination he acknowledged that he and his wife had reviewed and initialed an equipment list provided to him by his lender, Wachovia, prior to closing. (March 31, 2010 RP 113-115, Ex. 14.26) That equipment list specifically listed these trailers as being on TRAC leases.

The Hamiltons were thus clearly aware prior to closing that the trailers were TRAC leased. As they elected to close with that knowledge, they cannot claim damages related to those trailers.

IV.

**CONCLUSION**

The trial court erred in finding that the net amount of accounts receivable due to the Garners was \$41,025.00, as the

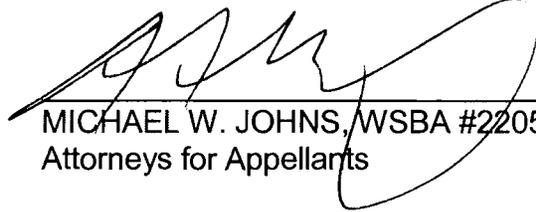
actual amount reflected in the summary provided by Gary Hamilton at trial was \$53,992.11. The trial court further erred in finding that the net unaccounted overdraft in Garner Trucking's checking account at closing was \$54,000.00, as the actual figure as testified by both Mr. Hamilton and Mr. Garner was \$13,245.96.

The trial court further erred in finding that Hamilton proved damages of \$34,233.00 for Truck 201 and \$30,912.00 for Truck 251, damages of \$21,288.00 for Trailers 5517 and 5518 and damages of \$31,504.00 for Trailers 5521 and 5522, and by failing to determine that Hamilton had failed to mitigate its claimed damages.

Correcting the errors reflected above, the net judgment awarded to Hamilton in the amount of \$72,567.93 should be vacated and this matter should be remanded to the trial court for entry of a net judgment in the amount of \$68,178.22 in favor of the Garners.

Respectfully submitted this 25<sup>th</sup> day August, 2010.

ROBERTS JOHNS & HEMPHILL, PLLC



MICHAEL W. JOHNS, WSBA #22054  
Attorneys for Appellants

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BY \_\_\_\_\_

**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing APPELLANTS' OPENING BRIEF on the following individuals in the manner indicated:

Kristina A. Driessen  
RYAN DRIESSEN & SMALL  
16 "A" Street S.E.  
Auburn, WA 98002-5433

(X) Via Hand Delivery (ABC Legal Messengers)

SIGNED this 26<sup>th</sup> day of August, 2010, at Gig Harbor, Washington.

  
KRISTINE R. PYLE

## **APPENDIX – EX. 39**

130,874.82

- 41,034.76

- 2,044.25

- 26,814.94

- 6,988.76

- 12,316.62

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41,675.49

Garner Trucking, Inc.  
 Year End: September 30, 2006  
 Leadsheet/Grouping  
 As At June 30, 2006

5K-1

Account	Prelim	Adj's	Reclass	Rep	Annotation	Rep 06/05	%Ch
1622 ACCUM DEPREC - PEOPLENET F	(440.71)	0.00	0.00	(440.71)		0.00	0
1630 ACCUM DEPREC - OFFICE EQUIP	(3,736.98)	0.00	0.00	(3,736.98)		0.00	0
1640 ACCUM DEPREC - OFFICE FURN	(1,071.84)	0.00	0.00	(1,071.84)		0.00	0
1650 ACCUM DEPREC-SOFTWARE	(17,256.41)	0.00	0.00	(17,256.41)		0.00	0
1660 AMORTZ - LEASEHOLD IMPROVE	(387.86)	0.00	0.00	(387.86)		0.00	0
1670 ACCUM DEPREC - PEOPLENET E	(17,208.21)	0.00	0.00	(17,208.21)		0.00	0
D3 Accumulated Depreciation	(153,320.84)	(1,860.40)	0.00	(155,181.24)		0.00	0
2426 N/P RON & MARILYN GARNER	(2,044.25)	2,044.25	0.00	0.00		0.00	0
2620 N/P RON GARNER	(43,050.76)	43,050.76	0.00	0.00		0.00	0
L1 Notes Payable-Related Parties	(45,095.01)	45,095.01	0.00	0.00		0.00	0
2410 Current Portion LTD	0.00	86,067.21	0.00	<del>86,067.21</del>		0.00	0
2427 N/P FIFE COMMERCIAL BANK	(26,129.02)	0.00	0.00	(26,129.02)		0.00	0
2516 N/P WPI #600	(90,168.49)	0.00	0.00	(90,168.49)		0.00	0
2517 N/P #602	(26,814.94)	0.00	0.00	(26,814.94)		0.00	0
2525 N/P #2227/4407	(7,142.22)	0.00	0.00	(7,142.22)		0.00	0
2570 N/P #531001/02/03/04	(6,988.76)	0.00	0.00	(6,988.76)		0.00	0
2580 N/P RAPID CAPITAL-PEOPLENET	(18,416.51)	0.00	0.00	(18,416.51)		0.00	0
LL Notes Payable	(175,659.94)	86,067.21	0.00	(89,592.73)		0.00	0
2010 ACCOUNTS PAYABLE	(192,761.52)	0.00	0.00	(192,761.52)		0.00	0
2011 A/P REIMBURSEMENTS	5,170.77	0.00	0.00	5,170.77		0.00	0
2015 O/O RESERVE - BRIAN AUSMUS	(2,515.04)	0.00	0.00	(2,515.04)		0.00	0
2022 O/O RESERVE - CODY GARNER	(2,500.00)	0.00	0.00	(2,500.00)		0.00	0
2023 O/O RESERVE - PAUL FULLER	(1,505.99)	0.00	0.00	(1,505.99)		0.00	0
2026 O/O RESERVE - STEVE HEMENVA	(2,519.78)	0.00	0.00	(2,519.78)		0.00	0
2035 O/O RESERVE - SCOTT JEWETT	(3,377.98)	0.00	0.00	(3,377.98)		0.00	0
2037 O/O RESERVE - R. KIRSCHMAN	(3,098.24)	0.00	0.00	(3,098.24)		0.00	0
2100 ACCRUED SALARIES/WAGES PA	(33,174.19)	0.00	0.00	(33,174.19)		0.00	0
2211 FEDERAL WITHHOLDING PAYABI	(7,553.53)	7,553.53	0.00	0.00		0.00	0
2221 FICA PAYABLE	(7,673.12)	0.00	0.00	(7,673.12)		0.00	0
2231 FUTA PAYABLE	(27.08)	0.00	0.00	(27.08)		0.00	0
2241 STATE WITHHOLDING PAYABLE	(1,768.45)	0.00	0.00	(1,768.45)		0.00	0
2251 SUTA PAYABLE	(238.12)	0.00	0.00	(238.12)		0.00	0
2261 WORK COMP LIABILITY PAYABLE	(4,577.51)	0.00	0.00	(4,577.51)		0.00	0
2327 INSURANCE DEPOSIT - CODY GA	(1,200.00)	0.00	0.00	(1,200.00)		0.00	0
2335 INSURANCE DEPOSIT - S. HEMEI	(1,200.00)	0.00	0.00	(1,200.00)		0.00	0
2345 INSURANCE DEPOSIT - S. JEWET	(1,200.00)	0.00	0.00	(1,200.00)		0.00	0
2349 INSURANCE DEPOSIT - R. KIRSCI	(1,200.00)	0.00	0.00	(1,200.00)		0.00	0
2353 INSURANCE DEPOSIT - A. NAILL	(1,200.00)	0.00	0.00	(1,200.00)		0.00	0
H Accounts payable & acc. liab.	(264,119.78)	7,553.53	0.00	(256,566.25)		0.00	0
2700 Long Term Debt	0.00	(86,067.21)	0.00	(86,067.21)		0.00	0
L Long term debt and related interes	0.00	(86,067.21)	0.00	(86,067.21)		0.00	0
2420 DEFERRED FEDERAL INC TAX	(19,110.56)	(14,360.25)	0.00	(33,470.81)		0.00	0
PP Deferred taxes	(19,110.56)	(14,360.25)	0.00	(33,470.81)		0.00	0
3200 CAPITOL STOCK	(500.00)	0.00	0.00	(500.00)		0.00	0
P Capital stock	(500.00)	0.00	0.00	(500.00)		0.00	0
3100 RETAINED EARNINGS	(244,561.42)	8,667.12	0.00	(235,894.30)		0.00	0
TT Retained earnings	(244,561.42)	8,667.12	0.00	(235,894.30)		0.00	0
3300 ADDITIONAL PAID IN CAPITOL	(500.00)	0.00	0.00	(500.00)		0.00	0
TT. 1 Contributed and other surplus	(500.00)	0.00	0.00	(500.00)		0.00	0

keep

RECORDED?  
 AL NAILL

72,503.76



AR

1000-900

0. C

283,703.74 +  
 21,041.55 +  
 30,515.67 +  
 8,794.39 +  
 14,000.00 +  
 2,000.00 +  
 2,000.00 +  
 2,431.53 +  
 2,387.02 +  
 2,515.04 +  
 1,502.58 +  
 2,519.78 +  
 3,127.98 +  
 2,798.24 +  
 3,612.00 +  
 16,029.00 +  
 9,355.86 +  
 14,201.04 +  
 6,650.64 +  
 5,200.00 +

020.....  
 434,486.05 ◊  
 40,475.03 -  
 337.90 -  
~~26,129.02~~ +  
~~.....~~ -  
~~.....~~ -  
 26,129.02 +  
 256,546.25 -

027.....  
 136,910.88 \*

136,910.88 +

7,553.53 -  
 002.....  
 129,357.35 \*

(2075.16)

14801012

**Ron Garner**

---

**From:** "Robin Nichols" <robin@nichols-ps.com>  
**To:** "Gary Hamilton" <ght@integrity.com>; "Ron Garner" <ron@garnerquality.com>  
**Sent:** Friday, July 14, 2006 10:57 AM  
**Subject:** Tax payable/receivable

Hi guys,

After looking at the prior couple of months tax workpapers and checking with JoAnn, the bottom line is this.

The credit of \$7,553.53 for withholding tax payable does belong in the calculation, but the accrual charged against the prepaid account the prior month of \$1,517.47 should be added back in since the total credit that Garner Trucking has with IRS for this fiscal year is \$3,949.00. On the detailed balance sheet this appears as account 1140 with a balance of 2431.53 which we included as an asset on the tape.

Revised tape calculation follows:

Balance after deducting the \$7,553.53 =	\$129,357.35
Correct adjustment for taxes	1,517.47
Revised balance due Ron	\$130,874.82

Please confirm that you received this message and let me know if you need anything else or have further questions/clarifications.

Robin A. Nichols  
Nichols & Associates PS Inc.  
315 - 39th Ave. SW Suite #7  
Puyallup, WA 98373  
Tel: (253)770-2600  
Fax: (253)770-2610  
Email: [robin@nichols-ps.com](mailto:robin@nichols-ps.com)

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Thank you.

--  
No virus found in this incoming message.

## **APPENDIX – EX. 18**

**GARNER TRUCKING INC**

P.O. BOX 1229  
BUCKLEY, WA 98321-1229  
(253) 826-8726

FIFE COMMERCIAL BANK  
5209 PACIFIC HIGHWAY EAST  
FIFE, WA 98424  
253-922-5100  
95-8471281 01

CHECK NO.

16273

DATE

AMOUNT

07/05/2008

\$2,044.2

PAY

TWO THOUSAND FORTY-FOUR DOLLARS AND 25 CENTS

TO THE ORDER OF

RONALD W GARNER  
PO BOX 800  
BUCKLEY WA 98321-0800

**VOID**

*Jan Ballard*  
AUTHORIZED SIGNATURE

⑈016273⑈ ⑆25108476⑆0104007364⑈

**GARNER TRUCKING INC**

P.O. BOX 1229  
BUCKLEY, WA 98321-1229  
(253) 826-8726

FIFE COMMERCIAL BANK  
5209 PACIFIC HIGHWAY EAST  
FIFE, WA 98424  
253-922-5100  
95-8471281 01

CHECK NO.

16275

DATE

AMOUNT

07/05/2008

\$43,050.76

PAY

FORTY-THREE THOUSAND FIFTY DOLLARS AND 76 CENTS

TO THE ORDER OF

RONALD W GARNER  
PO BOX 800  
BUCKLEY WA 98321-0800

**VOID**

*Jan Ballard*  
AUTHORIZED SIGNATURE

⑈016275⑈ ⑆25108476⑆0104007364⑈

This check replaces the two above minus to 7/16<sup>00</sup> that was on the balance sheet as an advance to me

GARNER TRUCKING, INC.  
P.O. BOX 1229  
BUCKLEY, WA 98321-1229  
253-826-8726

6/30/06

9710  
95-8471281

DATE

PAY TO THE ORDER OF *Ron Garner*

*Forty Three Thousand Seven Hundred and 01/100* DOLLARS

\$ 43,079.01

FIFE COMMERCIAL BANK  
5209 Pacific Highway East  
FIFE, WA 98424  
253-922-5100

TICR

⑈25108476⑆0104007364⑈ 9710

*Comp. 2/15/06 (Just closed)*

pg 8

## **APPENDIX – EX. 4**

# GARNER TRUCKING, INC.

Loans / Track Leases not paid off at closing.

Trailers 5517/5518	19,348.21
Aug Payment	970.19
Last Payment	<u>970.19</u>
	21,288.59

Trailers 5521/5522	30,477.25
Aug Payment	<u>1026.90</u>
	31,504.90

Trailers 4408/2228	24,308.48
--------------------	-----------

Assets paid for not received.

Tires	6,650.00
(pre paid tires from balance sheet put on trucks within first week and a half July 19 <sup>th</sup> -28 <sup>th</sup> )	

Office Equipment not received.	Group 1530	289.19 Printer
		496.40 Laptop

	Group 1540	3691.63
--	------------	---------

	Group 1560	5688.37
--	------------	---------

Phone number	(253) 905-4077	10,000.00 ?
--------------	----------------	-------------

Fax number	(253) 862-1572	10,000.00 ?
------------	----------------	-------------

(Fax number shut off rather than transferred to Puyallup)

Sub Total	113,917.56
-----------	------------

Credit For Trailers 4407/2227	(10,500.00)
-------------------------------	-------------

(not show on equipment list but paid for.)

Receivables	(41,675.49)
-------------	-------------

Total Owned	61,742.07
-------------	-----------

## Garner Trucking Inc.

14119 Pioneer Way E., Suite A • Puyallup, WA 98372

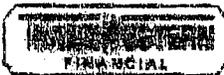
(253) 841-5607 • Fax (253) 841-0838

130,874.82  
- 41,034.76  
- 2,044.25  
- 26,814.94  
- 6,988.76  
- 12,316.62

---

41,675.49

From ACCOUNT  
RECEIVABLES



6700 Business Way  
Boise, Idaho 83705  
Phone (208) 344-1521  
FAX (208) 342-1046  
www.Industrial.com

## FAX Cover Sheet

1 Page(s) including this cover sheet

To: Garner Trucking, Inc. ATTN: Gary Hamilton  
Fax No. 253-841-0838

From: Dave Babcock

Date: September 7, 2006

RE: Current Payoffs for Schedules 3 and 6

Gary, the payoffs you requested for the referenced lease schedules are as follows:

- Schedule 3 (60/20 TRAC Lease), a set of 2002 WESTERN B-Trains (VIN B000103 and B000104), is \$19,348.21. This amount is based on 51 payments received through August 31, 2006 including the last month's payment, which was paid at lease commencement.
- Schedule 6 (36/20 TRAC Lease), a set of 1997 ARNE's B-Trains (VIN 003123 and 003124), is \$30,477.25. This amount is based on 11 payments received through August 31, 2006.

I will try to get the lease summary finished and faxed to you tomorrow. Other than that, please let me know if there is any other information I can provide.

Dave Babcock  
Sales Finance Manager  
208-344-2539 Phone  
208-344-1521 Fax



Asset	Property Description	Date In Service	Book Cost	Book Sec 179 Exp c	Book Sal Value	Book Prior Depreciation	Book Current Depreciation	Book End Depr	Book Net Book Value	Book Method	Book Period
<b>Group: 1528 Computer Software (continued)</b>											
43	Keystroke User Licenses	2/09/04	1,729.60	0.00	0.00	720.67	28.82	749.49	980.11	S/L	5.0
	1528 Computer Software		21,732.89	0.00c	0.00	16,983.91	116.25	17,120.16	4,637.73		
<b>Group: 1530 Office Equipment</b>											
22	Brother 9700 Printer	10/28/01	510.35	0.00	0.00	212.65	8.51	221.16	289.19	S/L	5.0
23	Laptop (RG)	2/03/04	876.00	0.00	0.00	365.00	14.60	379.60	496.40	S/L	5.0
24	Office Equipment Purchased from F	7/08/04	1,214.00	0.00	0.00	595.83	20.24	626.07	687.93	S/L	5.0
25	Computer	8/30/04	350.00	0.00	0.00	229.17	9.16	238.33	311.67	S/L	5.0
44	Computer w/ Keyboard & Monitor	11/07/00	800.00	0.00	0.00	800.00	0.00	800.00	0.00	S/L	5.0
45	Monitor and Speakers	12/29/00	450.00	0.00	0.00	450.00	0.00	450.00	0.00	S/L	5.0
46	Pentium 4 PC	3/04/02	824.59	0.00	0.00	673.42	13.75	687.17	137.42	S/L	5.0
49	Computer Monitors	12/26/04	1,227.96	0.00	0.00	327.45	20.47	347.92	880.04	S/L	5.0
	1530 Office Equipment		6,452.90	0.00c	0.00	3,563.52	86.73	3,650.25	2,802.65		
<b>Group: 1540 Office Furn &amp; Fixt</b>											
26	Office Chair	1/28/04	151.23	0.00	0.00	63.02	2.52	65.54	85.69	S/L	5.0
47	Desk	7/01/02	369.91	0.00	72.00	243.28	4.97	248.25	121.66	S/L	5.0
50	Tuff Shed	5/07/05	2,614.44	0.00	0.00	321.89	43.57	365.46	2,047.98	S/L	5.0
56	Office Furniture	12/20/05	966.14	0.00c	0.00	72.46	14.49	86.95	879.19	S/L	5.0
57	File Cabinet	3/08/06	586.43	0.00c	0.00	19.55	9.73	29.32	557.11	S/L	5.0
	1540 Office Furn & Fixt		4,688.15	0.00c	72.00	921.20	75.32	996.52	3,691.63		
<b>Group: 1568 Leasehold Improvements</b>											
27	Yard Gravel	7/19/04	518.00	0.00	0.00	63.30	2.88	66.18	451.82	S/L	15.0
28	Yard Gravel	6/30/04	1,788.60	0.00	0.00	208.67	9.93	218.60	1,570.00	S/L	15.0
51	Gravel - Buckley Yard	1/18/05	500.00	0.00	0.00	41.66	3.78	45.44	455.56	S/L	15.0
52	Office Carpet	12/15/05	701.10	0.00c	0.00	7.31	1.46	8.77	692.33	S/L	40.0
53	Shop Lighting, etc	12/03/05	969.70	0.00c	0.00	10.10	2.02	12.12	957.58	S/L	40.0
54	Office Carpet - Leasehold Imp	12/29/05	363.50	0.00c	0.00	3.41	0.68	4.09	359.41	S/L	40.0
55	Light Fixtures & Install office	1/13/06	424.49	0.00c	0.00	1.54	0.38	1.92	422.57	S/L	40.0
58	Casings & Solar Flood Lighting	3/01/06	90.79	0.00c	0.00	0.38	0.19	0.57	90.22	S/L	40.0
59	Lighting	12/23/05	166.86	0.00c	0.00	1.56	0.32	1.88	164.98	S/L	40.0
60	Shop Sink Parts	12/22/05	46.80	0.00c	0.00	0.44	0.09	0.53	46.27	S/L	40.0
61	Doors	2/08/06	484.16	0.00c	0.00	3.03	1.00	4.03	480.13	S/L	40.0
	1568 Leasehold Improvements		6,054.00	0.00c	0.00	343.40	22.23	365.63	5,688.37		
<b>Group: 1570 Capital Leased Equip</b>											
29	8 Units Peoplaxet Equipment	2/10/04	25,650.89	0.00	0.00	10,687.88	427.51	11,115.39	14,535.50	S/L	5.0
30	2 Units Peoplaxet Equipment	2/10/04	10,686.34	0.00	0.00	4,453.47	178.14	4,631.61	6,056.73	S/L	5.0
64	7 Units Peoplaxet Equipment	3/31/06	14,972.18	0.00c	0.00	427.78	213.89	641.67	14,330.51	S/L	5.0

## **APPENDIX – EX. 6**



January 15, 2007

Ron;

This is my response to your letter requesting a greater explanation dated November 14, 2006

1. Trailers 5517 & 5518 were on the supporting documents faxed to you, they are identified as Schedule 3, a set of 2002 Western B-Trains VIN B000103 and B000104. These trailers were identified on the original equipment list dated February 15, 2005 as being trailers financed though Tran Western not leased. According to our sales agreement all financed equipment is to be paid off free and clear. I have an email from Joann's computer to you dated June 27, 2006 that changes the values and lien Holders of said equipment. The values on this document are different from the original equipment list and the lien status has been changed. These documents were never forwarded onto me before closing. If you forwarded these changes to Salim Dada please provide me with that documentation. As it stands you owe Garner Trucking \$21,288.59 to pay off these trailers per our sales agreement.
2. Trailers 5521 & 5522 are on the same supporting document as Trailer 5517 & 5518, they identified as Schedule 6, a set of 1997 Arne's B-Trains VIN 003123 and 003124. Same thing applies to these trailers as Item 1. I found they were misrepresented. If you have documentation on changes to them, please forward them to me. Per our sales agreement you owe Garner Trucking \$31,504.90 to pay off these trailers.
3. Trailers 4408 & 2228 are 1985 Alloys VIN 1ALFF4283FS851076 and 1ALSF8283FS851066. These trailers were sold to Trans Western on May 10, 2006. On May 8, 2006 you signed a letter of intent, which did not permit any changes of this type. These trailers were sold for \$20,000 dollars, two thousand more than valued on the equipment list. If you notified Silam Dada about this transaction please supply documentation. The \$20,000 dollars was put in Garner Trucking checking account. This passed through to you, per our cash agreement at time of closing. With interest and fees you owe Garner

**Garner Trucking Inc.**

14119 Pioneer Way E., Suite A • Puyallup, WA 98372  
(253) 841-5607 • Fax (253) 841-0838

# **GARNER**

## **TRUCKING, INC.**

Trucking \$24,308.48 this is also in direct violation of the Purchase Agreement.

4. You charged me for 40 tires bought but not used (prepaid tires.) I had to put them on trucks or trailers to make the equipment legal for highways use. This had to be done with in two weeks after July 19, 2006 the purchase date of the Company. Just because you withheld and did not put them on trucks does not make them extra tires. You've asked for \$6650 dollars credit for tires in inventory, by legal standards there were no extra tires.
5. Group 1630 (1530) of Book deprecation. Lap Top and Brother 9700 Printer, you told me that they belong to you personally. I have found evidence they belong to Garner Trucking. I ask they be returned immediately. Anything on it is property of Garner Trucking. Any files removed personal or business is illegal and I will take action to recover them.
6. Group 1640 (1540) The Tuff-Shed and File Cabinet were never disclosed but are property of Garner Trucking. Please deliver them to 14119 Pioneer Way E Puyallup, WA. The other things, the Office Chair and Desk I told you to keep them, I stand by that.
7. Group 1660 (1560) has no value to me other than it should have been disclosed. This needs to be address because it points to a pattern though out this whole deal.
8. You asked to keep the phone number 253-905-4077. As a part of Garner Trucking this was acceptable. On September 18, 2006 after having a meeting with you about irregularities in the Books you left our offices. (You also wanted to lease a truck you purchased to Garner Trucking.) During the week of September 24, 2006 I called you and asked if you were going to come back in to finish working the hours you agreed on at the time of sale. Your reply was something about moving to the consulting part of our agreement. I have a signed copy that you agreed to work twelve weeks, 250 hours in my office (You are short 88 hours.) Your nonperformance was interpreted by me as quitting. Since you no longer work for Garner Trucking we need our phone number. I believe there is a value for the use of the number. I believe when I paid for the Company it included all phone numbers.

**Garner Trucking Inc.**

14119 Pioneer Way E., Suite A • Puyallup, WA 98372  
(253) 841-5607 • Fax (253) 841-0838

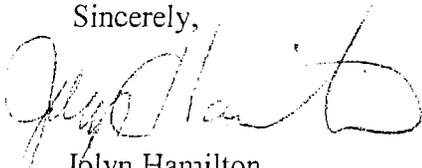
# **GARNER**

**TRUCKING, INC.**

9. Fax line 253-862-1572 this phone number as you indicate was sold as a Garner Trucking number. (Legally it belonged to Quality Hay.) Only you could change the billing to Garner Trucking. You had a chance to change the fax number over when you changed the main number 253-862-8726, but you did not why? This raises a question why you did not completely separate Garner Trucking and Quality Hay completely before you put the Company up for sale. As per the phone bill I will pay any out standing charges, if you will pay the long distance charges on 253-862-8726 after July 19<sup>th</sup> most were put on in the evening probably for Quality Hay.
  
10. Credit for Trailers 4407 & 2207. After contacting Wachovia Bank I have papers showing they were paid for at closing. They are property of Garner Trucking and not for sale.

Ron you owe Garner Trucking \$62,075.89 and Quality Hay owes \$19,336.87 a total \$81,412.76. Groups 1530, 1540, and 1560 are no longer up for negotiation. Please pay this and return any and all property belonging to Garner Trucking by February 1, 2007.

Sincerely,



Jolyn Hamilton  
President

**Garner Trucking Inc.**

14119 Pioneer Way E., Suite A • Puyallup, WA 98372  
(253) 841-5607 • Fax (253) 841-0838

# GARNER

## TRUCKING, INC.

Loans / Track Leases not paid off at closing.

Trailers 5517/5518	19,348.21
Aug Payment	970.19
Last Payment	<u>970.19</u>
	21,288.59

Trailers 5521/5522	30,477.25
Aug Payment	<u>1026.90</u>
	31,504.90

Trailers 4408/2228	24,308.48
--------------------	-----------

Assets paid for not received.

Tires	6,650.00
-------	----------

(pre paid tires from balance sheet put on trucks within first week and a half July 19<sup>th</sup> -28<sup>th</sup>)

~~Office Equipment not received:-----Group-1530-----289.19-Printer~~  
~~496.40-Laptop~~

~~Group-1540-----3691.63~~

~~Group-1560-----5688.37~~

Phone number (253) 905-4077	10,000.00 ?
Fax number (253) 862-1572	10,000.00 ?

(Fax number shut off rather than transferred to Puyallup)

~~Sub-Total-----113,917.56~~

Credit For Trailers 4407/2227	(10,500.00)
(not show on equipment list but paid for.)	
Receivables	(41,675.49)

Total Owned 61,742.07

Garner Trucking Inc.

14119 Pioneer Way E., Suite A • Puyallup, WA 98372

## **APPENDIX – EX. 14.6(A)**

A.

TRAC LEASED EQUIPMENT

73	2005	PTRB	TRAC	3	PACCAR	1XP5DB9X55D840313
77	2004	KENW	TRAC	3	PACCAR	1XKWDB9X34R068924
201	2006	PTRB	TRAC	3	PACCAR	1XP5DB9X26N894339
251	2007	PTRB	TRAC	3	PACCAR	1XP5DB9X77D668661
C140	2004	WEST	TLR	2	TRANSWESTERN	5DN1640214B000490
C124	2004	WEST	TLR	2	TRANSWESTERN	5DN26242X4B000491
C240	2004	WEST	TLR	2	TRANSWESTERN	5DN1640234B000703
C224	2004	WEST	TLR	2	TRANSWESTERN	5DN2624234B000705
C340	2004	WEST	TLR	2	TRANSWESTERN	5DN1640254B000704
C324	2004	WEST	TLR	2	TRANSWESTERN	5DN2624254B000706
2228	1985	ALLOY	TLR	2	TRANSWESTERN	1ALFF4283FS851076
4408	1985	ALLOY	TLR	2	TRANSWESTERN	1ALSF8283FS851066
5517	2002	WEST	TLR	3	TRANSWESTERN	5DN1140362B000103
5518	2002	WEST	TLR	2	TRANSWESTERN	5DN1128282B000104
5521	1997	ARNE	TLR	3	TRANSWESTERN	2A9114033VA003123
5522	1997	ARNE	TLR	2	TRANSWESTERN	2A9112927VA003124

EXHIBIT A

## **APPENDIX – EX. 14.26**

Exhibit A as attached to the Commercial  
Security Agreement

Garner Trucking Inc. (equipment values not reflected on balance sheet)  
Equipment: Balances Owed/Fair Market Value 2/15/2005

Unit #	Year	Make	Type	Axles	Lien Holder	Bal Owed	FMV	Net
<b>POWER</b>								
189	1998	PTRB	TRACTOR	4	FIFE BANK	\$23,000.00	\$36,000.00	\$13,000.00
190	1998	PTRB	TRACTOR	4	PACCAR	\$23,000.00	\$36,000.00	\$13,000.00
191	1998	PTRB	TRACTOR	4	PACCAR	\$0.00	\$36,000.00	\$36,000.00
192	1998	PTRB	TRACTOR	4	PACCAR	\$0.00	\$36,000.00	\$36,000.00
193	1998	PTRB	TRACTOR	4	PACCAR	\$0.00	\$36,000.00	\$36,000.00
216	1997	PTRB	TRACTOR	3	PACCAR	\$0.00	\$25,000.00	\$25,000.00
244	1997	PTRB	TRACTOR	3	PACCAR	\$0.00	\$25,000.00	\$25,000.00
<b>TRAILING SETS</b>								
5501	1990	COMET	TLR	3	NONE	\$0.00		
5502	1990	COMET	TLR	2	NONE	\$0.00	\$15,000.00	\$15,000.00
5513	1997	WESTERN	TLR	3	NONE	\$0.00		
5514	1997	WESTERN	TLR	2	NONE	\$0.00	\$30,000.00	\$30,000.00
5516	1993	MAGNUM	TLR	3	NONE	\$0.00		
5517	1993	MAGNUM	TLR	2	NONE	\$0.00	\$25,000.00	\$25,000.00
5517	2002	WESTERN	TLR	3	Transwestern			
5518	2002	WESTERN	TLR	2	Transwestern	\$20,000.00	\$45,000.00	\$15,000.00
5521	1997	ARNE	TLR	3	Transwestern			
5522	1997	ARNE	TLR	2	Transwestern	\$20,000.00	\$30,000.00	\$10,000.00
4026	1984	ALLOY	TLR	2				
2226	1984	ALLOY	TLR	2	NONE	\$0.00	\$18,000.00	\$18,000.00
<b>TRAILING SINGLES</b>								
531001	1998	WESTERN	TLR	4	Transwestern	\$0.00	\$30,000.00	\$30,000.00
531002	1998	WESTERN	TLR	4	Transwestern	\$0.00	\$30,000.00	\$30,000.00
531003	1998	WESTERN	TLR	4	Transwestern	\$0.00	\$30,000.00	\$30,000.00
531004	1998	WESTERN	TLR	4	Transwestern	\$0.00	\$30,000.00	\$30,000.00
531013	1998	WESTERN	TLR	4	PACCAR	\$0.00	\$33,000.00	\$33,000.00
<b>TOTALS</b>						<b>\$86,000.00</b>	<b>\$546,000.00</b>	<b>\$450,000.00</b>

TRAC LEASED EQUIPMENT

(NO EQUITY SHOWN BECAUSE THERE INSNT ANY YET)

77	2004	KW	TRAC	3	PACCAR			
73	2005	PBT	TRAC	3	PACCAR			
C140	2004	WESTERN	TLR	2	Transwestern			
C124	2004	WESTERN	TLR	2	Transwestern			
C240	2004	WESTERN	TLR	2	Transwestern			
C224	2004	WESTERN	TLR	2	Transwestern			
C340	2004	WESTERN	TLR	2	Transwestern			
C324	2004	WESTERN	TLR	2	Transwestern			



Exhibits attached to the Commercial Security Agreement

531004	1996 WESTERN	TLR	4	Transwe
531013	1998 WESTERN	TLR	4	NONE
				TOTALS

1C917U8F9T0112553  
 1C917U8F0W0112204

TRAC LEASED WITH EQUITY IF PAID OFF NOW

TRAILING SETS

5517	2002 WESTERN	TLR	3	Transwestern
5518	2002 WESTERN	TLR	2	Transwest
5521	1997 ARNE	TLR	3	Transwestern
5522	1997 ARNE	TLR	2	Transwest

5DN1140362B000103  
 5DN1128282B000104  
 2A9114033VA003123  
 2A9112927VA003124

KEYSTONE OPERATING SYSTEM INTERFACED WITH  
 PEOPLENET COMMUNICATIONS AND TRACKING SYSTEM  
 (NET OF COST MINUS BALANCE DUE ON RAPID CAPITAL LEASE)

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