

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

UNIVERSAL TRUCK & EQUIPMENT
COMPANY, INC.; NEW LONDON MINING,
MANUFACTURING & PROCESSING, LLC;
NICHOLAS E. CAMBIO;
VINCENT A. CAMBIO; and NICHOLAS E.
CAMBIO, as trustee of THE NICHOLAS E.
CAMBIO, RONEY A. MALAFRONTA AND
VINCENT A. CAMBIO TRUST,
Plaintiffs,

v.

Case No.: 10-466 S

CATERPILLAR, INC.,

Defendant,

And

CATERPILLAR FINANCIAL SERVICES
CORPORATION; and SOUTHWORTH-MILTON,
INC.,

Defendants and Plaintiffs-in-Counterclaim.

PRELIMINARY INJUNCTION

This matter comes before the Court on the Motion of Defendant Caterpillar Financial Services Corporation (“Cat Financial”) for an entry of Preliminary Injunction and Order of Replevin After notice and hearing, the Court having considered the Motion and the Affidavit of Marion Covell (the “Covell Affidavit”), and Cat Financial’s Memorandum in support of the Motion:

IT IS HEREBY PROVISIONALLY FOUND THAT:

1. Plaintiff New London Mining, Manufacturing & Processing, LLC (“New London”) is in default of the Security Agreement and Promissory Note dated July 30, 2009 (“Security Agreement 1”) between Cat Financial, as secured party, and New

London, as debtor, which was made to secure a loan made by Cat Financial to New London in the original principal amount of \$2,490,272.25.

2. Cat Financial possesses, as security for the Security Loan and as set forth in Security Agreement, a security interest in certain commercial equipment, more particularly listed as in Exhibit G to the Affidavit of Marion Covell and attached hereto as **Exhibit A**.

3. The Security Agreement entitles Cat Financial to repossess and remove the Equipment in the event of a default by New London.

4. To date, Cat Financial has not reclaimed, and New London has not returned, the Equipment.

5. Cat Financial is entitled to a writ of replevin under R.I. General Laws 34-21-1 *et seq.*

6. Cat Financial will suffer irreparable injury for which no adequate remedy at law exists unless New London and other persons and firms having knowledge of this injunction are: (a) enjoined from continuing to use, sell, conceal, waste, encumber, convert, convey, or remove the Equipment; (b) ordered to advise Cat Financial of the precise location of the Equipment; and (c) ordered to immediately surrender the Equipment to Cat Financial. Based on these provisional findings, the Counterclaim of Cat Financial and the Covell Affidavit and exhibits attached thereto, IT IS HEREBY ORDERED THAT:

- a. New London and any of its responsible managing agents, officers, directors, or employees (acting within the scope of his or her office or employment), and any person or entity acting in concert with New London, and any other person or firm having actual notice of this Preliminary Injunction, including but not limited to the

- domestic agents of New London, together with their officers, directors, or employees (acting within the scope of his or her office or employment), are hereby enjoined and restrained, until further Order of the Court, from using, selling, concealing, wasting, encumbering, converting or conveying the Equipment, identified on the attached Exhibit A (the "Equipment);
- b. New London and any of its responsible managing agents, officers, directors, or employees (acting within the scope of his or her office or employment) and any person or entity acting in concert with New London, and any other person or firm having actual notice of this Preliminary Injunction, including but not limited to the domestic agents of New London, together with their officers, directors, or employees (acting within the scope of his or her office or employment), are hereby ordered to immediately disclose the precise location of the Equipment to Cat Financial or to agents designated by Cat Financial in order for Cat Financial to reclaim same;
- c. New London and any of its responsible managing agents, officers, directors, or employees (acting within the scope of his or her office or employment) and any person or entity acting in concert with New London, and any other person or firm having actual notice of this Preliminary Injunction, including but not limited to the domestic agents of New London, together with their officers, directors, or employees (acting within the scope of his or her office or employment), are hereby enjoined from restricting the access of Cat Financial to the Equipment;
- d. New London and any of its responsible managing agents, officers, directors, or employees (acting within the scope of his or her office or employment) and any person or entity acting in concert with New London, and any other person or firm having actual notice of this Preliminary Injunction, including but not limited to the domestic agents of New London, together with their officers, directors, or employees (acting within the scope of his or her office or employment), are hereby ordered to immediately surrender the Equipment to Cat Financial, and forthwith take all actions necessary to allow Cat Financial to obtain access to and possession of the Equipment, including terminating leases, if any, and obtaining the Equipment from third party lessors, and removing the Equipment from any auction, sale, and/or auction or sale listing, and are hereby also ordered to assemble the Equipment and make the Equipment available to Cat Financial at a place to be designated by Cat Financial reasonably convenient to New London and Cat Financial;
- e. New London shall immediately notify all of its responsible managing agents, officers, directors, and employees of the entry of this Preliminary Injunction;

Entered:

/s/ William E. Smith

William E. Smith

U.S. District Judge

Date: December 14, 2011

Universal Truck & Equipment Co, Inc. v Caterpillar, Inc.

CA No. 10-466

Preliminary Injunction

EXHIBIT A

Equipment Financed by Cat Financial and Currently Held by New London

Description	Serial #
Caterpillar Articulated Truck	BIN00421
Caterpillar Telescopic Handler	SLF01694
ERIN (On 2009 as ERIN SYSTEM SCREENS)	2S91F37U752113051
ERIN (On 2009 as SYSTEM SCREENS)	2S93J37X352113003
Caterpillar Excavator	AGS01678
Caterpillar Wheel Loader	CRD01178
ERIN (On 2009 as Caterpillar ERIN FINGERSCREEN)	2S91B37J852113125
NPK (On 2009 as Caterpillar HAMMER)	65266
Caterpillar (On 2009 as Caterpillar JAW CRUSHER)	554620045
Caterpillar (On 2009 as Caterpillar DUMP TRUCK)	1X02129
Caterpillar (On 2009 as Caterpillar DUMP TRUCK)	1X01882
Caterpillar (On 2009 as Caterpillar DUMP TRUCK)	1X04328
Caterpillar (On 2009 as Caterpillar DUMP TRUCK)	1X04511
Caterpillar Excavator	PJW00656
Caterpillar Backhoe Loader	BLN08452
Caterpillar Backhoe Loader	DDT00407
Caterpillar Backhoe Loader	KMW00260
Multi quip Gen Set w/ Trailer	8400023