10. Prior to entering into the Contract, Cervus, Peterbilt, Cross Country and El Cargo Tarps, negligently made certain untrue, inaccurate or misleading representations to Bellhop with respect to the quality and fitness for purpose of the Trailer(s) and the Tarp System, whether expressly or by implication, which they knew or ought to have known Bellhop would rely on. These representations include, but are limited to, representations that the Trailer(s) and the Tarp System:

(a) The Trailer(s) will be in good working order and "free from defects in material and workmanship";

(b) The Trailer(s) are "not only suited to Bellhop's needs but has been engineered with safety, durability, and overall performance in mind";

(c) The Trailer(s) are "the toughest Trailer(s) on earth";

(d) The Trailer(s) are "Engineered for Today. Built for a lifetime.";

(e) The Tarp System is built for the customer's specific needs;

(f) That El Cargo Tarps will provide "unmatched customer service"; and

(g) That the Tarp System is made with "superior quality components", is "dependable", "reliable", "durable" and will "meet the individual needs of transporters".

11. Bellhop relied on the aforesaid representations of Cervus, Peterbilt, Cross Country and El Cargo Tarps, when deciding to enter into the Contract, to its detriment.

12. Further, it was an expressed or implied term of the Contract that the Trailer(s) and the Tarp System would be:

(a) Of merchantable quality and fit for purpose;

(b) The first of the Trailer(s) would be delivered to Bellhop by no later than May 18, 2015, and the second of the Trailer(s) would be delivered by June 1, 2015; and

(c) Both Trailer(s) would be delivered to Bellhop in good working order and free from defect in material and workmanship.

13. The Trailer(s) also carried a manufacturer's warranty that all new steel box and steel chassis Trailer(s) manufactured by Cross Country will be free of defects in material and workmanship (the **"Cross Country Warranty"**). Under the Cross Country Warranty, Cross Country represented or promised that it would repair and replace any defects in material and workmanship in the structure of the Trailer(s) for 5 years, and in the live bottom drive system for 1 year.

14. The El Cargo Tarp also carried with it a 3 year manufacturer's warranty that the tarp system would be free from all manufacturing defects and a 2 year manufacturer's warranty on the electrical components of the tarp system (the "**El Cargo Tarps Warranty**").

15. By reason of the Contract, the Cross Country Warranty, the El Cargo Warranty and the special and proximate relationship that exists between the parties, each of Cervus, Peterbilt, Cross Country and El Cargo Tarps owe Bellhop a duty of care and a duty of good faith in the performance of their respective contractual obligations.

16. In breach of the Contract, Cervus and/or Peterbilt delivered the first of the Trailer(s)s to Bellhop on or about July 14, 2015 or about 2 months late. The second Trailer(s) was never delivered to Bellhop.

17. As a direct result of the failure of Cervus and/or Peterbilt to deliver the Trailer(s) on schedule, or at all, Bellhop could not fulfill its contracts with its customers causing it to lose anticipated profits, business opportunity and business reputation.

18. To mitigate some of its damages, Bellhop purchased another smaller Trailer(s), causing Bellhop to incur further expenses.

19. Bellhop advised Cervus and Peterbilt, and it was reasonably foreseeable, that the failure to deliver the Trailer(s) to Bellhop on schedule would cause Bellhop to suffer damages including

out of pocket expenses, loss of profit, loss of business opportunity and loss of business reputation.

20. In breach of the Contract and the *Sale of Goods Act*, the Trailer(s) and the Tarp System that Cervus and/or Peterbilt delivered to Bellhop were not in good working order, free from defects in material and workmanship, of merchantable quality or fit for purpose. In particular, the Trailer(s) and the Tarp System had defects in material and workmanship which include, but are not limited to:

(a) Improperly installed fenders;
(b) Faulty wiring and electrical systems;
(c) Non-operating lift axels;
(d) Faulty air line;
(e) Non-operating belt;
(f) Broken output shaft;
(g) Leaking airbags;
(h) Non-operating tarp system;
(i) Improperly installed ladder latch;
(j) Faulty chain oiler system;
(k) Leaking axel seal;
(l) Incorrect threaded rods;
(m) Improper chain tension thread rod in the live bottom;
(n) Improper reflective tape on fender;
(o) Improper flaps installed behind all axels; and
(p) No centre mud flaps in front of landing gear.

21. Cervus, Peterbilt, Cross Country and El Cargo Tarps did not exercise reasonable care in supply of the Trailer(s) and the Tarp System, which were shoddy, defective and created a real and substantial danger to the health and safety of the user.

22. The Trailer(s) and the Tarp System broke down almost immediately after Bellhop took delivery and continuously broke down after emergency repairs were made, causing the Trailer(s)

to be constantly out of service for long periods of time. Eventually, Bellhop had no other choice but to take the Trailer(s) out of service entirely.

23. Bellhop promptly advised Cervus, Peterbilt, Cross Country and El Cargo Tarps, either by itself or through its agents, of each of these breakdowns and the defects in the material and workmanship of the Trailer(s) and the Tarp System as they became known to Bellhop. Notwithstanding the receipt of said notice, neither Cervus, Peterbilt, Cross Country nor El Cargo Tarps adequately responded to Bellhop with respect to the breakdowns or defects, or at all.

24. Given no other choice, in an attempt to mitigate its damages, Bellhop caused certain emergency repairs to be completed on the Trailer(s) and the Tarp System.

25. While Cervus, Peterbilt, Cross Country and El Cargo Tarps acknowledged the aforesaid defects in material and workmanship of the Trailer(s) and the Tarp System, and were given multiple opportunities to repair or replace the Trailer(s) and the Tarp System, Cervus, Peterbilt, Cross Country and El Cargo Tarps failed or refused to properly repair or replace the Trailer(s) and the Tarp System in a reasonable amount of time, or at all, in breach of the Contract, the warranties provided, and their respective duties of good faith.

26. As a direct result of Cervus, Peterbilt, Cross Country and El Cargo Tarps failing or refusing to repair the Trailer(s) and the Tarp System, Bellhop suffered damages including, but not limited to, out of pocket expenses, loss of income, loss of business opportunity and loss of business reputation.

27. Bellhop advised Cervus, Peterbilt, Cross Country and El Cargo Tarps, and it was reasonably foreseeable, that the failure to deliver the Trailer(s) and the Tarp System free of defects in material and workmanship, of merchantable quality, and fit for purpose and/or that a failure to repair or replace the Trailer(s) and the Tarp System with defects in material and workmanship, would cause Bellhop to suffer damages including out of pocket expenses, loss of income, loss of business opportunity and loss of business reputation and would pose a danger to the health and safety of the users.

28. The actions of Cervus, Peterbilt, Cross Country and El Cargo Tarps constitute a callous and flagrant disregard for the rights of Bellhop.

29. John Doe and Jane Doe took part in the control of the business of Cervus Contractors Equipment LP, and are thus jointly and severally liable for the actions of Cervus.

30. As a direct result of the aforesaid breaches of contract, breach of warranty, breach of the *Sale of Goods Act,* breach of duty of good faith, negligent misrepresentations, negligent supply of shoddy or defective goods, Bellhop suffered damages which include, but are not limited to, out of pocket expenses, loss of business opportunity and income, loss of good will and business reputation.

31. Bellhop pleads and relies on the *Sale of Goods Act*, R.S.O. 1990, c S.1, as amended.

March 17, 2017

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Lawyers for the plaintiff, Bellhop Express Corp.

Court File No. 914/17

BELLHOP EXPRESS CORP.	and	**CERVUS CONTRACTORS EQUIPMENT LP c.o.b. as PETERBILT as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD et al.**
Plaintiff		Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OSHAWA

STATEMENT OF CLAIM

CASSELS BROCK & BLACKWELL LLP
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Lawyers for the plaintiff, Bellhop Express Corp.

This is Exhibit "S" to the

Affidavit of James Anthony Crespi

Sworn before me this 5th day of February, 2018

Graham Andrews

A Commissioner for Taking Affidavits

Baker & McKenzie LLP
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July 17, 2017

Our ref: 92292799-000001

Raivo Uukkivi
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Via email
ruukkivi@casselsbrock.com and
jfletcher@casselsbrock.com

Dear Counsel:

5274398 Manitoba Ltd. ats. Bellhop Express (Court File No. 914/17)

As you are aware we have been recently retained by 5274398 Manitoba Ltd. to assist in the above noted proceedings.

Attached please find our client's Notice of Intent to Defend, which is being served upon you pursuant to the *Rules of Civil Procedure*.

We are in the process of familiarizing ourselves with this matter and will advise in due course regarding a delivery date for our client's Statement of Defence.

Regards,
BAKER & McKENZIE LLP

Michael Nowina
t: 416 865 2312
e: michael.nowina@bakermckenzie.com

Attachment

Baker & McKenzie LLP, an Ontario limited liability partnership, is a member of Baker & McKenzie International, a Swiss Verein.

Court File No. 914/17

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

BELLHOP EXPRESS CORP.

Plaintiff

-and-

CERVUS CONTRACTORS EQUIPMENT LP also known as PETERBILT ONTARIO TRUCK CENTRES as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD., PETERBILT ONTARIO INC. carrying on business as PETERBILT ONTARIO TRUCK CENTRES, 5274398 MANITOBA LTD. carrying on business as CROSS COUNTRY MANUFACTURING, ELCARGO FABRICATION INC. carrying on business as EL CARGO TARPS, JOHN DOE and JANE DOE

Defendants

NOTICE OF INTENT TO DEFEND

The Defendant 5274398 Manitoba Ltd., carrying on business as Cross Country Manufacturing, intends to defend this action.

July 17, 2017

BAKER & McKENZIE LLP
Barristers and Solicitors
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181 Bay Street, Suite 2100
Toronto, ON M5J 2T3

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Lawyers for the Defendant 5274398 Manitoba Ltd, carrying on business as Cross Country Manufacturing

TO: **CASSELS BROCK & BLACKWELL LLP**
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Lawyers for the Plaintiff, Bellhop Express Corp.

AND TO: **CERVUS CONTRACTORS EQUIPMENT LP also known as PETERBILT ONTARIO TRUCK CENTRES as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD.**
715 5th Avenue SW, Suite 2800
Calgary, AB T2P 2X6

AND TO: **PETERBILT ONTARIO INC. carrying on business as PETERBILT ONTARIO TRUCK CENTRES**
31 Buchanan Court
London, ON M5Z 4P9

AND TO: **ELCARGO FABRICATION INC. carrying on business as EL CARGO TARPS**
5735, Rue Barré
Saint-Hyacinthe, QC J2R 1E4

AND TO: **JOHN DOE**
N/A

AND TO: **JANE DOE**
N/A

BELLHOP EXPRESS CORP.
Plaintiff

-and-

CERVUS CONTRACTORS EQUIPMENT LP et al.
Defendants

Court File No. 914/17

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OSHAWA, ONTARIO

NOTICE OF INTENT TO DEFEND

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Lawyers for the Defendant 5274398 Manitoba Ltd, carrying on business as Cross Country Manufacturing

This is Exhibit "T" to the

Affidavit of James Anthony Crespi

Sworn before me this 5th day of February, 2018

A Commissioner for Taking Affidavits

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FACSIMILE

Please deliver immediately

Date: November 6, 2017 **Time:** 2:52 PM

From: Stewart D. Thom

Re: **Cervus Contractors Equipment, et al v. Bellhop**

File No: 38978.0005 **User No:** **706**

Total Pages Sent (including this cover sheet): 16

To the following recipients:

Name	Phone	Facsimile
Raivo Uukkivi & Jordan Fletcher Cassels Brock & Blackwell LLP		**416-640-3110 &** **416-642-7146**

Message:

Please find attached the Statement of Defence and Crossclaim of the Defendant, Cervus Contractors Equipment LP.

38978.0005/10593075_.1

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CONTACT JOSSET JOHNSON AT 416-863-1188 Ext. 227

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Our File No: 38978.0005

An international member of
AllyLaw

Torkin Manes
Barristers & Solicitors

November 6, 2017

DELIVERED VIA FAX

Raivo Uukkivi & Jordan Flether
Cassels Brock & Blackwell LLP
Scotia Plaza
2100-40 King St W
Toronto, ON M5H 3C2

Dear Sir/Madame:

Re: Cervus Contractors Equipment LP, et al v. Bellhop

Please find attached the Statement of Defence and Crossclaim of Cervus Contractors Equipment LP, which is served upon you pursuant to the *Rules of Civil Procedure*.

Yours truly,

Torkin Manes LLP
Per:

Stewart D. Thom
SDT/jj

Attachment
38978.0005/10593869_1

Court File No. 914 117

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

BELLHOP EXPRESS CORP.

Plaintiff

-and-

CERVUS CONTRACTORS EQUIPMENT LP also known as PETERBILT ONTARIO TRUCK CENTRES as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD., PETERBILT ONTARIO INC. carrying on business as PETERBILT ONTARIO TRUCK CENTRES, 5274398 MANITOBA LTD. carrying on business as CROSS COUNTRY MANUFACTURING, ELCARGO FABRICATION INC. carrying on business as EL CARGO TARPS, JOHN DOE and JANE DOE

Defendants

STATEMENT OF DEFENCE AND CROSSCLAIM OF CERVUS CONTRACTORS EQUIPMENT LP also known as PETERBILT ONTARIO TRUCK CENTRE as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD.

1. Unless otherwise stated herein, the Defendant, Cervus Contractors Equipment LP also known as Peterbilt Ontario Truck Centre, as represented by its general partner Cervus Contractors Equipment Ltd. ("**Cervus**"), denies each and every allegation of fact and law contained in the Statement of Claim.

Parties

2. Bellhop Express Corp. ("**Bellhop**") is an Ontario corporation with a registered head office in Trenton, Ontario.

3. Cervus carries on business as, *inter alia*, a dealer of transportation trucks, trailers and related equipment. Cervus does not manufacture any of the vehicles or equipment sold to Cervus' customers.

4. 5274398 Manitoba Ltd., carrying on business as Cross Country Manufacturing ("**Cross Country**"), is a Manitoba corporation with offices in Mordon, Manitoba which, *inter alia*, manufactures trailers. At the time of the events alleged in the Statement of Claim, Cross Country supplied trailers to Cervus.

5. Elcargo Fabrication Inc., carrying on business as El Cargo Tarps ("**El Cargo**"), is a federally incorporated company with registered head offices in Saint-Hyacinthe, Quebec. El Cargo is a manufacturer of, *inter alia*, mechanized tarp systems. El Cargo tarp systems are occasionally installed on Cross Country trailers purchased by Cervus' customers. Cervus has never performed the installation of a tarp system manufactured by El Cargo.

Cervus' Dealings with Bellhop

The March 19, OP

6. In or around March 2015, Bellhop entered into discussions with Cervus regarding the potential purchase by Bellhop of one or more 2015 485LB Cross Country manufactured trailer(s).

7. In connection with the above discussions, an undated offer to purchase was partially completed by Bellhop, in Cervus' standard form, and signed by Bellhop on March 19, 2015 (the "**March 19 OP**"). The details contained on the March 19 OP reflect an intention by Bellhop to offer to purchase two 485LB Cross Country trailers, each fitted with El Cargo mechanical tarp systems, from Cervus. The combined total purchase price for the two trailers and two tarp

systems indicated on the March 19 OP, excluding taxes, was $226,800, representing a per unit price of $112,000 per trailer and $1,400 per tarp system.

8. Until accepted by Cervus, the March 19 OP constitutes an offer to purchase only. The express terms of the March 19 OP state that it is not binding upon Cervus unless and until it is accepted by an authorized representative of Cervus. The "Vendor Acceptance" section of the March 19 OP was not dated or signed by any authorized, or any other, representative of Cervus. No deposit or any other payment was paid to Cervus by Bellhop in respect of the March 19 OP.

9. Cervus pleads that the March 19 OP was not accepted by Cervus and does not constitute a binding purchase agreement. Accordingly, the March 19 OP gives rise to no contractual, or any other, legal obligations on the part of Cervus.

The March 24 OP

10. The following week, Bellhop partially filled in two revised offers to purchase. The documents ("**March 24 OP #1**" and "**March 24 OP #2**", respectively and, collectively, the "**March 24 OP's**") are each dated March 18, 2015 but were each signed and dated by Bellhop on March 24, 2015. Each of March 24 OP #1 and March 24 OP #2 reflect an intention by Bellhop to offer to purchase one (instead of two) identical 485LB Cross Country trailers, similarly fitted with an El Cargo mechanical tarp system at the same per unit prices as indicated on the March 19 OP.

11. Until accepted by Cervus, the March 24 OP's constitutes an offer to purchase only. The express terms of the March 24 OP's state that these are not binding upon Cervus unless and until accepted by an authorized representative of Cervus. The "Vendor Acceptance" section was not signed or dated by any authorized, or any other, representative of Cervus is respect of either of

the March 24 OP's. No deposit or any other payment was paid to Cervus by Bellhop in respect of the March 24 OP's.

12. Cervus states that the March 24 OP's were not accepted by Cervus, are not binding purchase agreements and give rise to no contractual, or any other, legal obligations on the part of Cervus.

The Mercado Purchase Agreement

13. Between June 26 and July 6, 2015, Cervus entered into discussions respecting the purchase by Mercado Capital Corporation ("**Mercado**") of one trailer consistent with the specifications contained on each of the March 24 OP's.

14. On June 30, 2015, Mercado paid Cervus the sum of $128,418.85 for the purchase of said trailer (the "**Mercado Trailer**"). No payments were received by Cervus from Bellhop in connection with the Mercado Trailer.

15. Paperwork respecting the purchase of the Mercado Trailer was completed on July 6, 2015. An offer to purchase from Cervus one 485LB Cross Country trailer, fitted with El Cargo mechanical tarp system and having serial number 2C9LSW52XGB183760 was completed on behalf of Mercado. The Mercado offer to purchase was accepted by and signed back by Cervus.

16. Cross Country was to supply the Mercado Trailer to Cervus, with El Cargo tarp system installed prior to delivery.

17. Cervus' supply agreement with Cross Country (the "**Cross Country Agreement**") provides:

(a) that all trailers sold by Cross Country to Cervus are to be in good working order and free from defects in material and workmanship;

(b) that Cross Country warrantees to Cervus and any purchaser from Cervus:

(i) that it will remedy any defects in material and workmanship in Cross Country products at a rate of 100% for the first year following sale, or otherwise reimburse Cervus for the cost of remedying such defects; and

(ii) that the warranty referenced above applies also, in varying rates as particularized in the Cross Country Agreement, in subsequent years following sale.

18. Cervus received delivery of the Mercado Trailer from Cross Country, with El Cargo tarp system installed, in or around the first week of July, 2015. The Mercado Trailer was picked up from Cervus on or about July 8, 2015.

19. The Mercado Trailer was never owned by Bellhop. Cervus understands that the Mercado Trailer was used by Bellhop, but has no specific knowledge of the details or arrangements made as between Mercado and Bellhop with respect to the Mercado Trailer. Following delivery of the Mercado Trailer, a Cervus sales representative communicated with Bellhop to inquire as to whether Bellhop intended to proceed with the purchase of any equipment from Cervus. Bellhop indicated that it would not be proceeding with any transactions.

20. Cervus understands that in or around the spring of 2017, the Mercado Trailer was sold at auction and is no longer owned by Mercado.

Cervus' Position re Bellhop's Claims against Cervus

21. Cervus:

(a) has never orally, or in writing, entered into any contract with Bellhop;

(b) has never sold any trailers, or anything else, to Bellhop;

(c) has never received any payment, deposit or any other form of consideration, from Bellhop; and

(d) denies that any of the March 19 OP or March 24 OP's (collectively, the "**Bellhop OP's**") are binding upon Cervus or give rise to any legal obligations owing from Cervus to Bellhop.

22. Bellhop did not purchase any equipment or trailers from Cervus, as alleged or at all. There is no contractual relationship between Cervus and Bellhop, no duty owed by Cervus to Bellhop, and no buyer-seller relationship between Cervus and Bellhop pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1. Cervus denies all allegations of breach of contract, breach of warranty, breach of the *Sale of Goods Act*, R.S.O. 1990, c. S.1, breach of duty, negligent misrepresentation, or negligent supply of shoddy or defective goods as alleged in the Statement of Claim.

23. In the alternative, should this Honourable Court determine that any of the Bellhop OP's represents an enforceable agreement or that Cervus bore any legal responsibility to supply any equipment to Bellhop, all of which is denied by Cervus, Cervus states that:

(a) it did not agree to deliver any equipment to Bellhop by any scheduled date; and

(b) each of the Bellhop OP's contain, *inter alia*, the following standard terms:

(i) that both parties agree that any warranty is supplied only by the manufacturer and not by Cervus;

(ii) that Cervus makes no representations and gives no conditions or warranties with respect to quality or fitness;

(iii) that all implied warrantics and conditions under the *Sale of Goods Act* R.S.O. 1990, c. S.1 do not apply;

(iv) that Cervus shall not be liable for any delays or damages caused by the failure of any parts of the merchandise supplied; and

(v) that Cervus is not responsible for failure to deliver goods on time, nor responsible to fill orders where prevented by any cause beyond its reasonable control.

24. Cervus denies that it failed to comply with any agreed upon timelines for the delivery of any equipment to Bellhop or that any late delivery, or non-delivery, of any equipment supplied to Bellhop by any party to this proceeding ("**Equipment**") was a result of circumstances which were reasonably within the control of Cervus, or for which Cervus could be held liable.

25. Cervus denies that any Equipment had any defect in materials, workmanship or fitness for use (any of these, a "**Defect**") and holds Bellhop to the strict proof of such claims. Cervus furthermore denies that it had any legal responsibility to either repair or remedy any Defect which may have existed or to compensate Bellhop for any resulting damages or losses.

26. Cervus denies making any of the representations attributed to Cervus in Bellhop's claim, denies that any representative of Cervus was authorized to, or did, enter into any contract with Bellhop and denies that Bellhop could reasonably have expected on the basis of its dealings with Cervus that any equipment would be supplied to Bellhop by Cervus at all, or be subject to any warranty extended by Cervus.

27. Cervus denies that Bellhop has suffered any losses or damages and pleads that the losses and damages claimed by Bellhop are excessive and remote. Cervus puts Bellhop to the strict proof of its alleged damages/losses.

28. In the alternative, Cervus states that it did not cause or contribute to and is not liable to Bellhop for any losses or damages which Bellhop may have suffered. Cervus furthermore denies that it owed Bellhop any duty of care or failed to meet any standard of care owed to Bellhop.

29. To the extent that Bellhop is found to have suffered any losses or damages for which Cervus is legally responsible, Cervus states that Bellhop was obliged to, and failed to, take reasonable steps which would have mitigated or reduced Bellhop's losses if taken.

30. Furthermore, to the extent that Bellhop is found to have suffered damages as a result of any Defect in any Equipment, such damages were wholly or partially caused or contributed to by the negligence of Bellhop, and specifically:

(a) Bellhop knew, or ought to have known, that it did not have the requisite skills, training or knowledge to conduct repairs, alterations or adjustments to the Equipment but did so nonetheless. In doing so, Bellhop exacerbated or caused any Defect(s) complained of;

(b) Bellhop permitted persons that it knew, or ought to have known, were not qualified to perform repairs, alterations or adjustments to the Equipment to do so. In doing so, Bellhop exacerbated or caused any Defect(s) complained of;

(c) Bellhop failed to take reasonable steps to remedy any known Defects when discovered by Bellhop, thereby exacerbating or causing any Defect(s) complained of; and

(d) Bellhop frustrated the efforts of the Defendants, or any of them, to inspect the Equipment and perform any repairs which may have been necessary, thereby preventing repairs from being completed in a timely fashion.

31. Cervus states that Bellhop failed to exercise the ordinary prudence to be reasonably expected in the circumstances and that it was foreseeable that Bellhop's actions in this regard would directly result in or contribute to any losses or damages found to have been suffered by Bellhop in connection with the claims asserted by Bellhop in this Action.

32. Cervus pleads and relies on the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1.

33. Cervus states that this Action should be dismissed, with costs payable to Cervus on a substantial indemnity scale.

CROSSCLAIM OF CERVUS CONTRACTORS EQUIPMENT LP also known as PETERBILT ONTARIO TRUCK CENTRE as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD.

34. The Defendant, Plaintiff by Crossclaim, Cervus, claims against the Defendants Cross Country and El Cargo, for:

(a) Contribution and/or full indemnity with respect to any amount for which Cervus may be found liable to Bellhop in the main action;

(b) Pre-judgment and post-judgment interest in accordance with s. 128 and s. 129, respectively, of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(c) The costs of this Crossclaim on a substantial indemnity basis; and

(d) Such further and other relief as to this Honourable Court may seem just.

35. The Defendant, Cervus, repeats and relies on the allegations contained in its Statement of Defence, above, and pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1.

36. Cervus states that it has denied all allegations advanced by Bellhop in its Statement of Claim and denies that it is liable to Bellhop as alleged, or at all.

37. If Bellhop's Action is sustained by this Honourable Court, any damages found to have been suffered by Bellhop are attributable wholly or in part to:

(a) in the case of Cross Country, breach of the Cross Country Agreement, breach of warranty and/or negligence for which Cross Country is responsible; and/or

(b) in the case of El Cargo, breach of warranty and/or negligence for which El Cargo is responsible.

38. By virtue of the relationship between Cross Country as manufacturer and Cervus as distributor of Cross Country-manufactured trailers, Cross Country owed Cervus a duty of care. Cervus states that Cross Country's breach of the Cross Country Agreement and/or duty of care owed to Cervus arises from its failure to:

(a) ensure that any Trailers sold by Cross Country to Cervus would be in good working order and free from any Defects;

(b) ensure that its employees had the requisite skills knowledge and experience to install the El Cargo tarp system on the Mercado Trailer;

(c) properly install the El Cargo tarp system on the Mercado Trailer; and

(d) remedy any Defects with respect to the Mercado Trailer or El Cargo tarp system in a timely fashion upon being notified of same and/or perform its obligations pursuant to the warranties extended by Cross Country to Cervus and/or Mercado and/or Bellhop.

39. Cervus states that by virtue of the relationship between El Cargo as manufacturer and Cervus as distributor of El Cargo manufactured tarp systems, El Cargo owed Cervus a duty of care. El Cargo's breach of the duty of care owed to Cervus arises from its failure to:

(a) ensure that the El Cargo tarp system would be in good working order and free from any Defect;

(b) provide Cross Country with the necessary information and training to properly install the El Cargo Tarp system or to otherwise ensure that the El Cargo tarp system was properly installed and free from any Defect; and

(c) remedy any defects in materials and workmanship in the El Cargo tarp system in a timely fashion following notice being provided to El Cargo of any Defect and/or to perform its obligations pursuant to the warranties extended by El Cargo to Cervus and/or Mercado and/or Bellhop.

40. Cervus states that it is entitled to contribution and/or full indemnity from Cross Country and/or El Cargo for any and all damages to which Cervus may be found liable to the Plaintiff, the validity of which claims have been denied, in addition to all related legal costs and expenses.

41. Cervus states that this Crossclaim should be tried together with the main action.

42. This crossclaim is served outside of Ontario without leave pursuant to Rule 17.02(q).

November 5, 2017

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, ON M5C 2W7

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197
Fax: 1-877-689-3872
Lawyers for Cervus Contractors Equipment LP

TO: **CASSELS BROCK & BLACKWELL LLP**
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Raivo Uukkivi LSUC #: 49932L
Tel: 416.860.6613
Fax: 416.640.3110

Jordan Flether LSUC #: 59295R
Tel: 416.869.5402
Fax: 416.642.7146

Counsel for the Plaintiff

TO: **PETERBILT ONTARIO INC. carrying on business as PETERBILT ONTARIO TRUCK CENTRES**
31 Buchanan Court
London, Ontario
M5Z 4P9

TO: **BAKER & McKENZIE LLP**
Barristers & Solicitors
Brookfield Place, P.O. Box 874
181 Bay Street, Suite2100
Toronto, ON M5J 2T3

Michael Nowina
E-mail: michael.nowina@bakermckenzie.com
Tel.: 416-865-2312
Fax: 416-863-6275

Lawyers for the Defendant, 5274398 Manitoba Ltd. carrying on business as Cross Country Manufacturing and Cross Country Trailer

TO: **ELCARGO FABRICATION INC. carrying on business as EL CARGO TARPS**
5735, Rue Barre
Saint-Hyacinthe , Quebec
J2R 1E4

BELLHOP EXPRESS CORP.
Plaintiff

-and-

CERVUS CONTRACTORS EQUIPMENT LP, et al.
Defendants

Court File No. 914/17

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT OSHAWA

STATEMENT OF DEFENCE AND CROSSCLAIM OF CERVUS CONTRACTORS EQUIPMENT LP also known as PETERBILT ONTARIO TRUCK CENTRE as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD.

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
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Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197
Fax: 1-877-689-3872

Lawyers for Cervus Equipment Corporation

RCP-E 4C (May 1, 2016)

11/06/2017 16:36 FAX 416 863 0305 TORKIN MANES ☑016/016

Appendix 2

Bankruptcy and Insolvency Act ("Act")

PROOF OF CLAIM

(Section 50.1, 81.5, 81.6, Subsections 65.2(4), 81.3(8), 81.4(8), 102(2), 124(2), 128(1), and Paragraphs 51(1)(e) and 66.14(b) of the Act)

All notices or correspondence regarding this claim must be forwarded to the following addresses:

Torkin Manes LLP
1500 -151 Yonge Street
Toronto, Ontario M5C 2W7
Attention: Stewart Thom

and

Cervus Contractors Equipment LP
5201, 333 – 96 Ave NE
Calgary, Alberta T3K 0S3
Attention: Jamie Robinson

In the matter of the proposal of 5274398 Manitoba Ltd. doing business as Cross Country Manufacturing (the **"Debtor"**), of the City of Morden, in the Province of Manitoba and the claim of Cervus Contractors Equipment LP, as creditor.

I, Jamie Robinson, of the City of Calgary, in the Province of Alberta, do hereby certify:

1. That I am a Director of Business Development at Cervus Contractors Equipment LP, the Creditor of the above-named Debtor.

2. That I have knowledge of all the circumstances connected with the claim referred to in this form.

3. That the said Debtor, was at the date of the proposal, namely the 23rd day of January, 2018, and still is, indebted to the above-named Creditor (referred to in this form as "the **Creditor**") in the sum of $3,783,856.65 as shown on the relevant statement of accounts for services rendered attached hereto and marked "Schedule A", after deducting any counterclaims to which the Debtor is entitled.

4. (*Check and complete appropriate category.*)

☒ A. UNSECURED CLAIM OF $3,706,325.00

That in respect of the said debt, I do not hold any assets of the Debtor as security and

(*Check appropriate description*)

☐ Regarding the amount of $ _____, I claim a right to a priority under section 136 of the Act.

☒ Regarding the amount of $3,706,325.00, I do not claim a right to a priority.
(*Set out on an attached sheet details to support priority claim.*)

☐ B. CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE $_____
That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:

☐ C. SECURED CLAIM OF _____
That in respect of this debt, I hold assets of the debtor valued at $0.00 as security, particulars of which are as follows:

☐ D. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST OF $_____
That I hereby make a claim under subsection 81.2(1) of the Act for the unpaid amount of $_____

☐ E. CLAIM BY WAGE EARNER OF $_____

☐ That I hereby make a claim under subsection 81.3(8) of the Act in the amount of $ _____,
☐ That I hereby make a claim under subsection 81.4(8) of the Act in the amount of $ _____,

☐ F. CLAIM AGAINST DIRECTOR $_____

That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:

☐ G. CLAIM OF A CUSTOMER OF A BANKRUPT SECURITIES FIRM $_____
That I hereby make a claim as a customer for net equity as contemplated by section 262 of the Act, particulars of which are as follows:

5. That, to the best of my knowledge, the above-named Creditor is not related to the Debtor within the meaning of section 4 of the Act, and has dealt with the Debtor in an arm's-length manner.

6. That the following are the payments that I have received from, the credits that I have allowed to, and the transfers at undervalue within the meaning of subsection 2(1) of the Act that I have been privy to or a party to with the Debtor within the three months immediately before the date of the initial bankruptcy event within the meaning of subsection 2(1) of the Act: none

Dated at Calgary, Alberta, this 5 day of February, 2018.

Witness

CERVUS CONTRACTORS EQUIPMENT LP as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD.
Per: Jamie Robinson

NOTE: If an affidavit is attached, it must have been sworn to before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to subsection 128(3) of the Bankruptcy and Insolvency Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 201(1) of the Bankruptcy and Insolvency Act provides severe penalties for making any false claim, proof, declaration or statement of account

District of: Manitoba
Division No.: 01
Court no.
Estate no. 21-2281867

GENERAL PROXY

In the matter of the proposal of
5274398 Manitoba Ltd. d/b/a Cross Country Manufacturing
of the City of Morden, in the Province of Manitoba

In the matter of the proposal of 5274398 Manitoba Ltd. d/b/a Cross Country Manufacturing of the City of Morden, in the Province of Manitoba, the undersigned creditor hereby appoints (with power of substitution)

Stewart D. Thom

To be the creditors general proxy in the above matter (excepting only as to the receipt of dividends)

Dated at Calgary, this 5day of February, 2018

(location) (day)

Witness

Cervus Contractors Equipment LP

Per: _____

Name: Jamie Robinson
Title: Director of Business Development

I/We have the authority to bind the corporation

SCHEDULE "A"

The Creditor's claim against the Debtor is apportioned as follows:

Claim A:

In the amount of $3,600,000.00 for contribution indemnity relating to an action commenced by Bellhop Express Inc. against the Creditor, the Debtor, and others as evidenced by the following exhibits attached hereto:

Exhibits

- Statement of Claim issued on March 27, 2017
- Statement of Defence filed on November 14, 2017

Claim B:

In the amount of $183,856.65 in connection with the inadvertent duplicate payment of invoices rendered by the Debtor to the Creditor:

Exhibits:

- Various invoices issued by the Debtor totalling $183,856.65
- Banking records of the Creditor evidencing duplicate payment of above noted invoices.

CLAIM A

Court File No. 914 117

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

BELLHOP EXPRESS CORP.

Plaintiff

- and -

CERVUS CONTRACTORS EQUIPMENT LP also known as PETERBILT ONTARIO TRUCK CENTRES as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD., PETERBILT ONTARIO INC. carrying on business as PETERBILT ONTARIO TRUCK CENTRES, 5274398 MANITOBA LTD. carrying on business as CROSS COUNTRY MANUFACTURING, ELCARGO FABRICATION INC. carrying on business as El CARGO TARPS, JOHN DOE and JANE DOE

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the Statement of Claim served with this Notice of Action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this Notice of Action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU

WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $7,000.00 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and $400.00 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court

Date March 17, 2017 Issued by _____
Local Registrar

Address of court office:

Durham Region Courthouse
150 Bond Street East
Oshawa, ON L1G 0A2

TO: **CERVUS CONTRACTORS EQUIPMENT LP also known as PETERBILT ONTARIO TRUCK CENTRES as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD.**
715 5th Avenue SW, Suite 2800
Calgary, Alberta
T2P 2X6

AND TO: **PETERBILT ONTARIO INC. carrying on business as PETERBILT ONTARIO TRUCK CENTRES**
31 Buchanan Court
London, Ontario
M5Z 4P9

AND TO: **5274398 MANITOBA LTD. carrying on business as CROSS COUNTRY MANUFACTURING and CROSS COUNTRY TRAILER**
360 Main Street, Suite 3000
Winnipeg, Manitoba
R3C 4G1

AND TO: **ELCARGO FABRICATION INC. carrying on business as El CARGO TARPS**
5735, Rue Barré
Saint-Hyacinthe , Quebec
J2R 1E4

AND TO: **JOHN DOE**
N/A

AND TO: **JANE DOE**
N/A

CLAIM

1. The Plaintiff, Bellhop Express Corp. ("Bellhop"), claims as against the Defendants, Cervus Contractors Equipment LP also known as Peterbilt Ontario Truck Centres as represented by its general partner Cervus Contractors Equipment Ltd. ("**Cervus**"), Peterbilt Ontario Inc. carrying on business as Peterbilt Ontario Truck Centres ("**Peterbilt**"), 5274398 Manitoba Ltd. carrying on business as Cross Country Manufacturing and Cross Country Trailer ("**Cross Country**"), Elcargo Fabrication Inc. carrying on business as El Cargo Tarps ("**El Cargo Tarps**"), John Doe and Jane Doe:

(a) A declaration that the Defendants, Cervus, Peterbilt, and Cross Country, together or individually, breached their contracts with Bellhop;

(b) A declaration that the Defendants are jointly and severally liable;

(c) Damages for breach of contract in an amount estimated to be $100,000.00, or such other amounts as may be proven in the course of this action;

(d) Damages for loss of profits and lost business opportunity in an amount as yet to be determined but not less than $3,500,000.00;

(e) Damages for loss of business reputation in an amount as yet to be determined;

(f) Aggravated, punitive and exemplary damages;

(g) In the alternative, disgorgement of the Defendants profits;

(h) Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(i) It's costs of the action on a substantial indemnity basis together with HST thereon; and

(j) Such further and other relief as to this Honourable Court seems just.

2. Bellhop is a corporation incorporated pursuant to the laws of the Province of Ontario, carrying on business as a trucking company.

3. Cervus is a limited partnership registered in the Province of Alberta and extra-provincially registered in the Province of Ontario, carrying on business as a commercial equipment dealership.

4. Cross Country is a corporation incorporated pursuant to the laws of the Province of Manitoba and extra-provincially registered in the Province of Ontario, carrying on business as a manufacturer of commercial trailers.

5. Peterbilt is a corporation incorporated pursuant to the laws of the Province of Ontario., carrying on the business as a manufacturer of commercial trailers.

6. El Cargo Tarps is a federally incorporated corporation with head offices in Saint-Hyacinthe, Quebec, carrying on business in Ontario as the manufacturer of, *inter alia,* mechanized tarp systems.

7. John Doe and Jane Doe are the individuals and/or corporations that are the limited partners of Cervus Contractors Equipment LP.

8. On or about March 18, 2015, Bellhop entered into an agreement with Cervus and/or Peterbilt to purchase 2 new 485D Cross Country live bottom trailers, model year 2015, manufactured by Cross Country (the "**Trailer(s)**"), both of which would include a mechanized electrical tarp system manufactured by El Cargo Tarps (the "**Tarp System**"), for $112,000.00 per trailer, plus HST (the "**Contract**").

9. Cervus, Peterbilt, Cross Country and El Cargo Tarps knew or ought to have known the purpose for which the Trailer(s) and the Tarp System would be used.

10. Prior to entering into the Contract, Cervus, Peterbilt, Cross Country and El Cargo Tarps, negligently made certain untrue, inaccurate or misleading representations to Bellhop with respect to the quality and fitness for purpose of the Trailer(s) and the Tarp System, whether expressly or by implication, which they knew or ought to have known Bellhop would rely on. These representations include, but are limited to, representations that the Trailer(s) and the Tarp System:

(a) The Trailer(s) will be in good working order and "free from defects in material and workmanship";

(b) The Trailer(s) are "not only suited to Bellhop's needs but has been engineered with safety, durability, and overall performance in mind";

(c) The Trailer(s) are "the toughest Trailer(s) on earth";

(d) The Trailer(s) are "Engineered for Today. Built for a lifetime.";

(e) The Tarp System is built for the customer's specific needs;

(f) That El Cargo Tarps will provide "unmatched customer service"; and

(g) That the Tarp System is made with "superior quality components", is "dependable", "reliable", "durable" and will "meet the individual needs of transporters".

11. Bellhop relied on the aforesaid representations of Cervus, Peterbilt, Cross Country and El Cargo Tarps, when deciding to enter into the Contract, to its detriment.

12. Further, it was an expressed or implied term of the Contract that the Trailer(s) and the Tarp System would be:

(a) Of merchantable quality and fit for purpose;

(b) The first of the Trailer(s) would be delivered to Bellhop by no later than May 18, 2015, and the second of the Trailer(s) would be delivered by June 1, 2015; and

(c) Both Trailer(s) would be delivered to Bellhop in good working order and free from defect in material and workmanship.

13. The Trailer(s) also carried a manufacturer's warranty that all new steel box and steel chassis Trailer(s) manufactured by Cross Country will be free of defects in material and workmanship (the **"Cross Country Warranty"**). Under the Cross Country Warranty, Cross Country represented or promised that it would repair and replace any defects in material and workmanship in the structure of the Trailer(s) for 5 years, and in the live bottom drive system for 1 year.

14. The El Cargo Tarp also carried with it a 3 year manufacturer's warranty that the tarp system would be free from all manufacturing defects and a 2 year manufacturer's warranty on the electrical components of the tarp system (the "**El Cargo Tarps Warranty**").

15. By reason of the Contract, the Cross Country Warranty, the El Cargo Warranty and the special and proximate relationship that exists between the parties, each of Cervus, Peterbilt, Cross Country and El Cargo Tarps owe Bellhop a duty of care and a duty of good faith in the performance of their respective contractual obligations.

16. In breach of the Contract, Cervus and/or Peterbilt delivered the first of the Trailer(s)s to Bellhop on or about July 14, 2015 or about 2 months late. The second Trailer(s) was never delivered to Bellhop.

17. As a direct result of the failure of Cervus and/or Peterbilt to deliver the Trailer(s) on schedule, or at all, Bellhop could not fulfill its contracts with its customers causing it to lose anticipated profits, business opportunity and business reputation.

18. To mitigate some of its damages, Bellhop purchased another smaller Trailer(s), causing Bellhop to incur further expenses.

19. Bellhop advised Cervus and Peterbilt, and it was reasonably foreseeable, that the failure to deliver the Trailer(s) to Bellhop on schedule would cause Bellhop to suffer damages including

out of pocket expenses, loss of profit, loss of business opportunity and loss of business reputation.

20. In breach of the Contract and the *Sale of Goods Act*, the Trailer(s) and the Tarp System that Cervus and/or Peterbilt delivered to Bellhop were not in good working order, free from defects in material and workmanship, of merchantable quality or fit for purpose. In particular, the Trailer(s) and the Tarp System had defects in material and workmanship which include, but are not limited to:

(a) Improperly installed fenders;
(b) Faulty wiring and electrical systems;
(c) Non-operating lift axels;
(d) Faulty air line;
(e) Non-operating belt;
(f) Broken output shaft;
(g) Leaking airbags;
(h) Non-operating tarp system;
(i) Improperly installed ladder latch;
(j) Faulty chain oiler system;
(k) Leaking axel seal;
(l) Incorrect threaded rods;
(m) Improper chain tension thread rod in the live bottom;
(n) Improper reflective tape on fender;
(o) Improper flaps installed behind all axels; and
(p) No centre mud flaps in front of landing gear.

21. Cervus, Peterbilt, Cross Country and El Cargo Tarps did not exercise reasonable care in supply of the Trailer(s) and the Tarp System, which were shoddy, defective and created a real and substantial danger to the health and safety of the user.

22. The Trailer(s) and the Tarp System broke down almost immediately after Bellhop took delivery and continuously broke down after emergency repairs were made, causing the Trailer(s)

to be constantly out of service for long periods of time. Eventually, Bellhop had no other choice but to take the Trailer(s) out of service entirely.

23. Bellhop promptly advised Cervus, Peterbilt, Cross Country and El Cargo Tarps, either by itself or through its agents, of each of these breakdowns and the defects in the material and workmanship of the Trailer(s) and the Tarp System as they became known to Bellhop. Notwithstanding the receipt of said notice, neither Cervus, Peterbilt, Cross Country nor El Cargo Tarps adequately responded to Bellhop with respect to the breakdowns or defects, or at all.

24. Given no other choice, in an attempt to mitigate its damages, Bellhop caused certain emergency repairs to be completed on the Trailer(s) and the Tarp System.

25. While Cervus, Peterbilt, Cross Country and El Cargo Tarps acknowledged the aforesaid defects in material and workmanship of the Trailer(s) and the Tarp System, and were given multiple opportunities to repair or replace the Trailer(s) and the Tarp System, Cervus, Peterbilt, Cross Country and El Cargo Tarps failed or refused to properly repair or replace the Trailer(s) and the Tarp System in a reasonable amount of time, or at all, in breach of the Contract, the warranties provided, and their respective duties of good faith.

26. As a direct result of Cervus, Peterbilt, Cross Country and El Cargo Tarps failing or refusing to repair the Trailer(s) and the Tarp System, Bellhop suffered damages including, but not limited to, out of pocket expenses, loss of income, loss of business opportunity and loss of business reputation.

27. Bellhop advised Cervus, Peterbilt, Cross Country and El Cargo Tarps, and it was reasonably foreseeable, that the failure to deliver the Trailer(s) and the Tarp System free of defects in material and workmanship, of merchantable quality, and fit for purpose and/or that a failure to repair or replace the Trailer(s) and the Tarp System with defects in material and workmanship, would cause Bellhop to suffer damages including out of pocket expenses, loss of income, loss of business opportunity and loss of business reputation and would pose a danger to the health and safety of the users.

28. The actions of Cervus, Peterbilt, Cross Country and El Cargo Tarps constitute a callous and flagrant disregard for the rights of Bellhop.

29. John Doe and Jane Doe took part in the control of the business of Cervus Contractors Equipment LP, and are thus jointly and severally liable for the actions of Cervus.

30. As a direct result of the aforesaid breaches of contract, breach of warranty, breach of the *Sale of Goods Act*, breach of duty of good faith, negligent misrepresentations, negligent supply of shoddy or defective goods, Bellhop suffered damages which include, but are not limited to, out of pocket expenses, loss of business opportunity and income, loss of good will and business reputation.

31. Bellhop pleads and relies on the *Sale of Goods Act*, R.S.O. 1990, c S.1, as amended.

March 17, 2017

CASSELS BROCK & BLACKWELL LLP
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Lawyers for the plaintiff, Bellhop Express Corp.

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sthom@torkinmanes.com

Our File No: 38978.0005

An independent member of
AllyLaw

Torkin Manes
Barristers & Solicitors

November 8, 2017

VIA COURIER

Superior Court of Justice (Durham Region)
150 Bond St. E.
Oshawa, ON L1G 0A2

Dear Sirs/Madames:

Re: Cervus Contractors Equipment LP, et al ats Bellhop Express Corp.
Court File No. 914/17

Please find enclosed the following:

1. Two copies of the Statement of Defence and Crossclaim of Cervus Contractors Equipment LP;

2. Affidavit of Service;

3. Cheque in the amount of $175.

Kindly file the attached documents on our behalf and provide proof of filing thereof on one copy of the enclosed Statement of Defence and Crossclaim. For your convenience, please also find enclosed a self-addressed stamped envelope for the return of the Statement of Defence and Crossclaim with the proof of filing noted.

Yours truly,

Torkin Manes LLP
Per:

Stewart D. Thom
SDT/jj

Enclosure
02859.1429/10602613_1

Court File No. 914 117

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

BELLHOP EXPRESS CORP.

Plaintiff

-and-

CERVUS CONTRACTORS EQUIPMENT LP also known as PETERBILT ONTARIO TRUCK CENTRES as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD., PETERBILT ONTARIO INC. carrying on business as PETERBILT ONTARIO TRUCK CENTRES, 5274398 MANITOBA LTD. carrying on business as CROSS COUNTRY MANUFACTURING, ELCARGO FABRICATION INC. carrying on business as EL CARGO TARPS, JOHN DOE and JANE DOE

Defendants

STATEMENT OF DEFENCE AND CROSSCLAIM OF CERVUS CONTRACTORS EQUIPMENT LP also known as PETERBILT ONTARIO TRUCK CENTRE as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD.

1. Unless otherwise stated herein, the Defendant, Cervus Contractors Equipment LP also known as Peterbilt Ontario Truck Centre, as represented by its general partner Cervus Contractors Equipment Ltd. ("**Cervus**"), denies each and every allegation of fact and law contained in the Statement of Claim.

Parties

2. Bellhop Express Corp. ("**Bellhop**") is an Ontario corporation with a registered head office in Trenton, Ontario.

3. Cervus carries on business as, *inter alia*, a dealer of transportation trucks, trailers and related equipment. Cervus does not manufacture any of the vehicles or equipment sold to Cervus' customers.

4. 5274398 Manitoba Ltd., carrying on business as Cross Country Manufacturing ("**Cross Country**"), is a Manitoba corporation with offices in Mordon, Manitoba which, *inter alia*, manufactures trailers. At the time of the events alleged in the Statement of Claim, Cross Country supplied trailers to Cervus.

5. Elcargo Fabrication Inc., carrying on business as El Cargo Tarps ("**El Cargo**"), is a federally incorporated company with registered head offices in Saint-Hyacinthe, Quebec. El Cargo is a manufacturer of, *inter alia*, mechanized tarp systems. El Cargo tarp systems are occasionally installed on Cross Country trailers purchased by Cervus' customers. Cervus has never performed the installation of a tarp system manufactured by El Cargo.

Cervus' Dealings with Bellhop

The March 19, OP

6. In or around March 2015, Bellhop entered into discussions with Cervus regarding the potential purchase by Bellhop of one or more 2015 485LB Cross Country manufactured trailer(s).

7. In connection with the above discussions, an undated offer to purchase was partially completed by Bellhop, in Cervus' standard form, and signed by Bellhop on March 19, 2015 (the "**March 19 OP**"). The details contained on the March 19 OP reflect an intention by Bellhop to offer to purchase two 485LB Cross Country trailers, each fitted with El Cargo mechanical tarp systems, from Cervus. The combined total purchase price for the two trailers and two tarp

systems indicated on the March 19 OP, excluding taxes, was $226,800, representing a per unit price of $112,000 per trailer and $1,400 per tarp system.

8. Until accepted by Cervus, the March 19 OP constitutes an offer to purchase only. The express terms of the March 19 OP state that it is not binding upon Cervus unless and until it is accepted by an authorized representative of Cervus. The "Vendor Acceptance" section of the March 19 OP was not dated or signed by any authorized, or any other, representative of Cervus. No deposit or any other payment was paid to Cervus by Bellhop in respect of the March 19 OP.

9. Cervus pleads that the March 19 OP was not accepted by Cervus and does not constitute a binding purchase agreement. Accordingly, the March 19 OP gives rise to no contractual, or any other, legal obligations on the part of Cervus.

The March 24 OP

10. The following week, Bellhop partially filled in two revised offers to purchase. The documents ("**March 24 OP #1**" and "**March 24 OP #2**", respectively and, collectively, the "**March 24 OP's**") are each dated March 18, 2015 but were each signed and dated by Bellhop on March 24, 2015. Each of March 24 OP #1 and March 24 OP #2 reflect an intention by Bellhop to offer to purchase one (instead of two) identical 485LB Cross Country trailers, similarly fitted with an El Cargo mechanical tarp system at the same per unit prices as indicated on the March 19 OP.

11. Until accepted by Cervus, the March 24 OP's constitutes an offer to purchase only. The express terms of the March 24 OP's state that these are not binding upon Cervus unless and until accepted by an authorized representative of Cervus. The "Vendor Acceptance" section was not signed or dated by any authorized, or any other, representative of Cervus is respect of either of

the March 24 OP's. No deposit or any other payment was paid to Cervus by Bellhop in respect of the March 24 OP's.

12. Cervus states that the March 24 OP's were not accepted by Cervus, are not binding purchase agreements and give rise to no contractual, or any other, legal obligations on the part of Cervus.

The Mercado Purchase Agreement

13. Between June 26 and July 6, 2015, Cervus entered into discussions respecting the purchase by Mercado Capital Corporation ("**Mercado**") of one trailer consistent with the specifications contained on each of the March 24 OP's.

14. On June 30, 2015, Mercado paid Cervus the sum of $128,418.85 for the purchase of said trailer (the "**Mercado Trailer**"). No payments were received by Cervus from Bellhop in connection with the Mercado Trailer.

15. Paperwork respecting the purchase of the Mercado Trailer was completed on July 6, 2015. An offer to purchase from Cervus one 485LB Cross Country trailer, fitted with El Cargo mechanical tarp system and having serial number 2C9LSW52XGB183760 was completed on behalf of Mercado. The Mercado offer to purchase was accepted by and signed back by Cervus.

16. Cross Country was to supply the Mercado Trailer to Cervus, with El Cargo tarp system installed prior to delivery.

17. Cervus' supply agreement with Cross Country (the "**Cross Country Agreement**") provides:

(a) that all trailers sold by Cross Country to Cervus are to be in good working order and free from defects in material and workmanship;

(b) that Cross Country warrantees to Cervus and any purchaser from Cervus:

(i) that it will remedy any defects in material and workmanship in Cross Country products at a rate of 100% for the first year following sale, or otherwise reimburse Cervus for the cost of remedying such defects; and

(ii) that the warranty referenced above applies also, in varying rates as particularized in the Cross Country Agreement, in subsequent years following sale.

18. Cervus received delivery of the Mercado Trailer from Cross Country, with El Cargo tarp system installed, in or around the first week of July, 2015. The Mercado Trailer was picked up from Cervus on or about July 8, 2015.

19. The Mercado Trailer was never owned by Bellhop. Cervus understands that the Mercado Trailer was used by Bellhop, but has no specific knowledge of the details or arrangements made as between Mercado and Bellhop with respect to the Mercado Trailer. Following delivery of the Mercado Trailer, a Cervus sales representative communicated with Bellhop to inquire as to whether Bellhop intended to proceed with the purchase of any equipment from Cervus. Bellhop indicated that it would not be proceeding with any transactions.

20. Cervus understands that in or around the spring of 2017, the Mercado Trailer was sold at auction and is no longer owned by Mercado.

Cervus' Position re Bellhop's Claims against Cervus

21. Cervus:

(a) has never orally, or in writing, entered into any contract with Bellhop;

(b) has never sold any trailers, or anything else, to Bellhop;

(c) has never received any payment, deposit or any other form of consideration, from Bellhop; and

(d) denies that any of the March 19 OP or March 24 OP's (collectively, the "**Bellhop OP's**") are binding upon Cervus or give rise to any legal obligations owing from Cervus to Bellhop.

22. Bellhop did not purchase any equipment or trailers from Cervus, as alleged or at all. There is no contractual relationship between Cervus and Bellhop, no duty owed by Cervus to Bellhop, and no buyer-seller relationship between Cervus and Bellhop pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1. Cervus denies all allegations of breach of contract, breach of warranty, breach of the *Sale of Goods Act*, R.S.O. 1990, c. S.1, breach of duty, negligent misrepresentation, or negligent supply of shoddy or defective goods as alleged in the Statement of Claim.

23. In the alternative, should this Honourable Court determine that any of the Bellhop OP's represents an enforceable agreement or that Cervus bore any legal responsibility to supply any equipment to Bellhop, all of which is denied by Cervus, Cervus states that:

(a) it did not agree to deliver any equipment to Bellhop by any scheduled date; and

(b) each of the Bellhop OP's contain, *inter alia*, the following standard terms:

(i) that both parties agree that any warranty is supplied only by the manufacturer and not by Cervus;

(ii) that Cervus makes no representations and gives no conditions or warranties with respect to quality or fitness;

(iii) that all implied warranties and conditions under the *Sale of Goods Act* R.S.O. 1990, c. S.1 do not apply;

(iv) that Cervus shall not be liable for any delays or damages caused by the failure of any parts of the merchandise supplied; and

(v) that Cervus is not responsible for failure to deliver goods on time, nor responsible to fill orders where prevented by any cause beyond its reasonable control.

24. Cervus denies that it failed to comply with any agreed upon timelines for the delivery of any equipment to Bellhop or that any late delivery, or non-delivery, of any equipment supplied to Bellhop by any party to this proceeding ("**Equipment**") was a result of circumstances which were reasonably within the control of Cervus, or for which Cervus could be held liable.

25. Cervus denies that any Equipment had any defect in materials, workmanship or fitness for use (any of these, a "**Defect**") and holds Bellhop to the strict proof of such claims. Cervus furthermore denies that it had any legal responsibility to either repair or remedy any Defect which may have existed or to compensate Bellhop for any resulting damages or losses.

26. Cervus denies making any of the representations attributed to Cervus in Bellhop's claim, denies that any representative of Cervus was authorized to, or did, enter into any contract with Bellhop and denies that Bellhop could reasonably have expected on the basis of its dealings with Cervus that any equipment would be supplied to Bellhop by Cervus at all, or be subject to any warranty extended by Cervus.

27. Cervus denies that Bellhop has suffered any losses or damages and pleads that the losses and damages claimed by Bellhop are excessive and remote. Cervus puts Bellhop to the strict proof of its alleged damages/losses.

28. In the alternative, Cervus states that it did not cause or contribute to and is not liable to Bellhop for any losses or damages which Bellhop may have suffered. Cervus furthermore denies that it owed Bellhop any duty of care or failed to meet any standard of care owed to Bellhop.

29. To the extent that Bellhop is found to have suffered any losses or damages for which Cervus is legally responsible, Cervus states that Bellhop was obliged to, and failed to, take reasonable steps which would have mitigated or reduced Bellhop's losses if taken.

30. Furthermore, to the extent that Bellhop is found to have suffered damages as a result of any Defect in any Equipment, such damages were wholly or partially caused or contributed to by the negligence of Bellhop, and specifically:

(a) Bellhop knew, or ought to have known, that it did not have the requisite skills, training or knowledge to conduct repairs, alterations or adjustments to the Equipment but did so nonetheless. In doing so, Bellhop exacerbated or caused any Defect(s) complained of;

(b) Bellhop permitted persons that it knew, or ought to have known, were not qualified to perform repairs, alterations or adjustments to the Equipment to do so. In doing so, Bellhop exacerbated or caused any Defect(s) complained of;

(c) Bellhop failed to take reasonable steps to remedy any known Defects when discovered by Bellhop, thereby exacerbating or causing any Defect(s) complained of; and

(d) Bellhop frustrated the efforts of the Defendants, or any of them, to inspect the Equipment and perform any repairs which may have been necessary, thereby preventing repairs from being completed in a timely fashion.

31. Cervus states that Bellhop failed to exercise the ordinary prudence to be reasonably expected in the circumstances and that it was foreseeable that Bellhop's actions in this regard would directly result in or contribute to any losses or damages found to have been suffered by Bellhop in connection with the claims asserted by Bellhop in this Action.

32. Cervus pleads and relies on the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1.

33. Cervus states that this Action should be dismissed, with costs payable to Cervus on a substantial indemnity scale.

CROSSCLAIM OF CERVUS CONTRACTORS EQUIPMENT LP also known as PETERBILT ONTARIO TRUCK CENTRE as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD.

34. The Defendant, Plaintiff by Crossclaim, Cervus, claims against the Defendants Cross Country and El Cargo, for:

(a) Contribution and/or full indemnity with respect to any amount for which Cervus may be found liable to Bellhop in the main action;

(b) Pre-judgment and post-judgment interest in accordance with s. 128 and s. 129, respectively, of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(c) The costs of this Crossclaim on a substantial indemnity basis; and

(d) Such further and other relief as to this Honourable Court may seem just.

35. The Defendant, Cervus, repeats and relies on the allegations contained in its Statement of Defence, above, and pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1.

36. Cervus states that it has denied all allegations advanced by Bellhop in its Statement of Claim and denies that it is liable to Bellhop as alleged, or at all.

37. If Bellhop's Action is sustained by this Honourable Court, any damages found to have been suffered by Bellhop are attributable wholly or in part to:

(a) in the case of Cross Country, breach of the Cross Country Agreement, breach of warranty and/or negligence for which Cross Country is responsible; and/or

(b) in the case of El Cargo, breach of warranty and/or negligence for which El Cargo is responsible.

38. By virtue of the relationship between Cross Country as manufacturer and Cervus as distributor of Cross Country-manufactured trailers, Cross Country owed Cervus a duty of care. Cervus states that Cross Country's breach of the Cross Country Agreement and/or duty of care owed to Cervus arises from its failure to:

(a) ensure that any Trailers sold by Cross Country to Cervus would be in good working order and free from any Defects;

(b) ensure that its employees had the requisite skills knowledge and experience to install the El Cargo tarp system on the Mercado Trailer;

(c) properly install the El Cargo tarp system on the Mercado Trailer; and

(d) remedy any Defects with respect to the Mercado Trailer or El Cargo tarp system in a timely fashion upon being notified of same and/or perform its obligations pursuant to the warranties extended by Cross Country to Cervus and/or Mercado and/or Bellhop.

39. Cervus states that by virtue of the relationship between El Cargo as manufacturer and Cervus as distributor of El Cargo manufactured tarp systems, El Cargo owed Cervus a duty of care. El Cargo's breach of the duty of care owed to Cervus arises from its failure to:

(a) ensure that the El Cargo tarp system would be in good working order and free from any Defect;

(b) provide Cross Country with the necessary information and training to properly install the El Cargo Tarp system or to otherwise ensure that the El Cargo tarp system was properly installed and free from any Defect; and

(c) remedy any defects in materials and workmanship in the El Cargo tarp system in a timely fashion following notice being provided to El Cargo of any Defect and/or to perform its obligations pursuant to the warranties extended by El Cargo to Cervus and/or Mercado and/or Bellhop.

40. Cervus states that it is entitled to contribution and/or full indemnity from Cross Country and/or El Cargo for any and all damages to which Cervus may be found liable to the Plaintiff, the validity of which claims have been denied, in addition to all related legal costs and expenses.

41. Cervus states that this Crossclaim should be tried together with the main action.

42. This crossclaim is served outside of Ontario without leave pursuant to Rule 17.02(q).

November 5, 2017

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, ON M5C 2W7

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Fax: 1-877-689-3872
Lawyers for Cervus Contractors Equipment LP

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Fax: 416.642.7146

Counsel for the Plaintiff

TO: **PETERBILT ONTARIO INC. carrying on business as PETERBILT ONTARIO TRUCK CENTRES**
31 Buchanan Court
London, Ontario
M5Z 4P9

TO: **BAKER & McKENZIE LLP**
Barristers & Solicitors
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Toronto, ON M5J 2T3

Michael Nowina
E-mail: michael.nowina@bakermckenzie.com
Tel.: 416-865-2312
Fax: 416-863-6275

Lawyers for the Defendant, 5274398 Manitoba Ltd. carrying on business as Cross Country Manufacturing and Cross Country Trailer

TO: **ELCARGO FABRICATION INC. carrying on business as EL CARGO TARPS**
5735, Rue Barre
Saint-Hyacinthe . Quebec
J2R 1E4

BELLHOP EXPRESS CORP.
Plaintiff

-and-

CERVUS CONTRACTORS EQUIPMENT LP, et al.
Defendants

Court File No. 914/17

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT OSHAWA

STATEMENT OF DEFENCE AND CROSSCLAIM OF CERVUS CONTRACTORS EQUIPMENT LP also known as PETERBILT ONTARIO TRUCK CENTRE as represented by its general partner CERVUS CONTRACTORS EQUIPMENT LTD.

TORKIN MANES LLP
Barristers & Solicitors
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Toronto, ON M5C 2W7

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197
Fax: 1-877-689-3872

Lawyers for Cervus Equipment Corporation

RCP-E 4C (May 1, 2016)

CLAIM B

Cervus Contractors Equipment LP initiated payment of $183,856.65 on June 17, 2015 via wire transfer to cover two invoices: 51-6027 and 51-5904.

- A copy of invoices is attached as Appendix 1 and 2
- A copy of the wire payment confirmation as Appendix 3
- A copy of our online bank statement, for June 17th, 2015 demonstrating the payment clearing our bank account as Appendix 4. We have redacted the details (names & balances) that are not relevant to this matter.

Cervus Contractors Equipment LP initiated a duplicate of $183,856.65 for the same invoices (Appendix 1 and 2) on October 27, 2016 via EFT.

- A copy of the EFT file, that include the EFT payment to Cross Country in the amount of $183,856.65 as Appendix 5. We have redacted the names of other vendors that are not pertinent to this matter. The total value of the file submitted was $995,559.43
- A copy of our online bank statement, for October 27, 2016, demonstrating the total payment of $995,559.43 clearing our bank account as Appendix 6. We have redacted the details (names & balances) that are not relevant to this matter.

App. #1

5274398 Manitoba Ltd.
Cross Country Manufacturing
Fax: (204)822-9514
418 South Railway Street
Morden MB, R6M 2G2

15-0003T
244.1 &

Invoice

Date	Invoice #
05/06/2015	51-6027

Invoice To
Cervus Equipment - Peterbilt 125 Towerline Place London, ON N6E 2T3 Canada

Ship To
Cervus Equipment - Peterbilt 125 Towerline Place London, ON N6E 2T3 Canada

S.O. No.	P.O. No.	Terms
	~~15-0003T~~	

Item	Description	Qty	Rate	Amount
Trailer 485LB	48' 3 Axle Live Bottom w/ 2 Lift Steer Axles VIN# 2C9LSW52XGB183760 1/8" Hardox 450 Sidewalls 59" Sidewall Height 10g Mild Steel End Gate Sealed End Gate Jost A440 T2-19 Landing Gear (2) Auburn 33:1 Planetarics w/ Eaton Hydraulic Motors (3) Holland CBX25 Suspensions w/ 17" Ride Height 25K Axle Tapered Spindle (2) Holland Steer Axles w/ Auto Sensing Lift 25K Axle Tapered Spindle 60" 1st Steer Axle to 2nd Steer Axle, 99" to 3rd Axle, 60" Spacing on Tridem Unimount w/ Long Studs Cooper RM230 11R22.5" Tires on Primary Axles Accuride XP Aluminum Inner & Outer Wheels Cooper RM230 385/65R 22.5" Super Single Tires on Steer Axles Alcoa Mill Finish Aluminum Super Single Wheel (4) Logo Mud Flaps in Front of Landing Gear, (2) in Front of 1st Axle & (4) Behind Rear Axle No Sideboards Clear-Co Roll Over Electric Tarp, No Manual Backup Black Vinyl Tarp Aluminum Checker Plate Fenders at Front Red Plastic Half Moon Fenders Over Tires Aluminum Sidewall Sheeting		106,325.00	106,325.00

Posted by: [illegible]
JUN 16 2015

RECEIVED
JUN 16 2015

Total	
Payment Received	
Balance Due	

Please remit payment to:
5274398 Manitoba Ltd.
418 South Railway Street
Morden, MB
R6M 2G2
GST/HST No. 802040873

5274398 Manitoba Ltd.
Cross Country Manufacturing
Fax: (204)822-9514
418 South Railway Street
Morden MB, R6M 2G2

Invoice

Date	Invoice #
05/06/2015	51-6027

Invoice To
Cervus Equipment - Peterbilt 125 Towerline Place London, ON N6E 2T3 Canada

Ship To
Cervus Equipment - Peterbilt 125 Towerline Place London, ON N6E 2T3 Canada

S.O. No.	P.O. No.	Terms
	15-0002T	

Item	Description	Qty	Rate	Amount
	Insulated Sidewalls Closed In Front w/ Aluminum Sidewall Sheeting Fold Down Ladder Stainless Steel Hydraulic Line Backup Lights on Lightbar Strobe Lights Backup Alarm Calcium Sprayer Air Lubricator & Filter Forward & Reverse Hydraulic Manifold Belt Scraper 7 Wire Plug Painted Viper Red, 911064 HST ~ (ON) on sales		13.00%	13,822.25

Total	$120,147.25
Payment Received	$0.00
Balance Due	$120,147.25

Please remit payment to:
5274398 Manitoba Ltd.
418 South Railway Street
Morden, MB
R6M 2G2
GST/HST No. 802040873

App#2

5274398 Manitoba Ltd
Cross Country Manufacturing
Fax: (204)822-9514
418 South Railway Street
Morden MB, R6M 2G2

15-00027
3441

Invoice

Date	Invoice #
24/04/2015	51-5904

Invoice To

Cervus Equipment - Peterbilt
125 Towerline Place
London, ON N6E 2T3
Canada

Ship To

Cervus Equipment - Peterbilt
125 Towerline Place
London, ON N6E 2T3
Canada

S.O. No.	P.O. No.	Terms
	~~15-00027~~	

Item	Description	Qty	Rate	Amount
Trailer 170SSP	170SSP Tridem Aluminum Smooth Side Pony Pup VIN# 2C9PDR318GB183779 Extruded Aluminum Side & End Gate Panels Sealed End Gate Compression Locks 48" Sidewall Height 2x12" Wood Sideboards Landing Gear Leg Hyva FEE 7-4-157 Hoist Hendrickson H1300 Suspension 17" Ride Height IMT Steer Axle w/ Hendrickson HT250 Suspension & Lift 25K Axles Parallel Axles 100" First to Second Axle, 72" Second to Third Axle Spacing Unimount w/ Long Studs Cooper RM230 11R22.5" Tires Aluminum Accuride XP Inner & Outer Wheels (2) Mudflaps Behind 1st Axle & (4) Behind 3rd Axle Roll Rite Air Flip Mesh, Black Tarp Rolled Smooth Aluminum Tarp Shield 1/4" Round Aluminum Fenders Back Up Lights on Bumper Strobe Lights (4) 2" Lights Down Bottom Side Calcium Tank Iconic Tool Box, Checker Plate w/ Cam Locks, 18x18x48"		56,380.00	56,380.00

Posted by: LL
JUN 16 2015

Total	
Payment Received	
Balance Due	

Please remit payment to:
5274398 Manitoba Ltd.
418 South Railway Street
Morden, MB
R6M 2G2
GST/HST No. 802040873

5274398 Manitoba Ltd
Cross Country Manufacturing
Fax: (204)822-9514
418 South Railway Street
Morden MB, R6M 2G2

Invoice

Date	Invoice #
24/04/2015	51-5904

Invoice To	Ship To
Cervus Equipment - Peterbilt 125 Towerline Place London, ON N6E 2T3 Canada	Cervus Equipment - Peterbilt 125 Towerline Place London, ON N6E 2T3 Canada

S.O. No.	P.O. No.	Terms
	15-00041	

Item	Description	Qty	Rate	Amount
	Bulkhead at Front For Hydraulic Line, Air & Wiring Sideboards Painted Black Frame Painted Black HST - (ON) on sales		13.00%	7,329.40

Total	$63,709.40
Payment Received	$0.00
Balance Due	$63,709.40

Please remit payment to:
5274398 Manitoba Ltd.
418 South Railway Street
Morden, MB
R6M 2G2
GST/HST No. 802040873

Wire Payments

Help

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Create Payment - Review Payment Details

Template Name:	**N/A**		
Payment Type:	**Payment to Customer**		
Payment ID:	**Unassigned**	TD Payment ID:	**Unassigned**

Sender Information

TD Bank has populated sender name and address based on the settlement account selected. If this information is incorrect, you will need to either contact your relationship manager or your local branch.

Sender Name:	CERVUS CONTRACTORS EQUIPMENT LP		
Street:	333 96 AVE NE SUITE 5201		
City:	CALGARY		
Prov/State:	ALBERTA - AB	Country:	CANADA - CA

Beneficiary Information

Beneficiary Name:	CROSS COUNTRY MANUFACTURING		
Street:	418 South Railway Street		
City:	Morden		
Prov/State:	MANITOBA - MB	Country:	CANADA - CA
Payment Destination:	Other Financial Institution		

Beneficiary Account Information

Beneficiary's Account:	26107 1028518

Beneficiary's Bank Information

Beneficiary Bank Name:	BMO International Banking		
Bank Id:	0001		
Street:	1565 Regent Avenue		
City:	Winnipeg		
Prov/State:	MANITOBA - MB	Country:	CANADA - CA

Intermediary Bank Information

Intermediary Bank Name:			
Bank Id:			
Street:			
City:			
Prov/State:		Country:	

Due Date	**Value Date**	**Payment Must be Sent to Bank Before:**
06/17/2015	06/17/2015	06/17/2015 05:00 PM Eastern Time (ET)

Payment Currency	**Payment Amount**
CAD	183,856.65

Settlement Currency	**FX Type/ Contract Number**	**Exchange Rate**	**Settlement Amount**	**Settlement Account**
CAD	Bulletin	1.000000	**183,856.65**	Transportation Ontario

Your Reference

Stock 15-0003T 15-0002T

Reason for Wire Payment
Purchase of Goods
Instructions
Beneficiary: Invoice 516027 120147.25 Invoice 515904 63709.40
TD Bank:

Save as Template << Back Done

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(Server ID: scsmwap21_node)

App #4

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80605394695 CAD	NO	6/16/2015			13,608.69
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80605394695 CAD	NO	6/16/2015			31,037.88
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* 80605394695 CAD	NO	6/17/2015	150617B0274700RPW	183,856.65	
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80605394695 CAD	NO	6/1			140,674.43
80605394695 CAD	NO	6/1			253.25

App. #5

Vendor Name

reference #

2nd ref #

Amount of payment dollars = -cents

File 369 - Copy.txt

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D                271016E20876              00040001268425239964  0000337973
D                271016E20877              00040236277865003128  0000357080
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Date Ref #

This file is transmitted to the bank as one file. The bank disburses the individual payments, and charges cents one lump sum.

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total dollar value
of all EFTs
= 995,559.43

App #6

B/D	Description	Debit	Credit	Date
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	TWCCE80601 0369 EFT	$995,559.43		10/27/2016
		$124.95		10/27/2016
		$4,390.32		10/27/2016
		$309.44		10/27/2016
		$431.10		10/27/2016
		$5.00		10/27/2016
		$1,902.69		10/27/2016
		$249.54		10/27/2016
		$1,924.00		10/27/2016
		$205.00		10/27/2016
			$1,099.70	10/28/2016
			$18,693.88	10/28/2016
			$101.94	10/28/2016
			$246.31	10/28/2016
			$1,261.38	10/28/2016
			$5,805.40	10/28/2016
			$23,136.91	10/28/2016
			$517.13	10/28/2016
			$814.26	10/28/2016
			$3,395.79	10/28/2016
			$1,856.90	10/28/2016
			$7.37	10/28/2016
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		$5.00		10/28/2016
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			$1,564.70	10/28/2016
			$1,883.43	10/28/2016
			$1,974.59	10/28/2016
			$2,130.07	10/28/2016
			$3,183.11	10/28/2016
			$7,094.80	10/28/2016
			$8,956.06	10/28/2016
			$13,052.51	10/28/2016

Appendix 3

Questions:

1. How many trailers were formally ordered from Cross Country, by one or more of Bellhop Express Corp ("**Bellhop**"), Cervus Contractor Equipment LP ("**Cervus**"), Mercado Capital Corporation ("**Mercado**"), which were intended to be used in the business of Bellhop?

   (a) At what date were such order(s) received by Cross Country?

   (b) What initial delivery date(s) for such trailer(s) were promised?

   (c) To where, and on what date were the trailer(s) actually delivered by Cross Country?

2. What knowledge and information does Cross Country have concerning any complaints made by Bellhop concerning the quality of any Cross Country trailer(s) which Bellhop took possession of?

   (a) Were any of the trailer(s) returned to Cross Country for warranty work?

   (b) If so, provide the date(s), the time retained, and describe the warranty work performed

3. Were any claim(s) presented to Cross Country by Bellhop seeking reimbursement or compensation for costs Bellhop incurred to repair the trailer(s)?

   (a) If so, was Bellhop reimbursed for any such claims?

From: Tara Penner [mailto:tpenner@ccmfg.ca]
Sent: Monday, June 25, 2018 2:43 PM
To: Collin LeGall
Cc: 'Becky Froese'
Subject: RE: Bellhop Lawsuit - Questions to assist Trustee with their claim

Attached you will find the responses to Bellhop questions. Please keep in mind that I wasn't directly involved in this. Dave Dyck and Mike Zueff were primarily involved in this, both are no longer with the company but I responded to the best of my ability.

Some additional information to take note of:

- Cross Country did not install the tarp on this trailer. The tarp manufacture installed it
- Bellhop did not oil the live bottom chain which is required for valid warranty
- We recommended certain repairs that they refused which caused reoccurring issues
- We sent a Cross Country Supervisor to Bellhop to look at and repair the trailer and he was cursed off the property

Tara Penner
Cross Country Manufacturing

Description	5 Axle Live Bottom, Inset Gate
Model	485LB
Model Year	2016
VIN	2C9LSW52XGB183760

1	Bellhop originally ordered two live bottom trailers but after issues arose with the first trailer we ended up selling the second trailer to Transport. Bellhop only received one trailer from Cross Country.
1a)	Cervus requested a quote on Bellhop's behalf on January 23, 2015. An order was placed for two trailers March 25, 2015
1b)	An initial production time frame of "spring" was given to Cervus A signed drawing was received from Bellhop on April 23, 2015 with a projected delivery date of May 18, 2015
1c)	Trailer was complete June 23, 2015. Cervus would have been responsible for arranging freight
2	July 14, 2015 a warranty claim was approved by Cross Country in the amount of $935.84. The lift steer was plumbed incorrectly August 18, 2015 Cross Country received an email from Cervus that the tarp was down again and that they were looking for compensation on lost load due to tarp issues. Dave Dyck told Cervus that the tarp should be under warranty from El Cargo and that El Cargo had a technician from Montreal install the tarp on the Bellhop trailer so we would assume it was installed correctly April 2016 Bellhop made Cross Country aware of multiple issues. See tab titled repair work order for a repair quote. Repairs were complete June 29, 2016 June 2016 Bellhop made Cross Country aware of more issues.
2a)	Yes
2b)	There was roughly three times that the Bellhop trailer came back to Cross Country. There was at least one time where we sent our technicall team to them to see the trailer Dates are unclear. I'm looking into this
3	July 14, 2015 a warranty claim was approved by Cross Country in the amount of $935.84. The lift steer was plumbed incorrectly Bellhop on more than one occasion would notify Cervus of issues after they sent the trailer to get repaired

Cross Country Mfg

2-418 South Railway Street
Morden, Manitoba, R6M 2G2

REPAIR WORK ORDER

DEALER: DATE: April 5/16

CUSTOMER: Bellhop JOB SUPERVISOR: Dave H

TRAILER INFORMATION

MODEL: 485LB SERIAL NO.: GB183760

FAILURE INFORMATION

Lift Axle Fender Brackets coming off
Belt doesn't turn
Air lines to short
Tail Gate Hatch Broken
Right side back up wiring missing
Oiler doesn't work
Center mud flap bending down
Fenders bend into tires
Calcium tank doesn't work

REPAIR DETAILS

Repair/ replace lift axle fender brackets	4.0hrs
Repair belt motor	5.5hrs
Check and repair belt as needed	1hrs
Check air lines and lengthen / replace as needed	1hrs
Replace Tail Gate Latch	2hrs
Repair wiring on right side back up light	2.5hrs
Adjust / repair chain oiler	.5hrs
Check out /Repair center mud flap bracket	.5hrs

Check and repair/replace rear mud flap bracket	1.5hrs
Check out Calcium tank / sprayer	1hrs

Keep Track of Hours & Parts Used

Total Hours 19.5hrs

Parts:

P/N:	Description:	Quantity:			
301178LH	Fender Bracket	4	94.08	376.32	
301178RH	Fender Bracket	4	94.08	376.32	
17047	Output Shaft	1	1358.06	1358.06	
400856	Gate Latch	2	60.93	$ 121.86	
302216	Mud Flap Bracket	1	45.35	$ 45.35	
19006	Belt Lacing	1	314.82	$ 318.82	
19091	Master Link	2	149.92	$ 299.84	
			Total	$ 2,896.57	$ 2,145.00

WORK TO BE FINSHED ON:

WORK REQUESTED BY:

WORK COMPLETED BY:

DATE:

DATE:

Appendix 4

District of: Manitoba
Division No. 01-
Court No. BK 17-01-04509
Estate No. 21-2281867

FORM 77

Notice of Disallowance of Claim, Right to Priority or Security or Notice of Valuation of Claim
(Subsection 135(3) of the Act)

Bellhop Express Corp
Oshawa Court No. 914/17
c/o Cassels Brock Lawyers
2100 Scotia Plaza, 40 King Street West
Toronto ON M5H 3C2

Take notice that:

As trustee acting in the matter of the proposal of 5274398 Manitoba Ltd. operating as Cross Country Manufacturing, we have disallowed your claim (or your right to a priority or your security on the property) in whole, pursuant to subsection 135(2) of the Act, for a number of reasons, including but not limited to the following:

1. The claim is contingent and unliquidated and has therefore been considered by the trustee, in conjunction with the Inspector, pursuant to ss. 121(2) and 135 of the *BIA*.

2. The Statement of Claim in Ontario Superior Court of Justice action No. 914/17 (the "**BEC Action**"), as attached to the Affidavit of James Crespi given in support of the Proof of Claim ("**Crespi Affidavit**") seeks, *inter alia*, damages for breach of contract, but no contract is alleged between Bellhop Express Corp. ("**BEC**") and the debtor 5274398 Manitoba Ltd. o/a Cross Country ("**5274398**") and the documents submitted do not support the existence of a contract between BEC and 5274398 Manitoba Ltd. o/a Cross Country ("**5274398**") or between BEC and Cervus Contractors ("**Cervus**").

3. The BEC Action alleges a breach of written warranty on the part of 5274398, however:
   (a) there is no evidence in the Crespi Affidavit of an assignment of the warranty from Mercado Capital to BEC;
   (b) the Warranty document relied upon in the Crespi Affidavit:
      (i) is unsigned by 5274398;
      (ii) excludes implied warranties of merchantability or fitness for particular purposes;
      (iii) states that 5274398, "shall not be liable for incidental or consequential damages resulting from any breach of warranty including, and without limiting the generality of the foregoing, loss of income...", and therefore on its face excludes the loss of profits claimed by BEC in its Proof of Claim.

4. The Statement of Claim in the BEC Action asserts that the same damage claimed against 5274398 was caused by the independent breaches by third parties.

5. The Crespi Affidavit asserts that orders were placed for two trailers on March 18, 2015; however, the documents enclosed show that only one trailer was ordered from 5274398 by Cervus on March 25, 2015.
6. Crespi Affidavit alleges that BEC's business failed "as a direct result of the loss of revenue caused by the Dufferin contracts being cancelled", among other things, which was alleged to have been caused by defects in the trailer and/or delays in delivery of the trailer; however, the documents produced show that BEC was threatened with the loss of the contract with Dufferin prior to the earliest date that the first trailer is alleged to have been promised to be delivered, and there is no documentary evidence of the actual cancellation of the Dufferin contract, the date thereof, or the reasons for the cancellation. In particular, the Dufferin letter threatening to cancel BEC's contract is dated May 5, 2015 which pre-dates the date asserted in the Crespi Affidavit for the delivery of the first trailer.

7. As to the second trailer, documentation attached to the Crespi Affidavit suggests that BEC declined to proceed, not that 5274398 and/or Cervus failed to deliver it.

8. The BEC Action contains allegations of pre-contractual misrepresentations; however, the only representations on the part of 5274398 cited in the Crespi Affidavit are written statements in an owner's manual provided at the time BEC took possession of the trailer. Further, the alleged misrepresentations appear to be in the nature of mere puffery.

9. As to the damage claimed, there is no reasonable evidence to support the loss of profits claimed. Among other things:

(a) the Income Statement included in the Crespi Affidavit shows an increase in after-tax profits for the 12 month period ending August 2016 over the prior period and is not indicative of financial stress;
(b) the Balance Sheet included in the Crespi Affidavit shows an increase in Retained Earnings and Equity for the 12 month period ending August 2016 over the prior period and is not indicative of financial stress;
(c) there is no substantiation of the claim that delays in the delivery of the trailer affected BEC's operations and/or contracts;
(d) there is no substantiation of when and for how long the 5274398 trailer was out of service, or of the financial impact of same;
(e) there is no substantiation of how or why down-time with the 5274398 trailer impacted the ability of BEC's other trailers to generate income in 2016;
(f) there is no evidence of why BEC did not replace the trailer manufactured by 5274398 with another trailer if the expected profits from continued operations were as large as claimed;
(g) there is no substantiation of when or for what reason BEC ceased operations.

10. The Crespi Affidavit includes documentation which supports the assertion that certain repair costs were incurred relatively soon after BEC began to use the 5274398 trailer; however,

(a) certain of the documentation of incurred costs does not appear to relate to the subject trailer;
(b) certain of the documentation of incurred costs appears to relate to ordinary wear and tear;
(c) the balance of the documentation of incurred costs suggest that the cost of the repairs were modest relative to the value of the trailer. Further, this documentation largely pertains to a period of several months following BEC's receipt of the trailer;
(d) documentation included in the Crespi Affidavit suggests that BEC neglected or delayed in returning the trailer to 5274398 for warranty work/repairs, despite requests by Cervus and 5274398;
(e) there is no substantiation of how such repairs caused the loss of profits claimed.

11. In the result, the BEC claim is too remote and too speculative to be accepted or valued.

And further take notice that if you are dissatisfied with our decision in disallowing your claim in whole (or a right to rank or your security or valuation of your claim), you may appeal to the court within the 30-day period after the day on which this notice is served, or within any other period that the court may, on application made within the same 30-day period, allow.

Dated at the City of Winnipeg in the Province of Manitoba, this 10th day of September, 2018.

LAZER GRANT INC.

Per: _____

Collin LeGall, CPA, CMA, CIRP, LIT Partner & Vice-President
Lazer Grant Inc. - Licensed Insolvency Trustee
300-309 McDermot Avenue
Winnipeg MB R3A 1T3
Phone: (204) 942-0300
Fax: (204) 957-5611

Appendix 5

District of: Manitoba
Division No. 01-
Court No. BK 17-01-04509
Estate No. 21-2281867

FORM 77

Notice of Disallowance of Claim, Right to Priority or Security or Notice of Valuation of Claim

(Subsection 135(3) of the Act)

Cervus Contractors Equipment LP
Bellhop cross claim
c/o Stewart Thom
Suite 1500 – 151 Yonge Street
Toronto ON M5C 2W7

Take notice that:

As trustee acting in the matter of the proposal of 5274398 Manitoba Ltd. operating as Cross Country Manufacturing, we have allowed your claim (or your right to a priority or your security on the property) to the extent of $183,856.65, in respect of Claim B:

As trustee acting in the matter of the proposal of 5274398 Manitoba Ltd., we have allowed your claim (or your right to a priority or your security on the property) to the extent of $1.00, pursuant to subsection 135(1.1) of the Act, in respect of Claim A for a number of reasons, including but not limited to the following:

1. Claim A is a claim for contribution and indemnification in respect of liability which Cervus Contractors Equipment LP ("**Cervus**") may have to Bellhop Express Corp. ("**BEC**") in litigation in Ontario Superior Court of Justice court file no. 914/17.

2. Cervus has denied any liability to BEC.

3. The litigation does not appear to have materially progressed and it is speculative and uncertain whether the litigation will progress. It is speculative and uncertain whether the litigation will result in any liability on the part of Cervus to BEC for which Cervus is entitled to contribution and/or indemnity from the debtor.

And further take notice that if you are dissatisfied with our decision in disallowing your claim in whole (or a right to rank or your security or valuation of your claim), you may appeal to the court within the 30-day period after the day on which this notice is served, or within any other period that the court may, on application made within the same 30-day period, allow.

Dated at the City of Winnipeg in the Province of Manitoba, this 10th day of September, 2018.

LAZER GRANT INC.

Per:_____

Collin LeGall, CPA, CMA, CIRP, LIT Partner & Vice-President
Lazer Grant Inc. - Licensed Insolvency Trustee
300-309 McDermot Avenue
Winnipeg MB R3A 1T3
Phone: (204) 942-0300
Fax: (204) 957-5611

Appendix 6

File No. BK 17-01-04509

THE QUEEN'S BENCH
WINNIPEG CENTRE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF

5274398 MANITOBA LTD.

OF THE CITY OF MORDEN

IN THE PROVINCE OF MANITOBA

AFFIDAVIT OF SERVICE
(Letter to proven creditors advising as to Appeals taken by disallowed creditors)

LAZER GRANT INC.
Licensed Insolvency Trustee
300 – 309 McDermot Avenue
Winnipeg, MB R3A 1T3
204-942-0300

File No. BK 17-01-04509

THE QUEEN'S BENCH
WINNIPEG CENTRE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF
5274398 MANITOBA LTD.
OF THE CITY OF MORDEN
IN THE PROVINCE OF MANITOBA

AFFIDAVIT

I, David Deane, administrator for Lazer Grant Inc. Licensed Insolvency Trustee acting *in re* the Proposal of 5274398 Manitoba Ltd., make oath and say:

that I sent or caused to be sent on the 1st day of February, 2019, a Letter to proven creditors advising as to Appeals taken by disallowed creditors, a copy of which is attached hereto and marked Exhibit "A", to the debtor and to those creditors on the Creditor Mailing List, with the appropriate text marked to indicate the mode of service to the particular party, whether by prepaid first class mail, email or facsimile transmission, which is attached hereto and marked Exhibit "B".

SWORN before me at the City of)
)
Winnipeg, in the Province of Manitoba,)
)
this 4th day of February, 2019.)

A Notary Public / Commissioner for Oaths in and for the
Province of Manitoba. My Commission expires May 29, 2019

Lazer Grant Inc
Licensed Insolvency Trustee

This is Exhibit " A " referred to in the Affidavit of DAVID DEANE

Sworn before me this 4th day of FEBRUARY A.D. 20 19

A Commissioner for Oaths in and for the Province of Manitoba My Commission expires May 29, 2019

January 31, 2019

To the Creditors in the Proposal of
5274398 MANITOBA LTD., OPERATING AS
CROSS COUNTRY MANUFACTURING

This letter is sent to you solely because you filed a Proof of Claim in the Proposal of 5274398 Manitoba Ltd. operating as Cross Country Manufacturing, which Proposal was approved and sanctioned by the Court of Queen's Bench on March 2, 2018.

Be advised that the Proposal Trustee received Proofs of Claim in the Proposal of 5274398 Manitoba Ltd., operating as Cross Country Manufacturing (the "**Debtor**"), from Bellhop Express Corp. and Cervus Contractors Equipment LP in the unsecured amount of $3,706,325.00 (the "**Claims**"). The Proposal Trustee disallowed the Claims, meaning that these creditors would not be entitled to receive any payments under the Proposal. These creditors have appealed the Disallowances of their Claims to the Court of Queen's Bench. A date has been set for the Appeals to be heard: April 24, 2019 at 10:00 in the Court of Queen's Bench, 408 York Avenue, Winnipeg, Manitoba (the "**Appeals**" and the "**Appealing Creditors**").

The Proposal Trustee has been directed by the Court to ensure that you, as a creditor whose claim in the Proposal was accepted by the Proposal Trustee, are notified of the Appeals and that the hearing of the Appeals has been scheduled.

If the Appeals are successful, in whole or in part, the consequence will be that the Claims (or such portion of the Claims as the Court allows), will be accepted and included in the Proposal and as a result, unless your claim qualifies as a Floor Creditor Claim under the Proposal, there will be a dilution to your proportionate recovery in the Proposal because the Appealing Creditors will be entitled to receive a portion of the funds paid into the Proposal by the Debtor. Floor Creditors' Claims are defined in the Proposal as proven claims worth $2,000.00 or less.

Further, as an alternate request in its Appeal, Cervus Contractors Equipment LP will ask the Court to delay, in whole or in part, the Proposal Trustee's distribution of funds received from the Debtor under the Proposal to the creditors whose claims have been approved and accepted by the Proposal Trustee.

Should the Appealing Creditors be substantially or entirely successful in their Appeals and their Claims substantially or entirely allowed, the Proposal Trustee projects, based on information known to date and assuming that the Debtor completes all payments required under the Proposal, that the total dividend expected to be paid to unsecured creditors will be equal to approximately 10% of such creditors' accepted claims, other than those creditors who qualify as Floor Creditors' Claims under the Proposal, whose recovery remains projected to be close to 100% of accepted claims.

300 – 309 McDermot Avenue, Winnipeg, Manitoba R3A 1T3
Tel: (204) 942-0300 Fax: (204) 957-5611 Website: www.lazergrant.ca

Should the Appealing Creditors be substantially or entirely unsuccessful in their Appeals, the Proposal Trustee projects, based on information known to date and assuming that the Debtor completes all payments required under the Proposal, that the dividend expected to be paid to unsecured creditors in this Proposal will be equal to approximately 18% of such creditors' accepted claims, again other than those creditors with Floor Creditors' Claims.

Should the Appealing Creditors' Appeals be successful only in part, the total dividend expected to be paid will vary between the above two proportions depending on the extent of their success.

Should the alternate request of Cervus Contractors Equipment LP be granted by the Court, then the timing of your receipt of payments from the Proposal may be delayed; however, the Proposal Trustee is not able to estimate the length of such delay at this point in time.

Copies of the Claims and of each of the Notices of Disallowance thereof issued by the Proposal Trustee are contained the Eighth Report of the Proposal Trustee, which has been posted to the Proposal Trustee's website at:

https://www.lazergrant.ca/cross-country-manufacturing/

The Notices of Motion of the Appealing Creditors, in which they state the grounds for their Appeals, have also been posted to the Proposal Trustee's website. As a party whose payments from the Proposal may be affected by the outcome of the Appeals, you are entitled to seek to participate in the Appeals if you wish. To participate, please contact your solicitor who can inform you of any court filing fee and documentation required to be submitted and/or have your solicitor contact counsel for the Proposal Trustee at:

Fillmore Riley LLP,
1700-360 Main Street, Winnipeg Manitoba R3C 3Z3
204-957-8360 (p); 204-954-0360 (f)
Attention, Andrew P. Loewen

The Debtor has been making the required payments referred to in paragraph 3.1 of the Proposal.

Yours truly,
LAZER GRANT INC.
Per:

Collin LeGall, CPA, CMA, CIRP
Licensed Insolvency Trustee

Creditor Mailing List

Creditor Type	Name	Attention	Address
Unsecured	ABC Fire		800 Marion St Winnipeg MB R2J 0K4 E Accounting@abcfireandsafety.com
	Access Fire		57 Sandys St. Chatham ON N7L 3P5 Fax: (519) 252-0855 E sfuntig@funtig.com
	Advanced Wheel Sales		1645 Westbelt Drive Columbus OH 43228 United States F Fax: (614) 527-8553
	Air Liquide Canada		107842 1700 Steeles Avenue East Bramalea ON L6T 1A6 F Fax: (905) 793-9257
	All Canadian Tools		CROSS COUNTRY 400 Richmond St. Chatham ON N7M 1P9 Fax: (519) 352-7007 E toolex@bellnet.ca
	AMG Peterbilt Group		2188 2888 Nationwide Parkway Brunswick OH 44212 United States E dbarna@amgpeterbilt.com
	Ancra Canada		ACCAC00000235 PO Box 8713, Stn. A Toronto ON M5W 3C2 F Fax: (866) 792-0058
	Automated Cutting Machinery Inc.		2302 Dumfries Rd. Unit A7 Cambridge ON N1R 5S3 Fax: (905) 581-1192 C abender@acmachinery.com
	Baker & McKenzie LLP		80011758 181 Bay Street, Suite 2100 Toronto ON M5J 2T3 Fax: (416) 863-6275 E bridget.lord@bakermckenzie.com
	Beech Hill Freight Brokerage Inc		101 Woodborough Road Guelph ON N1G 3L7 E greg@beechhillfreight.com
	Bell and Mackenzie		C2918 PO Box 844 LCD #1 Hamilton ON L8N3N9 Fax: (905) 527-6660 C joyce@bellandmackenzie.com
	Big and Colourful		Box 39 Stonewall MB R0C 2Z0 Fax: (204) 467-2679 C corrie@stonewallteulontribune.ca
	Blenheim Chevrolet		CR0076 P.O. 970 Blenheim ON N0P 1A0 Fax: (519) 676-0196 C jason@blenheimchev.com
	Borderland Manufacturing		Pembina Colony Darlingford MB R0G 0L0 E ray@borderlandmfg.com

This is Exhibit "5" referred to in the Affidavit of DAVID DEANE

Sworn before me this 4th day of FEBRUARY A.D. 20 19

A Commissioner for oaths in and for the Province of Manitoba. My Commission expires May 29, 2019

Creditor Mailing List

Creditor Type	Name	Attention	Address
Unsecured	Brantford Hydraulics INC.		CROCO 41 Empey Street Brantford ON N3S 7P9 Fax: (519) 754-0743 E bgripper@brantfordhydraulics.com
	BWG Logistics Inc.		Box 436 Winkler MB R6W 4A6 Fax: (204) 331-3917 E bob@bwglogistics.com
	Canada Revenue Agency		802040873RT0001 Pacific Insolvency Intake Centre 9755 King George Boulevard Surrey BC V3T 5E1 Fax: (866) 219-0311 E cra-arc_tax-fisc_ins_t-f_g@cra-arc.gc.ca
	Canadian Bearings Ltd.		145492 1600 Drew Rd Mississauga ON L5S 1S5 Fax: (905) 670-7466 E john.dambrosio@canadianbearings.com
	Canadian Lumber		27989 139 North Railway Ave Winkler MB R6W 1J4 Fax: (204) 325-5984 E rhildebrand@canadianlumber.net
	Cascadia Metals		5CROSS Site 410 Box 7 RR4 Brandon MB R7A 5Y4 Fax: (204) 727-3026 E kams@napsteel.com
	Chatham Tire		CROSS Chatham Tire 370 Richmond St Chatham ON N7M 1P8 Fax: (519) 352-1138 E christine@tirecraft.ca
	Continental Tire		7443129 PO Box 1929 STN A Toronto ON M5W 1W9 E dina.sokkar@conti-na.com
	Custom Hoists Inc.		Box 98 Rt. 30A West Hayesville OH 44838 United States Fax: (419) 368-4209 E johnb@customhoists.com
	DA Loewen		CROCOU Box 1240 Winkler MB R6W 4B3 Fax: (204) 325-5377 E darrel@daloewenelectric.net
	Dowler Karn Fuels		24151 St. Clair Road RR2 Chatham ON N7M 5J2 E sromo@dowlerkarn.com
	DuCharm, McMillen		7405 East Danbro Crescent Mississauga ON L5N 6P8 F Fax: (260) 482-8152
	Entegrus		PO Box 70 Chatham ON N7M 5K2 Fax: (519) 351-4059 E entegrus@entegrus.com

Creditor Mailing List

Creditor Type	Name	Attention	Address
Unsecured	Fairview Fittings &		C11980M 310 Keewatin Road Winnipeg MB R2X 2R9 F Fax: (204) 632-9656
	Fehrway Feeds		W063 RR1, Box 80 Winkler MB R6W 4A1 Fax: (204) 325-8560 E fehrwayfeeds@xplornet.com
	Friesen Plastic Inc.		CROCOU 2926-7th Avenue North Lethbridge AB T1H 5C6 Fax: (403) 320-5735 E rickf@friesenplastics.com
	General Metal		822950900 269 Manitoba Rd Winkler MB R6W 4A9 Fax: (204) 325-5175 E gerald@generalmetal.ca
	Golden West Trailer		P.O.Box 225 Moose Jaw SK S6H 4N8 F Fax: (306) 694-0607
	Green Line		10 - 1650 Notre Dame Avenue Winnipeg MB R3H 1H6 Fax: (204) 694-0309 E darlene.johnson@greenlinehose.com
	Groeneveld Lubrication Solutions Inc.		300447 5 - 8450 Lawson Road Milton ON L9T 0J8 E r.modgil@groeneveld-group.com
	Grote Industries		230 Travail Rd. Markham ON L3S 3J1 Fax: (905) 209-9757 E kirk.batten@grote.com
	H Paulin & Co. Limited		55 Milne Avenue, Scarborough ON M1L 4N3 Fax: (416) 694-1869 E beverley.mcfee@hillmangroup.com
	Hendrickson Canada		250 Chrysler Drive Brampton ON L6S 6B6 Fax: (905) 789-1033 E kparekh@hendrickson-intl.com
	Hendrickson Truck		800 South Frontage Road Woodridge IL 60517-4904 United States Fax: (630) 910-2899 E ldielman@hendrickson-intl.com
	High Strength Plates & Profiles		7464 Tranmere Drive Mississauga ON L5S 1K4 F Fax: (905) 673-1139
	Hunter Steel Sales		1045 Pattullo Ave Woodstock ON N4V 1C8 Fax: (519) 539-3183 E erin@huntersteel.ca
	Hyva		1070 Thorndale Ave Bensenville IL 60106 United States Fax: (630) 227-9029 E judith.macchitelli@hyvausa.com
	Ironworks Industries Inc.		152 - PTH #2 Box 457 St. Claude MB R0G 1Z0 E ironworksindustries@hotmail.com

Creditor Mailing List

Creditor Type	Name	Attention	Address
Unsecured	Jade Trailer Repairs Ltd.		12810 - 163 Street Edmonton AB T5V 1K6 Fax: (780) 447-1278 E mikec@jadetrailer.ca
	James Western Star		&WOTHER 5239 Continental Way Prince George BC V2N 5S5 Fax: (250) 562-3260 E. inicholls@jamesws.com
	Joe Haley		272 Park Street m Chatham ON N7M 3S1
	Johnston Bros. (Bothwell) Ltd.		P.O. Box 220 Bothwell ON N0P 1C0 E johnson1950@hotmail.com
	Jost International		40388 1770 Hayes Street Grand Haven MI 49417 United States Fax: (616) 846-0310 E tvandermolen@jostinternational.com
	JR Bearing & Power Ltd		697 469 Manitoba Road Winkler MB R6W 4A9 F Fax: (204) 325-0661
	KG Industries Ltd.		1770 P.O Box 1157 Osoyoos BC V0H 1V0 E. lukegenberg@kgi.ca
	KIC Holdings Inc		3800 Fruit Valley Road Vancouver WA 98660 United States F Fax: (360) 823-4441
	Koolers Refrigeration		CROCOU 1-249 Manitoba Road Winkler MB R6W 0J8 Fax: (204) 325-5377 E darrel@daloewenelectric.net
	Landstar Ligon Inc.		Drawer CS 100733 Atlanta GA 30384-0733 United States E mdavis1@landstar.com
	Livingston		342910 PO Box 5640 Terminal A Toronto ON M5W 1P1 Fax: (905) 676-9575 E. dporter@livingstonintl.com
	Livingston - NGJ		619007 P.O. Box 5640, Terminal A Toronto ON M5W 1P1 Fax: (905) 676-9575 E dporter@livingstonintl.com
	MacKay's Truck & Trailer		124 Lower Truro Road Truro NS B2N 1B1 Fax: (902) 893-0111 E ar@mackaystruckcenter.ca
	Manitoba Hydro		360 Portage Avenue - 5th floor Winnipeg MB R3C 0G8 E MHBankruptcyInfo@hydro.mb.ca
	Marmon / Keystone		79 Routledge Ave. Headingly MB R4H 0A9 Fax: (204) 694-5591 E gdeakin@mkcanada.com

Creditor Mailing List

Creditor Type	Name	Attention	Address
Unsecured	McNeilus Steel		P.O. Box 249 Dodge Center MN 55927 United States Fax: (888) 604-0065 E mark.dulaney@mcneilus.com
	Michel's Industries		PO Box 119 St. Gregor SK S0K 3X0 Fax: (306) 366-2145 E budm@michels.ca
	Minister of Finance		PST audit c/o 300-309 McDermot Avenue Winnipeg MB R3A 1T3 E MBTax@gov.mb.ca
	Minister of Finance Manitoba		Health & Education Levy 101-401 York Avenue M Winnipeg MB R3C 0P8
	Nuera Industrial		13028 1980, bould. Dagenais Ouest Laval QC H7L 5W2 E jlelievre@nuera-ind.com
	Oliver Lumber		44968-000 9184 Twiss Road Campbellville ON L0P 1B0 Fax: (905) 854-1800 E mferguson@goodfellowinc.com
	Ontario Health Tax		802040873TE0001 33 King Street W, PO Box 627 Oshawa ON L1H 8H5 E insolvency.unit@ontario.ca
	Pembina Valley Canvas Ltd.		Box 897 Winkler MB R6W 4A9 E pvcanvas@mymts.net
	Pembina Valley Containers		006260/000001 160 Grant St. Morden MB R6M 1Y4 Fax: (204) 822-3751 E receivables@pennerwaste.com
	Pete's General Freight Inc.		Box 40 Morris MB R0G 1K0 E pete@petesgeneralfreight.com
	Pinwood Truck Parts		9557 Longwoods RD Chatham ON N7M 5J1 Fax: (519) 352-9283 E kstarr@fgiltd.ca
	Polaris Global Logistics		CROSS COUNTRY 7099 Torbram Road Mississauga ON L4T 1G7 E stilva@polaristransport.com
	Power Link Inc.		CROSSCUS 5405 J-A Bombardier St.Hubert QC J3Z 1K3 E sales@power-link.ca
	PPG Canada Inc.		P.O. Box 9457 Toronto ON M5W 4E1 Fax: (905) 669-3433 E kuncans@ppg.com
	Purolator Courier Ltd.		PO Box 1100 Etobicoke Postal Stn A. M Etobicoke ON M9C 5K2

Creditor Mailing List

Creditor Type	Name	Attention	Address
Unsecured	Quality Trailers Ltd.		Box 66, GRP 200 RR2 Winnipeg MB R3C 2E6 Fax: (204) 633-6015 E jdanylchuk@qualitytrailersltd.com
	R.T. Systems Inc.		35 Sharp Road Brantford ON N3T 5L8 F Fax: (519) 304-9003
	Ray's Septic Service		Box 561 Winkler MB R6W 4A7 Fax: (204) 325-5144 E raydyck6@mymts.net
	Remorques Lewis		499 Chemin du Grand Rang La Presentation QC J0H 1B0 E info@remorqueslewis.com
	Ride Air Controls Inc		CRO001 1235 MID-WAY BLVD. Mississauga ON L5T 2C1 E gord.law@partech.ca
	Rochling Engineering Plastics		192 21 Tidemand Drive Orangeville ON L9W 3K3 E Connie.Thompson@roechling-plastics.ca
	Rogers		695031492 Box 9100 Don Mills ON M3C 3P9 Fax: (647) 439-1419 E dsinsolvency@collectlink.com
	Russel Metals Inc.		2108090 Box 39 Winnipeg MB R3C 2G3 Fax: (905) 819-7265 E info@russelmetals.com
	Samuel Packaging Systems Group		2360 Dixie Road Mississauga ON L4Y 1Z7 E sales@samuel.com
	SAPA		Hydro Extension Canada Airport Office Park, Building 2, 400 Rosser rd, Ste 201 M Moon township PA 15108 eishel.Salas@hydro.com
	Securi Trim		CROMAN 9200 5th Ave Saint-Georges QC G5Y 2A9 E yves@securitrim.ca
	Semi Service.		679-7900 c/o 300-309 McDermot Avenue Winnipeg MB R3A 1T3 Fax: (801) 532-7407 E manderson@semiservice.com
	Southman Plastics		Box 690 Winkler MB R6W 4A8 Fax: (204) 325-6739 E southpla@mymts.net
	Spectrum Coatings o/a Murlin Holdings Inc.		CROCOU 1368 Border Street Winnipeg MB R3H 0M9 E mdoerksen@spectrumcoatings.ca

Creditor Type	Name	Attention	Address
Unsecured	Start-N-Charge		530 Commander Drive Winkler MB R6W 0J2 Fax: (204) 325-0844 E startandcharge@hotmail.com
	Station Park Logistics		28 Majestic Court St. Thomas ON N5R 0B9 Fax: (519) 207-1529 E jcoffey@stationparklogistics.com
	Sunvalley Tire		375 Kimberly Road Winkler MB R6W 0H7 Fax: (204) 325-5736 E ken@sunvalleytire.ca
	Superior Propane		1266833 Box 4568, Station A Toronto ON M5W 0J5 Fax: (866) 421-7765 E lockew@superiorpropane.com
	Think Lighting Ontario		c/o Oldfield, Greaves, D'Agostino Barristers & Solicitors PO Box 16580, 172 King Street South Waterloo ON N2J 4X8 Fax: (519) 576-0131 E bscriven@watlaw.com
	Tilbury Steel Service		CR012 159 Queen Street N. Tilbury ON N0P 2L0 E credit@tilburysteel.com
	Tirecraft		527MO01 370 Richmond St. Chatham ON N7M 1P9 Fax: (519) 352-1138 E christine@tirecraft.ca
	Total Quality Logistics, LLC		10306729 4289 Ivy Pointe Blvd. Cincinnati OH 45245 Fax: (513) 732-4511 E jwells@tql.com
	Traction Heavy Duty - Winnipeg		200 Oak Point Hwy Winnipeg MB R2R 1V1 Fax: (514) 256-8469 E cmoranmolina@uapinc.com
	Trans-East Trailers		368 Urquhart Ave. Moncton NB E1H 2R6 Fax: (506) 854-2353 E kcrockett@transeasttratilers.com
	Transport Trailer		8085 Esquesing Line - Fourth Line Milton ON L9T 2X9 Fax: (905) 875-4336 E nlambevski@ttsi.ca
	TST Overland Express		0260185 P.O. Box 3030 Mississauga ON L5A 3S3 Fax: (905) 624-7019 E pchong@tstoverland.com
	UPS Canada		5R362F P.O. Box 4900, Station A Toronto ON M5W 0A7 E cabankruptcy@ups.com

Creditor Mailing List

Creditor Type	Name	Attention	Address
Unsecured	VISP		1761 570 Roblin East Winkler MB R6W 0H2 E wdyck@valleyfiber.ca
	Wainbee		143395 5789 Coopers Ave. Mississauga ON L4Z 3S6 Fax: (204) 694-5494 E credit@waincbee.com
	Wallace Machinery		151 Agri Park Road Oak Bluff MB R4G 0A5 Fax: (204) 772-2341 E wallace@wallacemachinery.com
	Winkler Co-op		43299 Box 1120 Winkler MB R6W 4B2 Fax: (204) 331-1538 E jthiessen@winklercoop.com
	Winkler Forklift		Box 89 Winkler MB R6W 4A4 F Fax: (204) 325-5432
	Workers Compensation Board		CI17-01-08429 1499904 333 Broadway Winnipeg MB R3C 4W3 E awatson@wcb.mb.ca