

69544-4

69544-4

NO. 69544-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL SAYERS,

Appellant.

REC'D
JUN 17 2013
King County Prosecutor
Appellate Unit

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Patrick H. Oishi, Judge

BRIEF OF APPELLANT

JENNIFER J. SWEIGERT
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

2013 JUN 17 PM 4:09
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENT OF ERROR</u>	1
<u>Issue Pertaining to Assignment of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	3
THE COURT EXCEEDED ITS AUTHORITY IN AWARDING RESTITUTION FOR MORE THAN HALF THE VALUE OF AN EXCAVATOR THAT WAS RETURNED LARGELY UNDAMAGED.....	3
D. <u>CONCLUSION</u>	7

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Adams,
121 Wn. App. 438, 88 P.3d 1012 (2004)
rev'd in part on other grounds, 153 Wn.2d 746 (2004) 3

State v. Dedonado,
99 Wn. App. 251, 991 P.2d 1216 (2000)..... 5, 6

State v. Griffith,
164 Wn.2d 960, 195 P.3d 506 (2008)..... 3, 4

State v. Hiatt,
154 Wn.2d 560, 115 P.3d 274 (2005)..... 4

State v. Osborne,
140 Wn. App. 38, 163 P.3d 799 (2007)..... 4

State v. Smith,
42 Wn. App. 399, 711 P.2d 372 (1985)..... 6

RULES, STATUTES, AND OTHER AUTHORITIES

RCW 9.94A.753..... 3, 4

A. ASSIGNMENT OF ERROR

The court erred in awarding restitution for an excavator that was recovered with very minimal damage.

Issue Pertaining to Assignment of Error

A restitution award must be based on the amount of loss to the victim or gain to the offender. Appellant pled guilty to theft of an excavator that was returned to the insurance company after the company had paid the excavator's owner. Although the excavator was returned in nearly the same condition, the insurance company opted to sell it for salvage. Did the court err in awarding the insurance company restitution for the difference between what it paid on the owner's claim and the amount it received when it sold the excavator for salvage?

B. STATEMENT OF THE CASE

By amended information, the King County prosecutor charged appellant Michael Sayers with taking a motor vehicle without permission in the second degree. CP 21. Sayers pled guilty and agreed to pay restitution "for all losses from and damages to the stolen truck, the stolen excavator, and their contents." CP 26.

According to the restitution documentation¹, the insurance company estimated the value of the excavator at \$20,197.00. Appendix at 9-11. It paid to its insured, the excavator's owner, \$19,197.00 (the total value minus the deductible). Id. at 7-8. Later, the excavator was returned to the insurance company. It sold the excavator as salvage for \$8,447.50. Id. at 6-7. The insurance company requested restitution in the amount of \$10,749.50, the amount it paid out less the amount it received when it sold the excavator. Id. at 7-8; RP 10.

Sayers argued restitution was inappropriate because the excavator was returned in the same condition as when it was stolen. RP 13-14. Sayers argued the market value of the returned excavator was significantly higher than the salvage cost, as evidenced by the insurance company's own market research. RP 15; Appendix at 9-11. He argued the restitution statute does not authorize establishing two different values for the item and subtracting the lower from the higher and making the defendant responsible for the difference. CP 40.

The court agreed the excavator appeared to be in more or less the same condition as when it was stolen. RP 18. The State pointed out damage to the ignition panel, and the construction company logo had been

¹ The restitution documentation is attached as an appendix to this brief but appears to have not been filed in the trial court. Counsel for State has agreed the trial court considered the documentation and it should be considered part of the record on appeal.

painted over. RP 19. Sayers had stipulated to the facts contained in the certification for probable cause, which mentioned an uncut key and damage to the ignition and access panel. CP 5, 26. The State argued that, for whatever reason, the salvage cost was all the insurance company was able to obtain for the excavator, and thus the difference between that and what it paid to its insured was actual loss to the insurance company. RP 20-21. The court signed the restitution order as requested by the State. RP 22; CP 41-42. Notice of appeal was timely filed. CP 43.

C. ARGUMENT

THE COURT EXCEEDED ITS AUTHORITY IN AWARDING RESTITUTION FOR MORE THAN HALF THE VALUE OF AN EXCAVATOR THAT WAS RETURNED LARGELY UNDAMAGED.

The restitution order should be vacated because the amount claimed by the insurance company was not covered by the restitution statute, was not supported by the evidence, was not caused by the crime, and was not agreed to by Sayers.

Restitution is entirely a creature of statute. State v. Adams, 121 Wn. App. 438, 440, 88 P.3d 1012 (2004) rev'd in part on other grounds by 153 Wn.2d 746 (2004). Washington's restitution statute covers "damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury." RCW 9.94A.753.

A restitution order must be based on easily ascertainable damages established by a preponderance of the evidence. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008). The amount of loss must be supported by substantial credible evidence. Id. The evidence must afford the court a reasonable basis for estimating the loss without subjecting the court to conjecture or speculation. Id.

Here, the insurance company suffered no personal injury or lost wages. Nor did it lose any property, since the excavator was returned. The only possible restitution claim under RCW 9.94A.753 is for damage to property. The record shows some damage to the excavator. The use of an uncut key appears to have caused damage to the ignition and access panel. CP 5. And the logo and VIN number were painted over. CP 5. But there was no evidence presented that this minor damage to the excavator amounted to \$10,749.50. Appendix; CP 5. The insurance company's decision to sell the excavator as salvage does not afford a reasonable basis for estimating the cost of the damage.

Additionally, the financial loss suffered by the insurance company was not caused by Sayers' offense. A restitution order must be vacated on appeal when the State fails to establish a causal connection between the defendant's crime and the claimed damages and the defendant did not agree to them. State v. Osborne, 140 Wn. App. 38, 42, 163 P.3d 799

(2007). Restitution is limited to reasonably foreseeable consequences of criminal conduct. State v. Hiatt, 154 Wn.2d 560, 564, 115 P.3d 274 (2005). Taking the excavator did not cause the loss to the insurance company. The loss occurred because the insurance company chose either to sell the excavator for far less than its actual market value or to pay its insured far more than the excavator was actually worth. Neither of these choices can be attributed to Sayers, who returned the excavator in largely the same condition as when it was taken. Since the excavator was returned undamaged, it was not reasonably foreseeable that the insurance company would either overpay its insured or undersell the recovered excavator or both. Sayers agreed to pay for damage to the excavator. CP 26. He did not agree to pay for the consequences of unreasonable decisions by the insurance company.

“A causal connection is not established simply because a victim or insurer submits proof of expenditures for replacing property stolen or damaged by the person convicted. Such expenditures may be for items of substantially greater or lesser value than the actual loss.” State v. Dedonado, 99 Wn. App. 251, 257, 991 P.2d 1216 (2000). In Dedonado, the court held it was “unable to determine from the documentation” whether the item purchased as a replacement for a stolen generator was a “proper replacement” or whether all the repairs to the stolen van were due

to the damaged ignition switch. Id. The same dearth of documentation exists in this case. It cannot be determined from the record why the excavator, apparently worth more than \$20,000 to the insured could only be sold for \$8,447.50. The mere mention of the uncut key and some damage to the ignition/access panel does not explain this discrepancy.

A restitution award is an abuse of discretion when it is based on untenable grounds or is manifestly unreasonable. Dedonado, 99 Wn. App. at 255-56. Restitution can be fairly based on either market value or replacement value of the item. State v. Smith, 42 Wn. App. 399, 401-02, 711 P.2d 372 (1985). But the restitution order in this case is an unreasonable combination of the two. Sayers agreed to pay restitution for damage to the excavator. But the court instead calculated the replacement value, less the salvage cost. This essentially charges Sayers not just for the minor damage established in the certification of probable cause, but also for the pre-existing wear and tear on the vehicle. There was no evidence the difference in value between the replacement cost established by the insurance company and the salvage cost it recovered was entirely due to the theft.

Sayers agreed to pay for damage to the excavator. CP 26. The record below does not establish the cost of the damage and instead charges him for the insurance company's unreasonable and unforeseeable decisions. The restitution order should be vacated.

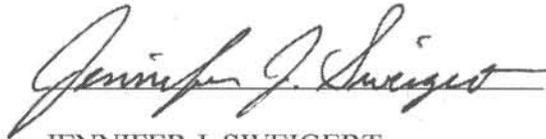
D. CONCLUSION

Sayers requests this Court vacate the restitution order.

DATED this 17th day of June, 2013.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in cursive script, reading "Jennifer J. Sweigert". The signature is written in black ink and is positioned above the printed name.

JENNIFER J. SWEIGERT
WSBA No. 38068
Office ID No. 91051

Attorney for Appellant

Appendix

DANIEL T. SATTERBERG
PROSECUTING ATTORNEY



Office of the Prosecuting Attorney
CRIMINAL DIVISION
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429
(206) 205-7411

August 28, 2012

MEMORANDUM

TIME-SENSITIVE

TO: Kenan Lee Isitt

FROM: Janda Tuggle
Victim Assistance Unit
(206) 205-7417 phone
(206) 205-7475 fax

SUBJECT: STATE V. MICHAEL LANE SAYERS
King County Cause #10-1-05793-1 KNT

If Kenan Isitt is no longer with your office or has withdrawn from this case, please make sure that another attorney from your office is assigned to represent the defendant regarding all restitution matters.

American Transport did not respond with a restitution claim. The plea agreement includes restitution for the stolen excavator. R/S Construction, the owner of the excavator, would like to claim restitution for their loss. Attached you will find an Order Setting Restitution and supporting documentation for expenses incurred as a result of the above case.

	Victim Out	Insurance claim
Excavator	\$1,000.00	\$19,197.00
Salvage recovery		<u>- \$8,447.50</u>
Total claim	\$1,000.00	\$10,749.50

I would like to reach an agreement if at all possible. Please take time to review this documentation and respond to me by **September 14, 2012**, with your concerns or an agreed order. If I do not hear from you by the above date, a restitution hearing will automatically be set.

Thank you,

Cc: Judge Patrick Oishi
File

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Presented by:

Copy received; Notice
Presentation waived:

Deputy Prosecuting Attorney

Kenan Isitt
Attorney for Defendant

Order Setting Restitution
CCN# 656108

REF# 2100619507

jkt/4-17-12

FELONY PLEA AGREEMENT

Date of Crime: June 18, 2010

Date: April 2, 2012

Defendant: MICHAEL LANE SAYERS

Cause No: 10-1-05793-1 KNT

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is as follows:

On Plea To: As charged in Count(s) 1 of the original 1ST amended information. With Special Finding(s): deadly weapon - firearm, RCW 9.94A.510(3); deadly weapon other than firearm, RCW 9.94A.510(4); sexual motivation, RCW 9.94A.835; protected zone, RCW 69.50.435; domestic violence, RCW 10.99.020; other _____; for count(s): _____

DISMISS: Upon disposition of Count(s) _____, the State moves to dismiss: _____

REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.530, the parties have stipulated that the following are real and material facts for purposes of this sentencing:

The facts set forth in the certification(s) for determination of probable cause and prosecutor's summary.

The facts set forth in Appendix C; _____

The defendant acknowledges and waives any right to have a jury determine these facts by proof beyond a reasonable doubt.

RESTITUTION: Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts and

agrees to pay restitution in the specific amount of \$ TBD

agrees to pay restitution for all losses from and damages to the stolen truck, the stolen excavator, and their contents

OTHER: The State agrees not to file additional property crime charges against the defendant arising out of KCSO case 10-141874 and agrees not to file Bail Jumping charges due to the defendant's failures to appear in this cause. -

The State does not agree to the defendant's release pending sentencing due to his absence in this cause for over a year (FTA in September 2010; BW served in February 2012).

CRIMINAL HISTORY AND OFFENDER SCORE:

a. The defendant agrees to this Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A), offender score and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation. An essential term of this agreement is the parties' understanding of the standard sentencing range(s); if the parties are mistaken as to the offender score on any count, neither party is bound by any term of this agreement.

b. The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, as follows:

(1) Conviction: _____ Basis: _____

(2) Conviction: _____ Basis: _____

c. The defendant understands that one or more convictions from other jurisdictions have been included in the offender score, and agrees that these convictions have been properly included and scored according to the comparable offense definitions provided by Washington law.

d. The parties agree that neither party will seek an exceptional sentence, and the defendant agrees that he or she will not request a first-time offender waiver, or a drug offender or parenting sentencing alternative.

Maximum on Count(s) 1 is not more than 5 years each and \$ 10,000 fine each.

Mandatory Minimum Term(s) pursuant to RCW 9.94A.540 only: _____

Mandatory weapon sentence enhancement for Count(s) _____ is _____ months each; for Count(s) _____ is _____ months each. This/these additional term(s) must be served consecutively to each other and to any other term and without any earned early release.

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new charged or uncharged crimes, fails to appear for sentencing or violates the conditions of release.

Michael Sayers
Defendant

Dan Kelly
Deputy Prosecuting Attorney, WSBA# 23586

Ken [Signature]
Attorney for Defendant

[Signature]
Judge, King County Superior Court

Claim #:	710723024015 - Property	Status:	Closed
Loss date:	12-23-2009	Reported:	12-28-2009
Catastrophe:		Loss #:	1
Policy #:	01CG715164	Eff/Exp dates:	03-16-2009 / 03-16-2010
Policy name:	R/s Construction & Excavation In	Agent:	Brown & Brown Of Wa Inc 02-8146
Company:	American States Insurance Company	Adjuster e-mail:	RONDAI@safeco.com
Adjuster:	Ron Daily 503 736-7817	Claimant:	Sayer, Michael
Fax #:	(888) 268-8840		
ACS claim #:	21A093622023		

FINANCIAL DETAIL

Display from:

Last payment date

Back:

FINANCIAL TRANSACTION INFORMATION

Processed Date	Transaction Type	Dr/Ck/Vou Number	Payee Name	Amount Paid	Cov Group	Cov Designation	SAFECO Code
2010/09/21	RESERVE			\$00	IM	INLD MARINE	RESV
01-07-2010	PAYMENT	20689546	R/s Construction & Excavation, Inc.	\$19,197.00	IM	INLD MARINE	PYMT
09-21-2010	SALVAGE		Salvage / Subrogation Expense	(\$8,447.50)	IM	INLD MARINE	SALV

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\$10,749.50

Tuggle, Janda

From: Raven Aslanis <raslanis@wilberlanelaw.com>
Sent: Wednesday, July 18, 2012 5:45 AM
To: Tuggle, Janda
Cc: APPENDS@WILBERLANELAW.COM
Subject: WLLF 422907/ MICHAEL SAYERS 101057931 KNT
Attachments: afesite.safeco.pdf

Hello Janda,

Thank you for pointing out the salvage receipt, I had not seen that in our records. Safeco balance= \$10,749.50 with the insured's \$1000.00 deductible.

Total restitution requested for this loss is \$11,749.50.

Thanks,

Raven Aslanis
Restitution Specialist- Team Lead
Wilber Lane Law Firm
raslanis@wilberlanelaw.com
800-397-5418 ext 7118

DONALD L. WILBER (IL, GA)
MARC E. LANE (IL)

OF COUNSEL:

GERARD DESANTIS (NY)
ADAM WILK (VA, MD, DC)
WILLIAM LINDEMAN (FL, CA, IL)



P.O. BOX 2155
816 ELDORADO ROAD, SUITE 7
BLOOMINGTON, IL 61702-2155
PHONE (309) 663-1245
FAX (309) 663-0972
Email: debtnet@wilberlanelaw.com
URL: www.wilberlanelaw.com
Tax ID 37-1366227

August 4, 2010

District Attorney's Office
Attention: Heather/Victim Assistance

Re: Our File No: 422907
Our Client: SAFECO Insurance
Their Insured: RS Construction
Amount of Loss: \$ 20,197.00 (\$ 1000 deductible included)
Offender: Michael Sayers
Case No: 101057931 KNT

Dear Court;

Please be advised that we represent SAFECO Insurance in their restitution efforts on the above claim. SAFECO Insurance paid a claim to their insured, RS Construction in the amount of \$ 19,197.00 for the loss caused by Michael Sayers. We request that the court order restitution to our client for this loss. Payments can be made payable to our client SAFECO Insurance and sent to our office at the address listed above, please include our file number 422907 on any payments and correspondence. Upon conviction or plea we request that a copy of the sentencing order be forwarded to our office.

If you have any questions, please contact me at 1-800-397-5418, extension 7118. Thank you for your time.

Respectfully,

Raven Aslanis
Restitution Specialist

CCC VALUESCOPE
Claim Services

AMERICAN STATES INSURANCE
Market Report

Report Reference Number: 42784125
Claim reference: 710723024015
Loss Incident Date: 12/23/2009
Claim class: CPR
Insured: Rs Construction And Excav

Adjuster: Ron Daily
Claim Reported Date: 12/30/2009
Owner: Rs Construction And Excav

Introduction

AMERICAN STATES INSURANCE Insurance has conducted an appraisal of your 2001 John Deere 35zts Mini Excavator located in Seattle, WA. The appraisal information was then used to conduct research in your market to determine the local market value of your unit. This CCC Valuescope Market Report details the results of that search. It contains the following sections:

Section Title:	Section Contents:
Equipment Summary	Market Value and Equipment Detail
VINGuard Identification	Loss Unit configuration and VIN history
Valuation Methodology	Method used to evaluate the vehicle
Comparable Units	Supporting market data for loss unit
Appraisal and Valuation Notes	Log notes for this file

===== Equipment Summary =====
Loss Unit Specifications

Industrial
2001 John Deere 35zts
Mini Excavator
Condition is 2: Average
Actual Cash Value \$ 20,197.00

Major Equipment
Engine Model #/Hp 29
Engine Hours 6,687
Trans Model #/Speed Hydrostatic
Bucket Size (Inches) 24
Rollover Protection Open

Additional Equipment
Rubber Tracks
Hydraulic Thumb
7' Blade
Quick Coupler
Engine Rebuilt at 5009 Hours
08/2006 \$5500
Right Side Rubber Track \$1300
04/2007

Valuation Request: 42784125 (Continued) 2001 JOHN DEERE 35ZTS

===== Equipment Summary (continued) =====

Actual Cash Value does not include tax, title, license, prior damage or deductible. For additional information or special consideration, call the CCC Commercial/Recreational Vehicle Division at 1-800-621-8070 or, in Illinois, 312-CCC-INFO. Please use your Valuation Request Number for reference.

===== VINGuard Identification =====

VIN: PF035X230667

	Insurer Description	VINGuard Analysis
Class	Industrial	
Year	2001	
Make	John Deere	
Model	35zts	
Body style	Mini Excavator	

===== Valuation Methodology =====

The Commercial + Recreational Vehicle Division of CCC Information Services, Inc., prepared this CCC Valuescope Market Report for AMERICAN STATES INSURANCE. CCC has been preparing market value reports for the insurance industry since 1981.

Valuations performed by CCC's Commercial + Recreational Vehicle Division require individual market searches to identify and locate supporting market information. Due to the unique nature of the loss units valued in the Commercial + Recreational Vehicle Division, a valuation expert handles each request individually.

When AMERICAN STATES INSURANCE requests a valuation report, they provide CCC with the configuration of the loss unit, including model, hours or mileage, optional features, any accessories, the condition of the loss unit as well as the VIN/HIN/PIN (vehicle/hull/product identification number) of the loss unit. That identification number is analyzed to verify basic information provided on the loss unit.

AMERICAN STATES INSURANCE also provides CCC with the loss unit owner's ZIP code, which identifies the local market used to determine the market value.

The local market area, however, may vary by vehicle or unit type. Where the vehicle or loss unit is readily available in a given location, the search area can be within the same city or state as the loss unit. If the loss unit or vehicle is very specialized, the search may expand to locate comparable support to document the loss unit's value.

Significant differences between the loss unit and any comparable units are Valuation Request: 42784125 (Continued) 2001 JOHN DEERE 35ZTS documented and are used to define a verifiable market value for the loss unit. If no comparable units are located, the valuation expert will conduct a local market survey to gather the expert opinion of knowledgeable retailers in order to determine the local market value.

===== Comparable Units =====

The Comparable Units are compared to the Loss Unit to determine the Adjusted Value. The Adjusted Value represents the price of the Comparable Unit configured to exactly match the Loss Unit.

Comparable # 1 :

Publication: Sss Internet Ads
 Location: Durham, Nc
 Dealer/Private: Dealer

Publication Date: 12/30/2009
 Phone: (919)957-3310
 Dealer Name: Park East Sales

Loss Unit	Comparable # 1	Adjustment
Loss Unit Type: Heavy Equipment Class: Industrial	Heavy Equipment Industrial	
2001 John Deere 35zts Mini Excavator Condition: 2 Average	2001 John Deere 35zts Mini Excavator 2 Average	18500
Major Equipment Engine Model #/Hp: 29 Engine Hours 6,687 Trans Model #/Speed: Hydrostatic Tire Size/Wear Bucket Size (inches) 24 Rollover Protection: Open	4,930 24 Open	-1230
Packages		
Additional Equipment Rubber Tracks	Rubber Tracks	

2001 JD TEA-CUP 352TS

S/N FF035X230667

DATE OF OIL CHANGE	HOURS/ MILES	DATE OF NEXT OIL CHANGE	HOURS/ MILES	OIL FILTER Y OR N	DATE CHANGED	AIR FILTER Y OR N	DATE CHANGED	FUEL FILTER Y OR N	DATE CHANGED	HYD. FILTER Y OR N	DATE CHANGED	DATE CHANGED	SPECIALS PARTS	DATE OF SPECIAL PART
11-19-04	2777c			Y	01/19/04	N		Y	01/19/04	Y			None	1-04-03
11-19-04	3924c			Y		N				Y				
12-7-05	4741		2140L	Y	8/14/05	Y		Y		Y				
3-5-06	4541			Y	3-5-06	Y	Etowah	Y		N	3-5-06		Remanured Sprock	
2-27-06	4960		4960	Y		N	Blower	W		N				
8-22-06	5004													
11-20-06	5193		5193	Y	11-20-06	Y		N	5193				Remanured 1st Engine	
12-31-06	5236		5236	Y	12-31-06	Y	12/20/06	Y					Part - 11/16/06 1/16/06	
1-25-07	5369		5369	Y				Y					New sprockets	
4-20-07	5613												New 2nd Sprock	
5-14-07	5882		5882	Y	5-14-07	Y	9/14/07	Y		N	7-11-07		New Dozer Blade	
10-10-07	9905													
11-8-08	6131													
2-25-09	6474		6474	Y	2-25-09	Y	2-25-09	Y					New 2nd Sprock	
4-23-09	6660													
4-25-09	6666		6666	Y	4-25	Y	Blower	Y					Blower	
12-11-09	101097													

12/31/2009

Coinsurance Calculation

Insured: R/S Construction
Policy Number: 01CG715164
Claim Number: 7.10723E+11
Date of Loss: 12/23/2009

	Actual Cash Value (ACV)	Replacement Cost Value (RCV)
Total inventory valuation	20,197.00	
Multiplied times coinsurance % requirement	90.00%	
Amt. Of limits required	18,177.30	0.00
Amt of limits on policy	19,740.00	
Divided by amt of limits required	18,177.30	0.00
Actual perecentage coinsured	108.60%	0.00%
Coinsurance adjustment (1-Actual percentage coinsured)	0.00%	100.00%
Amount of loss	20,197.00	
Less: Coinsurance adjustment	0.00	0.00
Amount of loss after adjustment	20,197.00	0.00
Less: Deductible	1,000	
Claim payable*	<u>19,197.00</u>	<u>0.00</u>

* ACV Claim payable represents ACV amount payable after coinsurance adjustment and deductible

* RCV Claim payable represents RCV amount payable after coinsurance adjustment and deductible

To: American States Insurance Company

PROOF OF LOSS — INLAND MARINE

DATE December 31, 2009		CLAIM #: 710723024015
POLICY NUMBER 01CG715184	NAME OF POLICY-HOLDER R/S Construction & Excavation Inc	
LOSS LOCATION 2210 NE 10th St	Renton	WA
DATE OF LOSS December 23, 2009	CAUSE OF LOSS Theft	
LEGAL OWNER OF PROPERTY AT TIME OF LOSS R/S Construction & Excavation, Inc.		
MORTGAGE OR LOSS PAYEE AT TIME OF LOSS		
POLICY LIMITS Scheduled - \$ 19,740.00 Unscheduled - \$		

Are there any other insurance policies that cover this property? Yes No
(If "Yes", identify the insurance company, policy number, and coverage limits on the back of this form.)

State the amount claimed for damages: \$19,197.00

I request payment to be made to: R/S CONSTRUCTION & EXCAVATION INC.

In consideration of payment of this claim, I give the company my rights of recovery up to the amount paid, and will execute all documents required of me and cooperate with the company in prosecuting all actions to effect recovery. The company is authorized to commence and prosecute any action or proceeding in my name, or in its own, or in the name of any person or persons to whom it may assign its claims hereunder, for the purpose of affecting collection of the amount mentioned above.

Any information that may be required will be furnished upon request and considered a part of these proofs.

It is expressly understood and agreed, that the furnishings of this blank form to the insured or the preparing of proofs by an adjuster, or any agent of the company named herein is not a waiver of any rights of said company.

Date 01-06-10 Signed Salvatore Aiello
SALVATORE AIELLO President

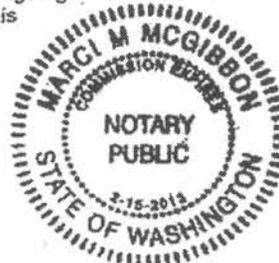
It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

NOTARY SIGNATURE REQUIRED ON ALL CLAIMS OF \$10,000 OR MORE

State of WA County of King

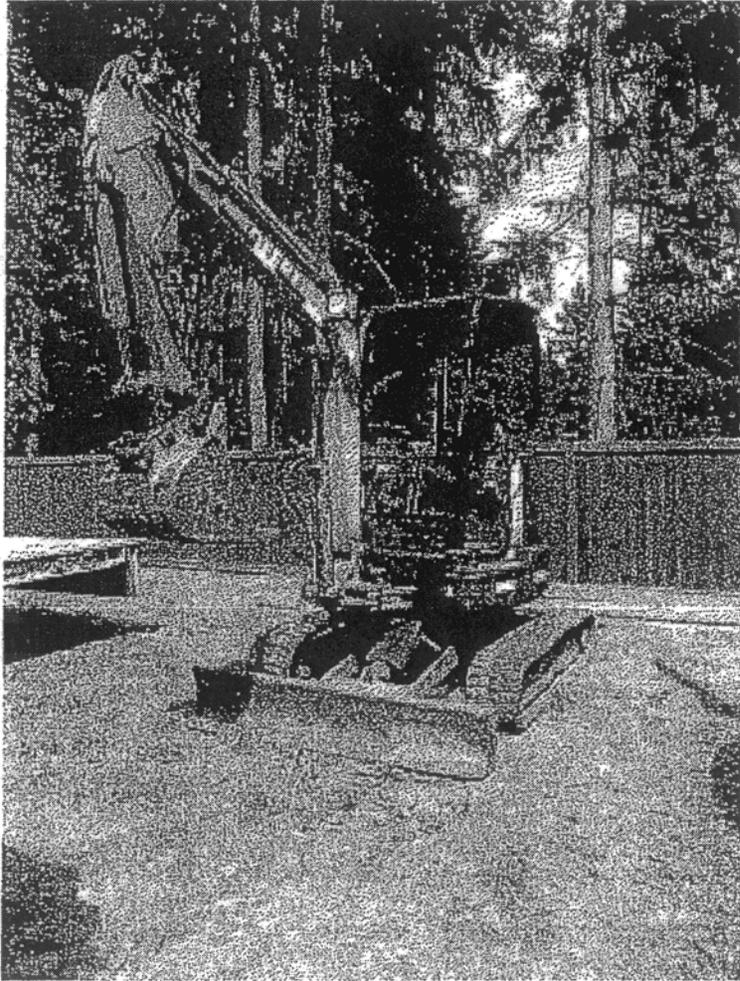
Personally appeared before me, the day and date above written signer of foregoing statement, who make solemn oath to the truth of same, that no material fact is withheld of which the said insurance company should be advised.

Margi M. McGibbon (Seal)
Notary Public

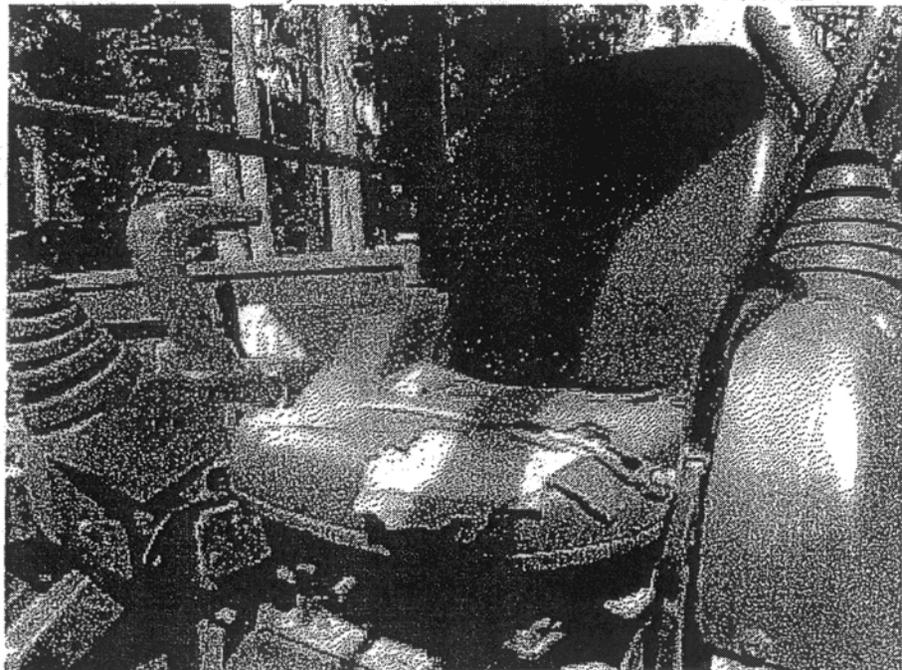


DIGITAL PHOTO LOG
PICTURES TAKEN BY PAMELA LEEMING, SR FIELD INVESTIGATOR II
JUNE 24, 2010

Picture 1 shows the excavator.



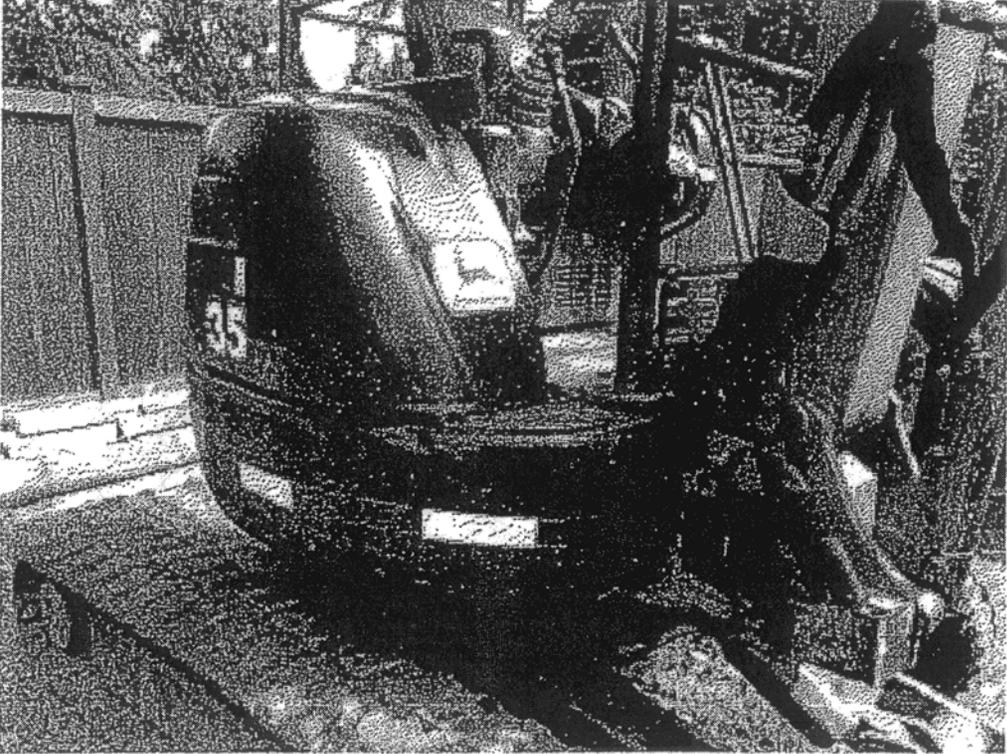
Picture 2 shows the seat; however it was like this before it was stolen.



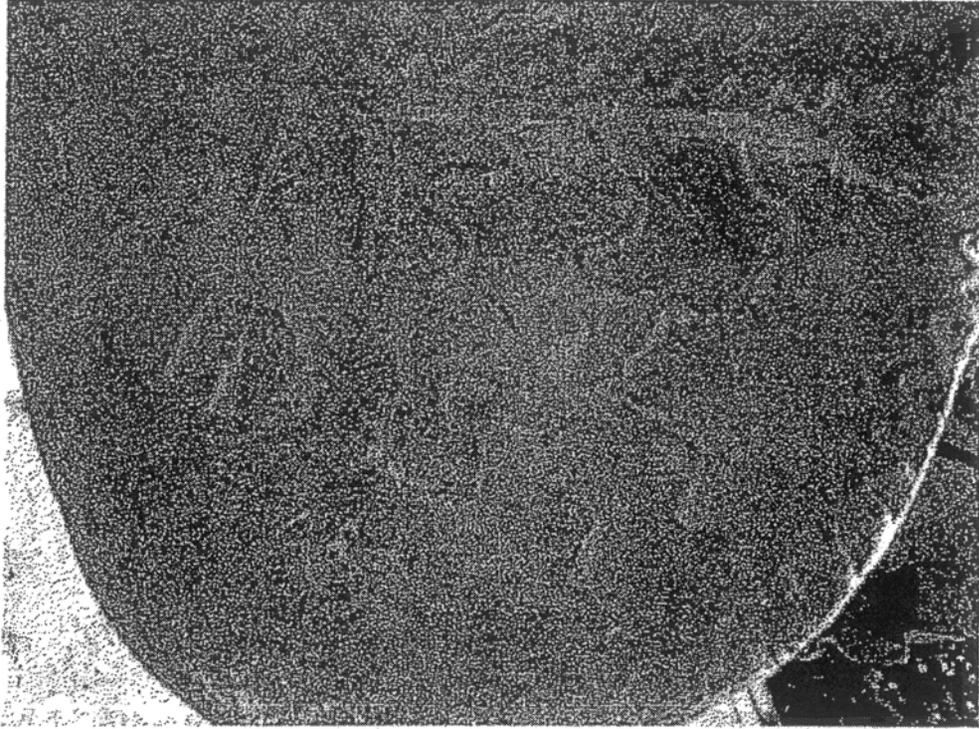
Picture 3 shows back side of excavator. This is where the insured had their logo on the excavator. Also who ever stole it painted it black and put new reflective tape on it.



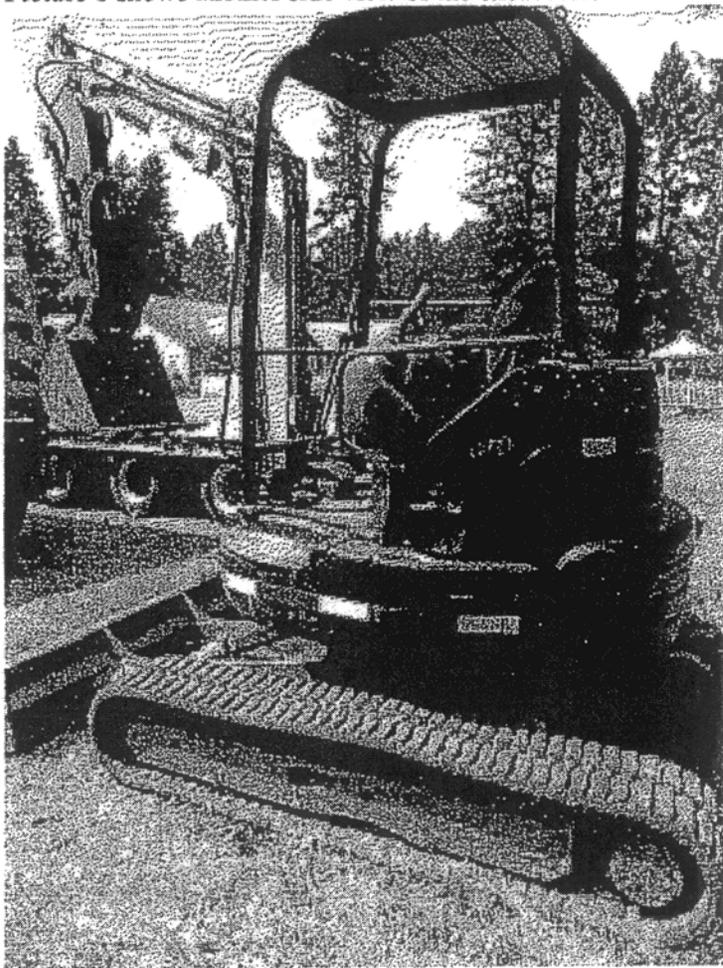
Picture 4 shows side view of excavator.



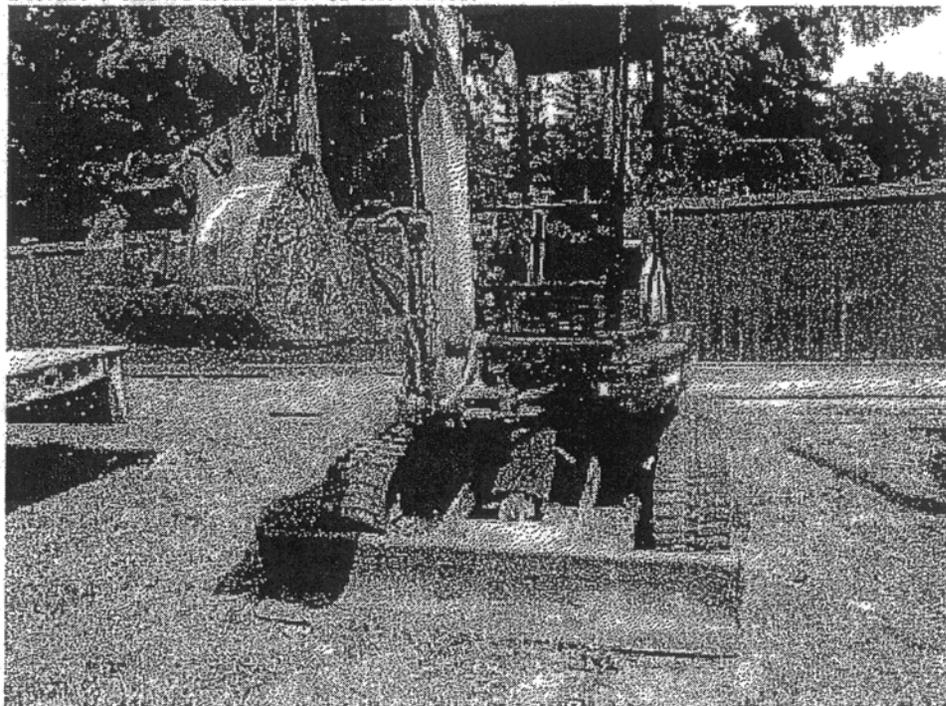
Picture 5 shows close up of bucket that has the insured's name welded into the excavator.



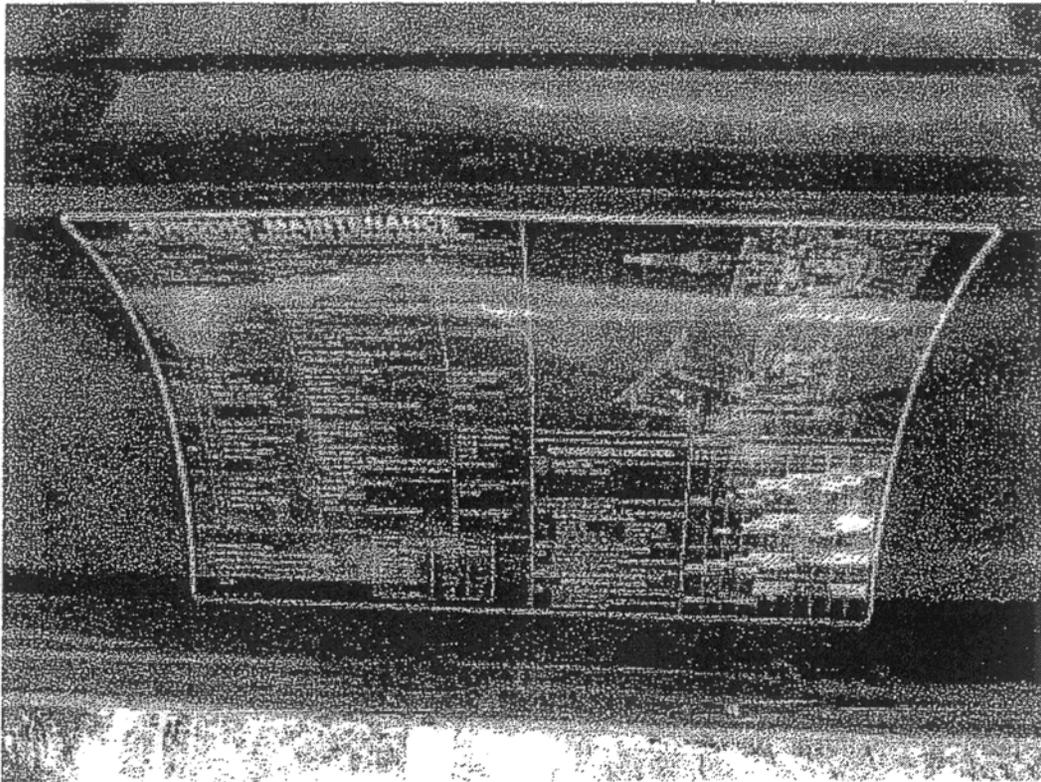
Picture 6 shows another side view of the excavator.



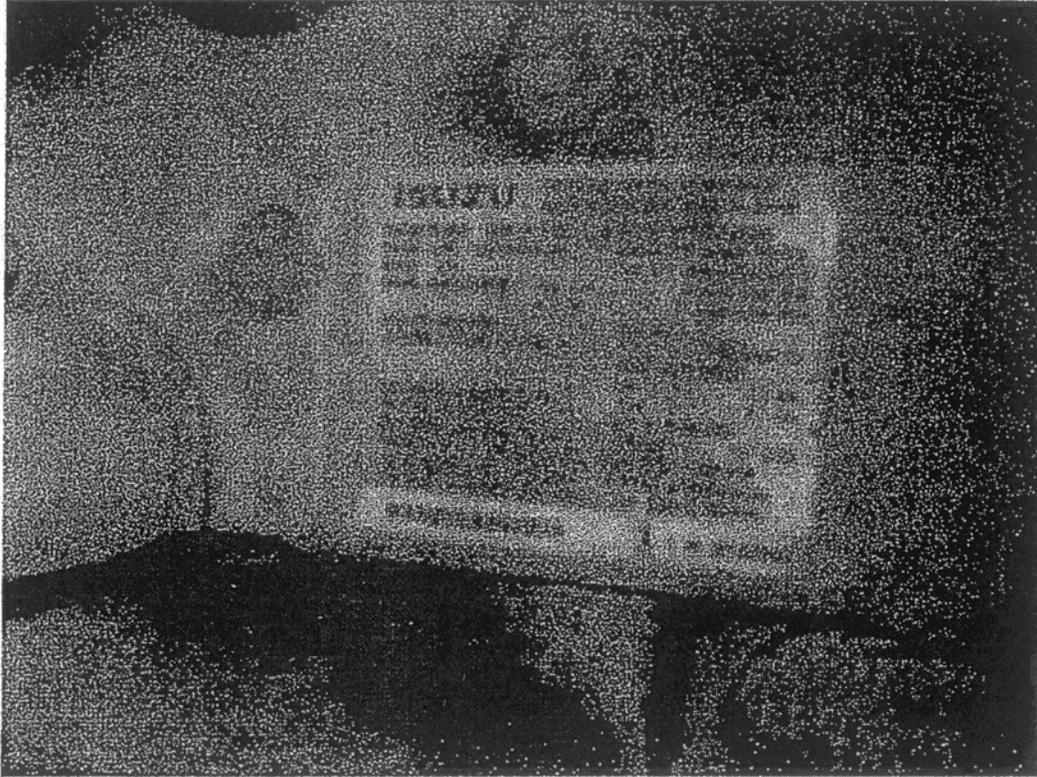
Picture 7 shows front view of excavator.



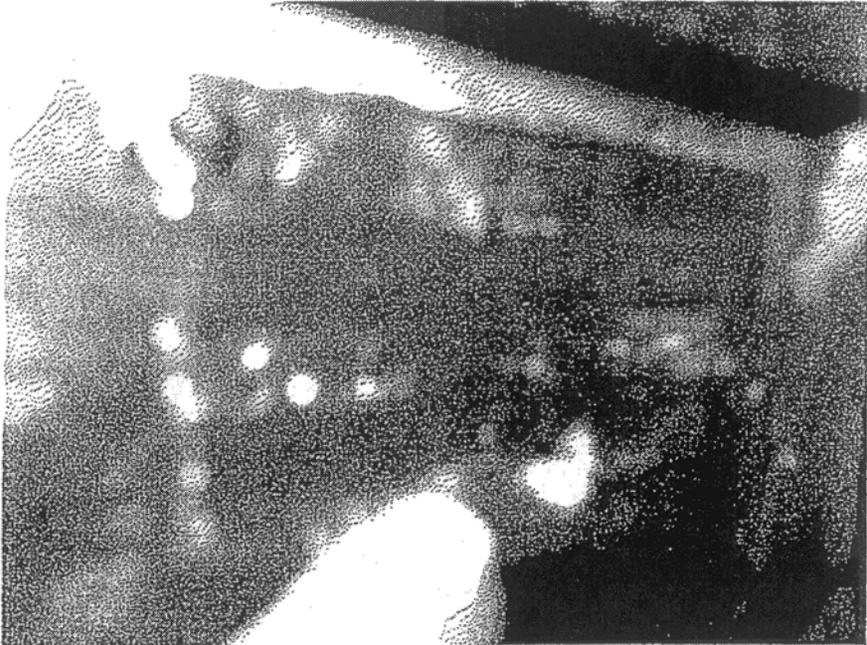
Picture 8 shows maintenance schedule which is inside the upper cab.



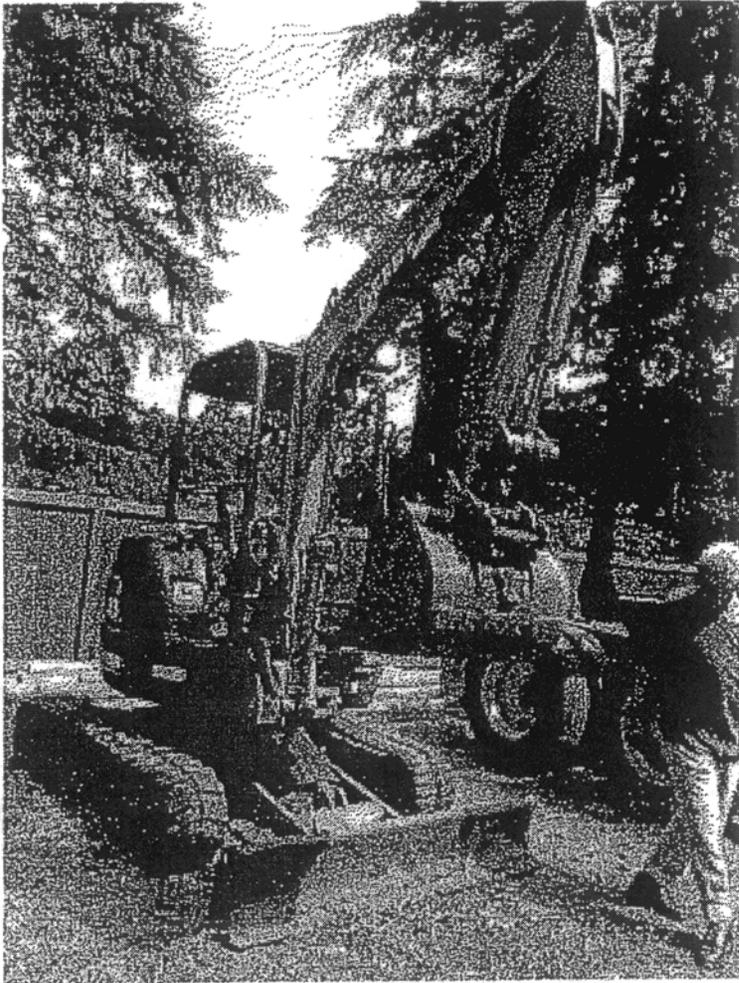
Picture 9 shows inside under the back of the excavator; motor ID numbers; but this is not where the VIN number is located .



Picture 10 shows VIN number that has been painted over in black paint, the VIN number cannot be read.



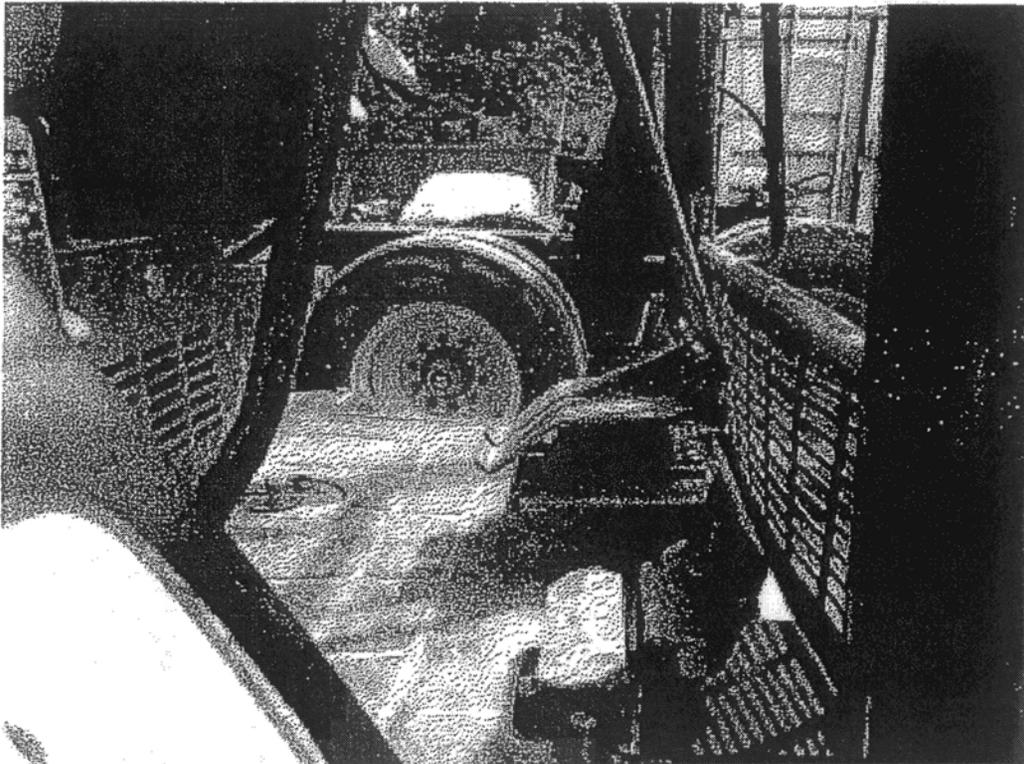
Picture 11 shows another side view of the excavator.



Picture 13 shows close up of gear mechanism to the front bucket.



Picture 14 shows the control pedals.



Respectfully submitted:

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