

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Chapter 7  
BKY Case No. 04-60885-DDO

Daniel Joseph Byrne,  
Rebecca Lyne Byrne,

Debtors.

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**NOTICE OF HEARING AND MOTION FOR  
RELIEF FROM THE AUTOMATIC STAY**

TO: DEBTOR, TRUSTEE AND OTHER ENTITIES SPECIFIED IN LOCAL RULES  
2002-5 AND 9013-3

1. Caterpillar Financial Services Corporation ("CAT Financial"), a secured creditor herein, by and through its duly authorized and undersigned attorneys, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this Motion at **1:00 p.m.** on **September, 28, 2004** before the Honorable Dennis D. O'Brien, United States Bankruptcy Court, 204 U.S. Courthouse, 118 Southmill Street, Fergus Falls, MN 56537, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered no later than 2:00 P.M. on September 25, 2004, which is three days before the time set for the hearing, or filed and served by mail no later than September 21, 2004, which is seven business days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This is a core proceeding.

The petition commencing this case under Chapter 7 was filed on July 23, 2004 (the "Petition Date"). The case is pending in this Court.

5. This motion arises under 11 U.S.C. § 362(d) and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-4 and 9017-1. CAT Financial seeks relief from the automatic stay under § 362(a) with respect to certain personal property owned by Debtor and requests that this Court permit CAT Financial to immediately enforce the order requested, lifting the 10 day stay imposed by Rule 4001(a)(3).

6. CAT Financial holds a valid and perfected security interest in a certain CAT 226 Skid Steer Loader S/N 5FZ03600 (the "Collateral") owned by the Debtor. The current wholesale value of the Collateral is approximately \$16,000.00. As of the Petition Date, Debtor Daniel Joseph Byrne (the "Debtor") is indebted to CAT Financial in the amount of \$9,356.24, pursuant to an Installment Sale Contract (Security Agreement) (the "Contract"). True and correct copies of the Contract and evidence of perfection of CAT Financial's interest in the Collateral are attached hereto as Exhibits A, B and C.

7. The Debtor has failed to maintain proper insurance coverage for the Collateral.

8. The Debtor is in material default under other terms of the Contract. Specifically, Debtor has sold and transferred possession of the Collateral to a third-party without CAT Financial's consent and in direct violation of the terms of the Contract. A true and correct copy of the contract evidencing this sale is attached hereto as Exhibit D.

9. The aforementioned circumstances constitutes cause within the meaning of § 362(d)(1), entitling CAT Financial to relief from the automatic stay, to the extent that the automatic stay would prevent CAT Financial from enforcing its rights under the Contract. Because the Collateral is no longer in the Debtor's possession, CAT Financial seeks the relief requested on an expedited basis to protect its interest in the same.

10. CAT Financial has incurred and will incur attorney fees and costs to protect its right to the Collateral and to payments concerning the same. Incident to this motion, CAT Financial seeks allowance of attorneys fees and costs incurred herein.

11. This Notice of Motion and Motion also serve a notice of default required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980).

12. This motion is supported by (1) CAT Financial's Memorandum in Support of Motion for Relief from the Automatic Stay; (2) such other matters which may be presented at the hearing on the motion or prior to the Court's decision; and (3) such other matters of which the Court may take notice.

13. If testimony is necessary to any facts relevant to this motion, CAT Financial reserves the right to have its representatives testify as to the Contract and as to the material default thereunder.

WHEREFORE, CAT Financial prays that this Court enter an order (1) granting CAT Financial relief from the automatic stay, to the extent applicable, in accordance with 11 U.S.C. § 362(d) to repossess the Collateral and to pursue its other state law remedies, including selling the Collateral to a third-party; and (2) granting such other and further relief as the Court deems just under the circumstances.

Dated: September 17, 2004

DORSEY & WHITNEY LLP

By /e/ Alpha Khaldi  
Katherine A. Constantine #123341  
Alpha Khaldi #0303860  
50 South Sixth St., Ste. 1500  
Minneapolis, MN 55402-1498  
Telephone: (612) 340-2600

Attorneys for Caterpillar Financial Services

**INSTALLMENT SALE CONTRACT (SECURITY AGREEMENT)**

**PURCHASER(S):**

Dan Byrne  
18233 County Rd 12 NW  
Garfield, MN 56332  
County: Douglas

**SELLER (DEALER):**

ZIEGLER INC.  
901 WEST 94TH STREET  
BLOOMINGTON, MN 55420-4299

K 175052

Subject to the terms and conditions set forth below and on the reverse side hereof, Seller hereby sells the equipment described below (the "Unit" or "Units") to Purchaser, and Purchaser (if more than one, jointly and severally), having been offered both a cash sale price and a time sale price, hereby buys the Units from Seller on a time sale basis.

NEW OR USED	(IF USED) FIRST MODEL USED	DESCRIPTION OF UNIT(S)	SERIAL#	DELIVERED CASH SALE PRICE
(1) New	226	Caterpillar Skid Steer Loader	5F203600	\$21,708.00

FIRST USED	DESCRIPTION OF ADDITIONAL SECURITY (MAKE, MODEL & SERIAL NUMBER)		
		Sub-Total.....	\$ 21,708.00
		Sales Tax.....	0.00
		1. Total Cash Sale Price.....	\$ 21,708.00
		Cash Down Pay.....	0.00
		Net Trade-in Allow.....	0.00
		2. Total Down Payment.....	\$ 0.00
		3. Unpaid Balance of Cash Price (1 - 2).....	\$ 21,708.00
		4. Official Fees (Specify).....	\$ 100.00
		Document Fee.....	100.00
		Other Fees.....	0.00
		5. Physical Damage Insurance.....	\$
		6. Principal Balance (Amount Financed) (3 + 4 + 5).....	\$ 21,808.00
		7. Finance Charge (Time Price Differential).....	\$ 3,558.80
		8. Time Balance (Total of Payments) (6 + 7).....	\$ 25,366.80
		9. Time Sale Balance (Total of Payment Price) (2 + 8).....	\$ 25,366.80
		10. Annual Percentage Rate.....	5.90%
		11. Date FINANCE CHARGE begins to accrue	8-23-01

  

FIRST USED	DESCRIPTION OF TRADE-IN EQUIPMENT (MAKE, MODEL & SERIAL NUMBER)		
		Trade-in Value.....	0.00
		Less Owing to.....	0.00
		Net Trade-in Allowance.....	0.00

Location of Units: 18233 county Rd 12 NW  
Garfield, MN 56332, Douglas

Purchaser hereby sells and conveys to Seller the above described Trade-in Equipment and warrants it to be free and clear of all claims, liens, security interests and encumbrances except to the extent shown above.

1. PAYMENT: Purchaser shall pay to Seller, at PO Box 730669 Dallas, TX 75373-0669 or such other location Seller designates in writing, the Time Balance (Item 8 above) as follows (check (a) or (b)):

- (a) in 60 equal monthly installments of \$422.78 each, with the first installment due on 9-23-01 and the balance of the installments due on the like day of each month thereafter, (except no payments shall be due during the month(s) of a/a), until the entire indebtedness has been paid; or
- (b) in accordance with the Payment Schedule attached to this Contract.

(Provisions of section 1 continued on reverse.)  
SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS WHICH ARE A PART OF THIS CONTRACT.

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

NOTICE TO PURCHASER: (1) DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES; (2) YOU ARE ENTITLED TO AN EXACT COPY OF THE CONTRACT YOU SIGN; (3) UNDER THE LAW YOU MAY HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND TO OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE.

PURCHASER ACKNOWLEDGES RECEIPT OF A FULLY COMPLETED COPY OF THIS CONTRACT EXECUTED BY BOTH PURCHASER AND SELLER.

Purchaser(s) and Seller have duly executed this Contract as of 8-6 2001.

Purchaser(s):  
Dan Byrne

Seller:  
ZIEGLER INC.

By: [Signature]

By: [Signature]

Name (PRINT) Dan Byrne

Name (PRINT) S. K. Erickson  
Executive Vice President

Title Owner

Title \_\_\_\_\_

## ADDITIONAL TERMS AND CONDITIONS

- 1. PAYMENT (continued):** Purchaser shall pay to Seller a late payment charge equal to the lesser of (a) the highest charge allowed by law or (b) 5% of the amount of any payment (including any accelerated payment) not made when due under this Contract (or such later date as may be required by applicable law). Upon prepayment in full or acceleration of the total unpaid Time Balance, Purchaser shall receive a rebate of the unearned portion of the Finance Charge computed on an actuarial basis less a processing fee. Except as otherwise expressly provided herein, the obligations of Purchaser hereunder shall not be affected by any defect in, damage to, loss of or interference with possession or use of any Unit, by the attachment of any lien or claim to any Unit, or for any other cause.
- 2. DISCLAIMER OF WARRANTIES:** Purchaser acknowledges and agrees that Seller is not the manufacturer of the Unit(s) and that Purchaser has selected each Unit based on Purchaser's own judgment without any reliance whatsoever on any statements or representations made by Seller. AS BETWEEN SELLER AND PURCHASER, THE UNIT(S) ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND. PURCHASER HEREBY EXPRESSLY DISCLAIMS a) ALL WARRANTIES OF MERCHANTABILITY, b) ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, AND c) ALL WARRANTIES AGAINST INFRINGEMENT OR THE LIKE. Seller assigns to Purchaser its interest in any of the manufacturer's warranties on the Unit(s).
- 3. POSSESSION, USE AND MAINTENANCE:** Purchaser shall not (a) use any Unit improperly, carelessly, unsafely or in violation of any law or regulation or for personal, family, or household purposes or for any purpose other than in Purchaser's business (including agricultural business); (b) permit the use of any Unit by anyone other than Purchaser or change the permanent location of any Unit from the county and state specified above without the prior written consent of Seller, or (c) sell, lease, assign or transfer, or create or suffer to exist any lien, claim, security interest or encumbrance on any of its rights hereunder or in any Unit. The Units are and shall remain personal property irrespective of their use or manner of attachment to realty. Upon prior notice to Purchaser, Seller or its agent shall have the right (but not the obligation) at all reasonable times to inspect any Unit. Purchaser shall at its expense maintain the Units in good operating order, repair and condition. Purchaser shall not alter any Unit or affix any equipment to any Unit if such alteration or addition would impair the originally intended function or reduce the value of such Unit. Any alteration or addition to any Unit shall be at the sole risk of Purchaser.
- 4. TAXES:** Purchaser shall promptly pay all taxes, assessments, fees and other charges when levied or assessed against any Unit or the ownership or use thereof, or this Contract or any payments made or to be made to Seller.
- 5. WAIVER AND INDEMNITY:** PURCHASER HEREBY AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND ASSIGNS FROM AND AGAINST ANY CLAIMS OF PURCHASER OR THIRD PARTIES, INCLUDING CLAIMS BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, PERSONAL INJURY, PROPERTY DAMAGE, STRICT LIABILITY OR NEGLIGENCE, FOR ANY LOSS, DAMAGE OR INJURY CAUSED BY OR RELATING TO THE DESIGN, MANUFACTURE, SELECTION, DELIVERY, CONDITION, OPERATION, USE, OWNERSHIP, MAINTENANCE OR REPAIR OF ANY UNIT. FURTHER, PURCHASER AGREES TO BE RESPONSIBLE FOR ALL COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY SELLER OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND ASSIGNS IN DEFENDING SUCH CLAIMS OR IN ENFORCING THIS PROVISION. UNDER NO CONDITION OR CAUSE OF ACTION SHALL SELLER BE LIABLE FOR ANY LOSS OF ACTUAL OR ANTICIPATED BUSINESS OR PROFITS OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.
- 6. INSURANCE:** Purchaser, at its expense, shall keep each Unit and all equipment listed as Additional Security insured against all risks for their full insurable value and shall maintain comprehensive public liability insurance in an amount reasonably acceptable to Seller. All such insurance shall be in such form and with such companies as Seller shall reasonably approve, shall be primary, without right of contribution from any insurance carried by Seller, and shall provide that such insurance may not be cancelled or altered so as to affect the interest of Seller without at least 30 days' prior written notice to Seller. All insurance covering loss or damage to the Units and Additional Security shall name Seller (or its designee) as loss payee and be payable to Seller as its interest may appear. Purchaser agrees to notify Seller of any occurrence which may become the basis of an insurance claim hereunder and not to make any adjustments with insurers without Seller's prior written consent. Prior to the first delivery of any Unit to Purchaser, Purchaser shall deliver to Seller satisfactory evidence of such insurance coverage.
- 7. EVENTS OF DEFAULT:** Each of the following shall constitute an "Event of Default" hereunder: (a) Purchaser shall fail to make any payment to Seller when due hereunder or fail to observe or perform any other covenant, agreement or warranty made by Purchaser hereunder; (b) any representation or warranty of Purchaser contained herein or in any document furnished to Seller in connection therewith shall be incorrect or misleading when made; (c) any Unit or additional security shall become lost, stolen, destroyed, irreparably damaged or subject to any sale, lien, claim, security interest or encumbrance (other than in favor of Seller or its assignee); (d) any default shall occur under any other agreement between Purchaser and Seller; (e) Purchaser or any guarantor of this Contract shall cease to do business, become insolvent, make an assignment for the benefit of creditors or file any petition under any bankruptcy, reorganization, insolvency or moratorium law, or any other law for the relief of debtors; (f) any involuntary petition shall be filed under any bankruptcy statute against Purchaser or any guarantor of this Contract or any receiver, trustee, or similar official shall be appointed to take possession of the properties of Purchaser or any guarantor of this Contract unless such petition or appointment ceases to be in effect within 30 days of said filing or appointment; (g) Seller shall reasonably deem itself to be insecure; or (h) any breach or repudiation by any guarantor shall occur under any guaranty obtained by Seller in connection with this Contract.
- 8. REMEDIES:** If any Event of Default shall occur, Seller may, at its option, do any one or more of the following: (a) Declare all amounts due or to become due under this Contract, excluding any unearned portion of the Finance Charge, immediately due and payable; (b) recover any additional damages and expenses sustained by Seller by reason of the breach of any covenant, representation or warranty contained in this Contract; (c) enforce the security interest granted hereunder; (d) without notice, liability or legal process, enter upon the premises where any of the Units or additional security may be and take possession thereof; and (e) require Purchaser to assemble the Units and additional security and make them available to Seller at a place designated by Seller which is reasonably convenient to both parties. Time is of the essence of this Contract. Seller shall have all rights given to a secured party by law and may retain all monies theretofore paid by Purchaser hereunder as compensation for the reasonable use of the Units by Purchaser. Seller may, at its option, undertake commercially reasonable efforts to sell the Units and additional security, and the proceeds of any such sale shall be applied: First, to reimburse Seller for all reasonable expenses of retaking, holding, preparing for sale, and selling the Units and additional security, including all taxes and reasonable attorneys' fees, and second, to the extent not previously paid by Purchaser, to pay Seller all amounts then due or accrued under this Contract, including any accelerated payments and late payment charges. Any surplus shall be paid to the person entitled thereto. Purchaser shall promptly pay any deficiency to Seller. Purchaser acknowledges that sales for cash or on credit to a wholesaler, retailer or user of the Units or additional security, and with or without the Units or additional security being present at such sale, are all commercially reasonable. Purchaser agrees to pay all reasonable attorneys' fees (to the extent permitted by applicable law) and all costs and expenses incurred by Seller in enforcing this Contract. The remedies provided herein shall be cumulative and in addition to all other remedies at law or in equity. If Purchaser fails to perform any of its obligations under this Contract, Seller may (but need not) at any time thereafter perform such obligation, and the expenses incurred in connection therewith shall be payable by Purchaser upon demand.
- 9. SECURITY INTEREST; PURCHASER ASSURANCES AND REPRESENTATIONS:** To secure payment of Purchaser's indebtedness to Seller hereunder and the performance of all obligations of Purchaser hereunder, Purchaser hereby grants to Seller a continuing security interest in the Units, and in the equipment, if any, described as Additional Security on the front of this Contract, including all attachments, accessories and optional features for such Units and Additional Security (whether or not installed thereon) and all substitutions, replacements, additions and accessories therein, and proceeds of all the foregoing including, but not limited to, proceeds in the form of chattel paper. Purchaser will, at its expense, do any act and execute, acknowledge, deliver, file, register and record any Documents which Seller deems desirable in its discretion to protect Seller's security interest and Seller's rights and benefits under this Contract. Purchaser hereby irrevocably appoints Seller as Purchaser's Attorney-in-Fact for the signing and filing of such documents and authorizes Seller to delegate these limited powers. Purchaser acknowledges the signature of Seller or said delegatee upon such documents to be the same as Purchaser's own for all purposes and with the present intent to authenticate the document. Purchaser represents and warrants to Seller that (a) Purchaser has the power to make, deliver and perform under this Contract; (b) the person executing and delivering this Contract is authorized to do so on behalf of Purchaser; (c) this Contract constitutes a valid obligation of Purchaser, legally binding upon it and enforceable in accordance with its terms; and (d) all credit, financial and other information submitted to Seller in connection with this Contract is and shall be true, correct and complete. Purchaser further represents and warrants to Seller that Purchaser will not change its principal place of business or primary residence and, if a business entity, its form of business organization (including any merger, consolidation, reincorporation or such similar restructuring), without prior written notice to Seller.
- 10. ASSIGNMENT; COUNTERPARTS:** The rights and remedies of Seller under this Contract may be assigned by Seller at any time. If this Contract is assigned by Seller, the term "Seller" shall thenceforth mean Seller's assignee, and if assigned to a partnership, shall thenceforth mean such partnership and, for purposes of Sections 2, 4, 5 and 6, each partner in such partnership. If notified by Seller, Purchaser shall make all payments due hereunder directly to the party designated in such notice, without any offset or deduction whatsoever. Purchaser waives, as to Seller's assignee, all claims and defenses Purchaser may have or assert against Seller and agrees that no such claim or defense will be asserted against Seller's assignee. No assignment of this Contract by Seller shall release any claim Purchaser may have against Seller hereunder. No assignment of this Contract or any right or obligation hereunder may be made by Purchaser without the prior written consent of Seller. This Contract shall be binding upon and inure to the benefit of Seller and Purchaser and their respective successors and assigns. Although multiple counterparts of this document may be signed, only the counterpart accepted, acknowledged and certified by Caterpillar Financial Services Corporation on the signature page thereof as the original will constitute original chattel paper.
- 11. EFFECT OF WAIVER; ENTIRE AGREEMENT; MODIFICATION OF CONTRACT; NOTICES:** No delay or omission to exercise any right or remedy accruing to Seller hereunder shall impair any such right or remedy nor shall it be construed to be a waiver of any breach or default of Purchaser. Any waiver or consent by Seller under this Contract must be in writing specifically set forth. This Contract completely states the rights of Seller and Purchaser with respect to the Units and supercedes all prior agreements with respect thereto. No variation or modification of this Contract shall be valid unless in writing. All notices hereunder shall be in writing, addressed to each party at the address set forth on the front of this Contract or at such other address as may hereafter be furnished in writing.
- 12. APPLICABLE LAW, JURISDICTION AND JURY TRIAL, WAIVER PROVISIONS:** This Agreement shall be governed by and construed under the laws of the State of Tennessee, without giving effect to the conflict-of-laws principles thereof, and Purchaser hereby consents to the jurisdiction of any state or federal court located within the State of Tennessee. THE PARTIES HERETO HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OBLIGATIONS OR THE COLLATERAL.
- 13. SEVERABILITY; SURVIVAL OF COVENANTS:** If any provision of this Contract shall be invalid under any applicable law, such provision shall be deemed omitted but the remaining provisions hereof shall be given effect. All obligations of Purchaser under this Contract shall survive the expiration or termination of this Contract to the extent required for their full observance and performance.

**ASSIGNMENT OF INSTALLMENT SALE CONTRACT  
(SECURITY AGREEMENT)**

For valuable consideration, the receipt of which is hereby acknowledged, **ZIEGLER INC.** of **BLOOMINGTON, MN** ("Seller") hereby sells, assigns, transfers and sets over to **Caterpillar Financial Services Corporation** ("Assignee"), its successors and assigns, (a) all of Seller's interest in and rights and remedies under the Installment Sales Contract (Security Agreement) attached hereto, dated as of 8-23-01 (the "Contract"), executed by Seller and **Dan Byrne** ("Buyer"), and (b) Seller's security interest in the Units (as defined in the Contract).

Seller represents and warrants to Assignee that (a) the Contract is genuine and all statements of fact contained therein are true and correct; (b) the Contract has been duly authorized, executed and delivered by the parties thereto, and the signatures thereon are the genuine signatures of the parties whose signatures they purport to be; (c) the Contract is the original and only contract executed in connection with the Units; (d) the Contract constitutes the entire agreement of the parties with respect to the Units; (e) the Contract is a valid and binding agreement of each party thereto, enforceable against such party in accordance with its terms; (f) Seller has the right to assign the Contract to Assignee; (g) as of the date hereof, no party to the Contract is in default thereunder; (h) the Units have been delivered to Buyer under the Contract in satisfactory condition and have been unconditionally accepted by Buyer; (i) upon acceptance of this Assignment by Assignee, Assignee will have a valid, perfected, first priority security interest in the Units and in all equipment (if any) described as Additional Security in the Contract, and good title to the Contract, free of all liens, claims, security interests and encumbrances; and (j) as of the date hereof, the unpaid balance specified in the Contract is **\$25,366.80**, without offset or deduction of any kind.

This Assignment shall be binding on Seller, its successors and assigns and shall inure to the benefit of Assignee, its successors and assigns. This Assignment shall become effective only upon acceptance hereof by Assignee.

IN WITNESS WHEREFORE, Seller has duly executed this Assignment on 8-23-01

**Caterpillar Financial Services Corporation**  
(Assignee)

Signature: Felicia A. Sims

Name (PRINT): Felicia A. Sims  
Documentation Manager

Title: \_\_\_\_\_

Accepted on: AUG 23 2001

**ZIEGLER INC.**  
(Seller)

Signature: S.K. Erickson

Name (PRINT): S. K. Erickson  
Executive Vice President

Title: \_\_\_\_\_

FILING NO: 2001 1401641  
 FILING DATE: 2001/08/27  
 FILING TIME: 5:00pm  
 STATE OF MINNESOTA  
 FILING OFFICE: SECRETARY OF STATE

**UCC FINANCING STATEMENT**  
 FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional) Phone: (800) 331-3282 Fax: (612) 682-4141	
B. SEND ACKNOWLEDGEMENT TO: (Name and Address)	
UCC Direct Services P.O. Box 29071 Glendale, CA 91209-9071	94887 CAT11 3043934-40-1  File with: Minnesota

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME: BYRNE

FIRST NAME: DAN	MIDDLE NAME:	SUFFIX:
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1c. MAILING ADDRESS: 18233 COUNTY RD 12 NW

CITY: GARFIELD	STATE: MN	POSTAL CODE: 56332	COUNTRY:
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1d. TAX ID #: SSN OR EIN

1e. TYPE OF ORGANIZATION

1f. JURISDICTION OF ORGANIZATION

1g. ORGANIZATIONAL ID #, if any  NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

FIRST NAME:	MIDDLE NAME:	SUFFIX:
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2c. MAILING ADDRESS

CITY:	STATE:	POSTAL CODE:	COUNTRY:
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2d. TAX ID #: SSN OR EIN

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any  NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME: Ziegler inc. (Minnesota)

OR

3b. INDIVIDUAL'S LAST NAME

FIRST NAME:	MIDDLE NAME:	SUFFIX:
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3c. MAILING ADDRESS: 901 West 94th Street

CITY: Minneapolis	STATE: MN	POSTAL CODE: 55420-4299	COUNTRY:
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4. This FINANCING STATEMENT covers the following collateral:  
 ONE CATERPILLAR SKID STEER LOADER MODEL 226, S/N SFZ03600 AND SUBSTITUTIONS, REPLACEMENTS, ADDITIONS, & ACCESSIONS THERETO, NOW OWNED OR HEREAFTER ACQUIRED, AND PROCEEDS THEREOF. Contr/CrApp# 91751

K# 175052

5. ALTERNATIVE DESIGNATION (if applicable)  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum  if applicable. 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)  All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA

File with: Minnesota

Contr/CrApp# 191751

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

Processed by UCC Direct Services, P.O. Box 29071, Glendale, CA 91209-9071 Tel: (800) 331-3282

91751

FROM : LEUTHNER LAW OFFICE

FAX NO. : 320-762-0773

Sep. 10 2004 08:44AM P2

Contract for Deed for 2001 226 CAT Skidloader Serial # 5FZ03600

Purchase Price: \$ 14000.00  
 Down Payment: \$ 2000.00 *PD ck# 5432*  
 Length of contract : 30 months  
 Amount of payment: \$ 400.00  
 Interest rate : 0%

Payment due date : The First (1<sup>st</sup>) of every month starting with March 1, 2004

Contract end date : August 1, 2006 equal to 30 payments of \$400.00 totaling \$12000.00

Late fee: \$25.00 If paid later than the 10<sup>th</sup> of the month.

Date of Sale 2-1-2004

Seller is Dan Byrne 43007 Summit Drive Evansville, Mn 56326 218-267-5110

Buyer is Greg Kaufenberg 15249 Spring Lake Rd NW Miltona, Mn 56354 218 267 2541

Buyer must carry full insurance on the said equipment until the contract is satisfied.

If buyer decides to sell the skidloader, contract has to be paid in full before new owner takes possession.

Buyer receives 3 attachments in deal : 66 inch bucket, Cat dirt bucket, and manure forks.

If buyer defaults on loan for 3 payments, seller has the right to confiscate skidloader with no obligation to return any money invested by the buyer.

Skidloader must be maintained efficiently by the buyer, the length of the loan.

Payments for the first 28 payments will be made to Cat Financial, and Dan Byrne  
 To insure seller that Dan's original note is being paid off. Seller will notify Buyer on the last 2 payments on how the check will be written.

In the event that the seller pays off the original note to Cat Financial, proof of the payoff Will be presented to the buyer, and any payment thereafter will be made only to the seller.

There will be 2 signed copies of contract, one to seller one to buyer.

SELLER : Dan Byrne

BUYER : Greg Kaufenberg

Date 2/1/04

Date FEB 1<sup>st</sup> 2004

Signature *Dan Byrne*

Signature *Greg Kaufenberg*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Chapter 7  
BKY Case No. 04-60885-DDO

Daniel Joseph Byrne,  
Rebecca Lyne Byrne,

Debtors.

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**MEMORANDUM IN SUPPORT OF MOTION  
FOR RELIEF FROM THE AUTOMATIC STAY**

This Memorandum is submitted in support of the MOTION FOR RELIEF FROM THE AUTOMATIC STAY, AND REQUEST FOR A HEARING (the "Motion") filed by Caterpillar Financial Services Corporation. ("CAT Financial").

**PROCEDURAL CONTEXT**

In this Motion, CAT Financial seeks relief from the automatic stay provisions of 11 U.S.C. § 362(a) to repossess that certain CAT 226 Skid Steer Loader S/N 5FZ03600 (the "Collateral") which is the subject of the Installment Sale Contract (Security Agreement) (the "Contract") between CAT Financial and Daniel Joseph Byrne (the "Debtor") and to pursue its other state law remedies, including sale to a third party purchaser.

**POSITION**

CAT Financial contends that the Debtor's failure to maintain insurance on the Collateral, constitute "cause" for relief from the automatic stay under 11 U.S.C. § 362(d)(1). Furthermore, the material default arising from the Debtor's sale and transfer of the Collateral to a third-party, in breach of the Contract, provides an independent basis for the lifting of the stay.

## FACTS

On August 6, 2001, the Debtor executed and entered into the Contract with Ziegler, Inc., which was subsequently assigned to CAT Financial on August 23, 2001. True and correct copies of the Contract and evidence of perfection of CAT Financial's interest in the Collateral are attached hereto as Exhibits A, B and C. CAT Financial is the holder of a secured claim, and is thus a party in interest. CAT Financial has a valid and perfected security interest in the Collateral. The balance due on the Contract is \$9,356.24, plus costs and attorneys fees. On information and belief, the wholesale value of the Collateral is approximately \$16,000.00.

The Debtor has failed to maintain proper insurance coverage for the Collateral. There has been a further material default of the Contract in that Debtor has sold and transferred possession of the Collateral to a third-party who, upon information and belief, continues to use the Collateral. This continued use is causing the Collateral to deteriorate in value.

## ARGUMENT

Under the Bankruptcy Code, the Court must grant relief from the stay if either of two alternatives is met:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if –

(A) the debtor does not have an equity in such property;

and

(B) such property is not necessary to an effective reorganization . . . .

11 U.S.C. § 362(d). With the exception of the equity issue, the debtor bears the burden of proof on all elements. In re Marion Street Partnership, 108 B.R. 218, 224 (Bankr. D. Minn. 1989); 11 U.S.C. § 362(g) ("In any hearing under subsection (d) or (e) of this section . . . (1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property ; and (2) the party opposing such relief has the burden of proof on all other issues.").

**a. CAT FINANCIAL is entitled to relief from the automatic stay pursuant to 11 U.S.C § 362(d)(1).**

The Bankruptcy Code does not expressly define "cause." See In re Metro Square, 1988 WL 86679, at \*2 (Bankr. D. Minn. Aug. 10, 1988). However, a lack of adequate protection has been construed to constitute sufficient cause for lifting the stay. See First Fed. Savs. Bank v. Sierra (In re Sierra), 73 B.R. 322, 323 (Bankr. D. P. R. 1987) (failure of debtor to provide adequate protection constitutes "per se . . . cause to lift the automatic stay.").

In the instant case, CAT Financial's interest in the Collateral is not adequately protected because: (1) Debtor has sold and transferred possession of the vehicle to a third-party in direction violation the terms of the Contract; (2) upon information and belief, the third-party who purchased the Collateral from the Debtor continues to use the Collateral and such continued use will decrease the value of CAT Financial's interest in the collateral; (3) Debtor has failed to maintain insurance coverage for the Collateral. The aforementioned circumstances constitute "cause" within the meaning of § 362(d)(1), justifying relief from the automatic stay. See United Savs. Ass'n v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 370 (1988); In re Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306 (8<sup>th</sup> Cir. 1991).

**CONCLUSION**

Cause exists under § 362(d)(1) to grant CAT Financial relief from the automatic stay provisions of 11 U.S.C. § 362(a). Accordingly, CAT Financial respectfully requests that the relief requested in the Motion be granted.

Dated: September 17, 2004

DORSEY & WHITNEY LLP

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Attorneys for Caterpillar Financial Services

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Chapter 7

BKY Case No. 04-60885-DDO

Daniel Joseph Byrne,  
Rebecca Lyne Byrne,

Debtors.

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**ORDER GRANTING RELIEF  
FROM THE AUTOMATIC STAY**

The Motion of Caterpillar Financial Services Corp. ("CAT Financial") for Relief from the Automatic Stay (the "Motion") came before the Court and the undersigned Judge. Notice of the hearing on the Motion being adequate, and the Court, being fully advised of the premises, and based upon the Motion, all of the files and records in this case and the arguments of counsel,

**IT IS HEREBY ORDERED THAT:**

1. The automatic stay imposed by 11 U.S.C. § 362(a) is terminated as it applies to CAT Financial, in order that CAT Financial may repossess that certain CAT 226 Skid Steer Loader S/N 5FZ03600 (the "Collateral") and exercise its state law rights and remedies, including sale of the Collateral to a third party;
2. CAT Financial is allowed its reasonable attorneys fees and costs incurred in this matter, such amount to be added to its claim amount so the any sale proceeds in excess of such claim amount may be applied to the allowed attorney fees and costs;
3. Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this Order is effective immediately.

Dated: September \_\_, 2004

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UNITED STATES BANKRUPTCY JUDGE

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In re:

BKY Case No. 04-60885-DDO

Daniel Joseph Byrne,  
Rebecca Lyne Byrne,

Chapter 7

Debtors.

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**UNSWORN AFFIDAVIT OF SERVICE**

I, Alpha Khaldi, state that on the 17th day of September, 2004, I did serve, via facsimile, a true and correct copy of the NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY, MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY and proposed Order on the following parties :

Daniel Joseph Bryne  
Rebecca Lynn Bryne  
43007 Summit Drive  
Evansville, MN 56326

U.S. Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415  
Fax: 612-664-5516

Tamara L Yon  
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/e/ Alpha Khaldi  
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Alpha Khaldi