

1 Lawrence E. Wilk, #006510  
Jonathan P. Ibsen, #023284  
2 **JABURG & WILK, P.C.**  
3200 North Central Avenue, Suite 2000  
3 Phoenix, Arizona 85012  
(602) 248-1000  
4 e-mail [lew@jaburgwilk.com](mailto:lew@jaburgwilk.com)  
*Special Counsel for Debtor*  
5

6 UNITED STATES BANKRUPTCY COURT  
7 DISTRICT OF ARIZONA

8 In re:  
9 MATHON FUND, L.L.C., et al,  
10 Debtors.

Chapter 11 Proceedings  
Case No: 05-27993 PHX GBN  
(Jointly Administered with Case Nos.  
05-27994 PHX-SSC and  
05-27995 PHX- JMM)

11 THIS FILING APPLIES TO:

- 12  ALL DEBTORS  
13  SPECIFIED DEBTORS

**NOTICE OF FILING MOTION TO  
APPROVE SETTLEMENT WITH LOBO  
EXCAVATING & UNDERGROUND INC.  
AND BAR DATE FOR FILING  
OBJECTIONS**

14  
15  
16 **NOTICE IS HEREBY GIVEN** that James C. Sell, State Court Appointed Receiver, has  
17 filed a *Motion to Approve Settlement with Lobo Excavating & Underground, Inc.* attached hereto  
18 as Exhibit "A."

19 Any objection(s) to the *Motion to Approve Settlement* shall be in writing, filed with the  
20 Court within ten (10) days of service of this Notice and served on counsel for the Receiver at the  
21 following addresses:

22 Lawrence E. Wilk  
23 JABURG & WILK, P.C.  
3200 N. Central Ave., #2000  
24 Phoenix, AZ 85012  
[lew@jaburgwilk.com](mailto:lew@jaburgwilk.com)

25 If a timely objection is filed, the Court will set a hearing on the matter as soon as the  
26 court's calendar permits. If no objection is filed, the court will enter an Order approving the  
27 Motion without further notice.  
28

JABURG & WILK, P.C.  
ATTORNEYS AT LAW  
3200 NORTH CENTRAL AVENUE  
SUITE 2000  
PHOENIX, ARIZONA 85012

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The *Motion to Approve Settlement* is on file with the Court and can be viewed at:  
[www.mathonconservatorship.com](http://www.mathonconservatorship.com).

DATED this 7<sup>th</sup> day of July, 2006.

**JABURG & WILK, P.C.**

/s/ 006510

Lawrence E. Wilk  
*Special Counsel for Debtor*

COPY of the foregoing mailed  
This 7<sup>th</sup> day of July, 2006.

Michael W. Carmel  
80 E. Columbus Ave.  
Phoenix, AZ 85012-4965  
*Counsel for Debtor*

OFFICE OF THE U.S. TRUSTEE  
230 N. 1<sup>st</sup> Avenue, Suite 204  
Phoenix, AZ 85003-1725  
*U.S. Trustee*

Keith L. Beauchamp, Esq.  
Bret A. Maidman, Esq.  
LEWIS & ROCA, LLP  
40 N. Central Avenue, Suite 1900  
Phoenix, AZ 85004-4429  
*Attorney for Duane Slade and Guy Williams*

Wendy L. Coy, Esq.  
ARIZONA CORPORATION COMMISSION,  
SECURITIES DIVISION  
1300 West Washington, 3<sup>rd</sup> Floor  
Phoenix, Arizona 85007  
*Counsel for Arizona Corporation Commission*

Robert A. Shull, Esq.  
MARISCAL, WEEKS, MCINTYRE  
& FRIEDLANDER, P.A.  
2901 N. Central Avenue, Suite 200  
Phoenix, AZ 85012-2705  
*Attorney for Scott Johnson & Ross Farnsworth, Jr.*

Taylor Ashworth  
Alan A. Meda  
STINSON, MORRISON & HECKER, LLP  
1850 N. Central Avenue, Suite 2100  
Phoenix, Arizona 85004-4584  
*Attorneys for the Official Creditor's Committee*

Merwin D. Grant, Esq.  
GRANT & VAUGHN, PC  
6225 N. 24<sup>th</sup> Street, Suite 125  
Phoenix, Arizona 85016  
*Attorney for Dr. Glauser, Larry Pew & Rich Stewart*

SCHEER & IMFELD, LLP  
100 Smith Ranch Road, Suite 306  
San Rafael, CA 94903

Charles L. Firestein, P.C.  
CHARLES L. FIRESTEIN, P.C.  
1300 E. Missouri Avenue, Suite D-200  
Phoenix, AZ 85014

Robert B. Lochhead  
PARR WADDOUPS BROWN GEE & LOVELESS  
185 S. State Street, Suite 1300  
Salt Lake City, UT 84111  
*Attorney for O & A Development*

Barry Bursley  
BURSLEY & ASSOCIATES, P.C.  
3561 E. Sunrise Drive, Suite 225  
Tucson, AZ 85718  
*Attorney for R&A CPAs*

James C. Sell  
2222 E. Camelback Road, #110  
Phoenix, Arizona 85016  
*Court Appointed Receiver*

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Terry A. Dake, Esq.  
TERRY A. DAKE, LTD  
11811 N. Tatum Blvd, Suite 3031  
Phoenix, Arizona 85028-1621

And the Twenty Largest Unsecured Creditors  
attached hereto as Exhibit I.

/s/Janet Forster

JABURG & WILK, P.C.  
ATTORNEYS AT LAW  
3200 NORTH CENTRAL AVENUE  
SUITE 2000  
PHOENIX, ARIZONA 85012

Exhibit "A"

JABURG & WILK, P.C.  
ATTORNEYS AT LAW  
3200 NORTH CENTRAL AVENUE  
SUITE 2000  
PHOENIX, ARIZONA 85012

1  
2  
3  
4  
5  
6  
7  
8  
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13  
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20  
21  
22  
23  
24  
25  
26  
27  
28

Michael Carmel, Esq. #007356  
**LAW OFFICES OF MICHAEL W. CARMEL, LTD**  
80 East Columbus Avenue  
Phoenix, Arizona 85012-2334  
(602) 264-4965  
e-mail [michael@mcarmellaw.com](mailto:michael@mcarmellaw.com)  
*Attorney for the Debtors*

Lawrence E. Wilk, #006510  
Jonathan P. Ibsen, #023284  
**JABURG & WILK, P.C.**  
3200 North Central Avenue, Suite 2000  
Phoenix, Arizona 85012  
(602) 248-1000  
e-mail [lew@jaburgwilk.com](mailto:lew@jaburgwilk.com)  
*Special Counsel to the Debtors*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

In re:  
MATHON FUND, L.L.C., et al,  
  
Debtors.

**Chapter 11 Proceedings**  
**Case No: 05-27993 PHX GBN**  
**(Jointly Administered with Case Nos.**  
**05-27994 PHX-SSC and**  
**05-27995 PHX- JMM)**  
  
**MOTION TO APPROVE**  
**SETTLEMENT WITH LOBO**  
**EXCAVATING & UNDERGROUND,**  
**INC.**

THIS FILING APPLIES TO:  
 ALL DEBTORS  
 SPECIFIED DEBTORS

The Debtors, through counsel of record undersigned, hereby submit the following Motion to approve their Settlement of the claims brought by Louis A. Movitz as Trustee for Lobo Excavating & Underground, Inc. (Lobo), in the Adversary Proceeding presently pending in this Court, Case No., 04-831 (the "Adversary Proceeding") on the terms set forth on Exhibit "A" hereto, for the sum of \$25,000.00.

The Motion should be granted because the Settlement is in the best interests of these Debtors' Estates, as more fully explained herein.

///

1     **I.     Relevant Factual and Procedural Background.**

2             On or about June 4, 2004, Lobo commenced an Adversary Proceeding against Slade  
3 Williams & Associates, LLC (“Slade Williams”) to recover a transfer in the amount of \$50,000  
4 pursuant to 11 U.S.C. § 547 (the “Transfer”).

5             On or about April 1, 2005, the Arizona Corporation Commission caused to be filed, in the  
6 Superior Court in and for the State of Arizona (the “State Court”) a Verified Complaint against  
7 various Mathon Entities - including Slade Williams - seeking the appointment of a Receiver over  
8 the named Defendants.

9             On April 5, 2005, the State Court issued its Order appointing James C. Sell Receiver for  
10 the approximately 30 entities named in the Receivership complaint.

11             Subsequently, after notice and hearing, on April 14, 2006, the State Court issued its Order  
12 approving the Stipulation Regarding Order Appointing Conservator, in which the title of James C.  
13 Sell was changed from Receiver to Conservator (hereinafter, the “Conservatorship Order”). The  
14 rights and obligations of the Conservator remained identical to those of the Receiver.

15             Pursuant to an Order entered in the State Court proceeding on October 25, 2005, that  
16 Court authorized the filing of Bankruptcy for three Conservatorship Entities: Mathon Fund I,  
17 LLC, Mathon Fund, LLC and W.S.F. – World Sports Fans, LLC.

18             In compliance therewith, these Bankruptcy Cases were commenced on November 13,  
19 2005.

20             On January 12, 2006, this Court entered an Order allowing for the Joint Administration of  
21 the above referenced bankruptcy estates. This Motion is filed in the Mathon Fund LLC jointly  
22 administered case in accordance with the Court’s prior Joint Administration Order.

23             Investigations into the books and records of the Debtors revealed that the Transfer sought  
24 by Lobo, actually related to an obligation of Mathon Fund I - a Debtor in these Bankruptcy Cases.  
25 Moreover, prior to the Receivership and these Bankruptcy Cases, the Debtors and the  
26 Receivership Entities routinely co-mingled funds, and failed to follow corporate formalities  
27 among the various entities. Based in part upon these facts, the Transfer gives rise to a claim by  
28 Lobo against these Debtors’ Estates.

1           Thereafter, through extensive negotiation with Lobo, Lobo has agreed to compromise its  
2 claims against Mathon by 50%, rather than incur the costs and risks of litigating the matter  
3 further.

4       **II.     The Settlement is in the Best Interests of the Debtors' Estates.**

5           The decision whether to approve a compromise or settlement is left to the sound discretion  
6 of the Court. *Woodson v. Fireman's Fund Ins. Co.* 839 F.2d 610, 620 (9th Cir. 1988); *In re A&C*  
7 *Properties*, 784 F.2d 1377, 1380-81 (9th Cir.), *cert. denied sub nom. Martin v. Robinson*, 479  
8 U.S. 854 (1986).

9           Thus, the Court is charged with making an informed, independent determination as to  
10 whether a settlement is fair, equitable and in the best interests of the estate's creditors bearing in  
11 mind that the law favors compromises. *In re Blair*, 538 F.2d 849, 841 (9th Cir. 1976).

12           While the Bankruptcy Court should not rubber stamp a proposed settlement agreement,  
13 the Court need not conduct a trial on the merits and should give considerable weight to the  
14 debtor-in-possession's position that the proposed agreement is fair and equitable. *Protective*  
15 *Committee for Independent Stockholders of TAT Trailer Ferry, Inc. V. Anderson*, 390 U.S. 414,  
16 444 (1968); *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 493, 496 (Bankr. S.D.N.Y.  
17 1991). *See also, In re Carla Leather, Inc.*, 44 B.R. 457, 472 (Bankr. S.D.N.Y.), *aff'd*, 50 B.R. 764  
18 (S.D.N.Y. 1984).

19           Controlling case law identifies a number of factors for the Court to examine in evaluating  
20 the Settlement Agreement. These factors are as follows:

- 21           (a)     The probability of success in litigation;
- 22           (b)     Difficulties in collection activities if successful results were obtained through  
23 litigation;
- 24           (c)     The complexity of the litigation involved, and the attendant expense,  
25 inconvenience, and delay; and
- 26           (d)     The paramount interest and reasonable view of the creditors.

27       *See, Woodson, supra.*

1 Here, a consideration of the foregoing factors weighs heavily in favor of approving the  
2 Settlement Agreement. Indeed, if the parties were to litigate the many various disputes that are  
3 being resolved pursuant to the Settlement Agreement, it is possible that the Debtors would not  
4 obtain as good a result as is set forth in the Settlement Agreement.

5 However, one thing is very clear - the litigation would incur significant legal costs for the  
6 Debtors' Estates.

7 Consequently, the Settlement is in the best interests of these Debtors' Estates.

8 **III. CONCLUSION**

9 Based on the foregoing, the Debtors respectfully request that the Court enter an Order  
10 approving the Settlement Agreement.

11 DATED this 7<sup>th</sup> day of July, 2006.

**JABURG & WILK, P.C.**

/s/ 006510

\_\_\_\_\_  
Lawrence E. Wilk  
Jonathan P. Ibsen  
*Special Counsel for Debtor in Possession*

12  
13  
14  
15 COPY of the foregoing mailed  
This 7<sup>th</sup> day of July, 2006.

16 Michael W. Carmel  
17 80 E. Columbus Ave.  
18 Phoenix, AZ 85012-4965  
*Counsel for Debtor*

OFFICE OF THE U.S. TRUSTEE  
230 N. 1<sup>st</sup> Avenue, Suite 204  
Phoenix, AZ 85003-1725  
*U.S. Trustee*

19 Keith L. Beauchamp, Esq.  
20 Bret A. Maidman, Esq.  
21 LEWIS & ROCA, LLP  
22 40 N. Central Avenue, Suite 1900  
23 Phoenix, AZ 85004-4429  
*Attorney for Duane Slade and Guy Williams*

Wendy L. Coy, Esq.  
ARIZONA CORPORATION COMMISSION,  
SECURITIES DIVISION  
1300 West Washington, 3<sup>rd</sup> Floor  
Phoenix, Arizona 85007  
*Counsel for Arizona Corporation Commission*

23 Robert A. Shull, Esq.  
24 MARISCAL, WEEKS, MCINTYRE  
& FRIEDLANDER, P.A.  
25 2901 N. Central Avenue, Suite 200  
Phoenix, AZ 85012-2705  
*Attorney for Scott Johnson & Ross Farnsworth, Jr.*

Taylor Ashworth  
Alan A. Meda  
STINSON, MORRISON & HECKER, LLP  
1850 N. Central Avenue, Suite 2100  
Phoenix, Arizona 85004-4584  
*Attorneys for the Official Creditor's Committee*

26 Merwin D. Grant, Esq.  
27 GRANT & VAUGHN, PC  
28 6225 N. 24<sup>th</sup> Street, Suite 125  
Phoenix, Arizona 85016  
*Attorney for Dr. Glauser, Larry Pew & Rich Stewart*

SCHEER & IMFELD, LLP  
100 Smith Ranch Road, Suite 306  
San Rafael, CA 94903

1 Charles L. Firestein, P.C.  
CHARLES L. FIRESTEIN, P.C.  
2 1300 E. Missouri Avenue, Suite D-200  
Phoenix, AZ 85014  
3

Robert B. Lochhead  
PARR WADDOUPS BROWN GEE & LOVELESS  
185 S. State Street, Suite 1300  
Salt Lake City, UT 84111  
*Attorney for O & A Development*

4 Barry Bursley  
BURSLEY & ASSOCIATES, P.C.  
5 3561 E. Sunrise Drive, Suite 225  
Tucson, AZ 85718  
6 *Attorney for R&A CPAs*

James C. Sell  
2222 E. Camelback Road, #110  
Phoenix, Arizona 85016  
*Court Appointed Receiver*

7 Terry A. Dake, Esq.  
TERRY A. DAKE, LTD  
8 11811 N. Tatum Blvd, Suite 3031  
Phoenix, Arizona 85028-1621  
9

10 */s/Janet Forster*  
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Exhibit "A"

1 | **TERRY A. DAKE, LTD.**  
11811 North Tatum Boulevard  
2 | Suite 3031  
Phoenix, Arizona 85028-1621  
3 | Telephone: (480) 368-5199  
Facsimile: (480) 368-5198  
4 | tdake@cox.net

5 | Terry A. Dake - 009656  
6 | Attorney for Trustee

7 | IN THE UNITED STATES BANKRUPTCY COURT  
8 | FOR THE DISTRICT OF ARIZONA

9   In re:	)	In Chapter 7 Proceedings
	)	
10   LOBO EXCAVATING &	)	
UNDERGROUND, INC.;	)	Case No. 2-03-17048-SSC
11	)	
Debtor.	)	
12   _____	)	
	)	
13   LOUIS A. MOVITZ, Trustee	)	Adversary No. 04-831
	)	
14                     Plaintiff,	)	
	)	
15   v.	)	
	)	
16   SLADE WILLIAMS	)	
& ASSOCIATES, LLC	)	
17   aka Slade Williams	)	
And Associates, Inc.	)	
	)	
18                     Defendant.	)	
19   _____	)	

20 | MOTION TO APPROVE COMPROMISE  
AND NOTICE OF BAR DATE FOR OBJECTIONS

21 | The trustee moves this Court for the entry of an order  
22 | approving a compromise of this adversary proceeding. The trustee's  
23 | motion is more fully set forth in and is supported by the following  
24 | Memorandum Of Points and Authorities.

25 |  
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27 |  
28 |

1 DATED June 5, 2006.

2 TERRY A. DAKE, LTD.

3 By /s/ TD009656

4 Terry A. Dake - 009656  
5 11811 North Tatum Boulevard  
6 Suite 3031  
7 Phoenix, Arizona 85028-1621

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 Prior to the bankruptcy filing, the debtor paid to the  
10 defendant the sum of \$50,000.00. The trustee contends that the payment  
11 made by the debtor is avoidable under 11 U.S.C. §547 and/or §548. The  
12 defendant disputes the trustee's allegations contending, among other  
13 things, that the payment was made for valuable consideration in the  
14 ordinary course of business and that new value was provided.

15 In order to resolve this litigation, but without admitting the  
16 trustee's allegations or that any claims against the defendant exist,  
17 the defendant has agreed to pay to the trustee the sum of \$25,000.00 in  
18 full satisfaction of the trustee's claims.

19 In light of the amounts at issue, and the costs and  
20 uncertainties of additional litigation, the trustee believes that the  
21 proposed compromise is reasonable and in the best interest of the  
22 estate. The proposed compromise avoids the delay, expense and  
23 uncertainty of additional litigation and provides a return to the  
24 estate.

25 The agreed upon amount of \$25,000.00 will be paid by the  
26 defendant to the trustee not later than ten (10) days after the later of  
27 the entry of an order approving this compromise, and after approval of  
28 this compromise by the courts currently holding jurisdiction over the

1 affairs of the defendant. Upon payment, the trustee will lodge an order  
2 providing for the dismissal of this adversary proceeding with prejudice,  
3 with each party to bear their own attorneys' fees and costs.

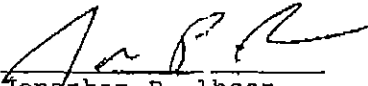
4  
5 DATED June 5, 2006.

6 TERRY A. DAKE, LTD.

7  
8 By /s/ TD009656

9 Terry A. Dake - 009656  
10 11811 North Tatum Boulevard  
Suite 3031  
Phoenix, Arizona 85028-1621

11 APPROVED AND AGREED:

12  
13   
14 Jonathan P. Ibsen  
15 JABURG & WILLI, P.C.  
Attorneys for Defendant

16  
17  
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Label Matrix for local noticing  
0970-2  
Case 2:03-bk-17048-SSC  
District of Arizona  
Phoenix  
Wed Jun 7 16:34:39 MST 2006

CATERPILLAR FINANCIAL SERVICES CORPORATION  
C/O PETER J. RATHWELL  
SNELL & WILMER, LLP  
ONE ARIZONA CENTER  
400 E. VAN BUREN  
PHOENIX, AZ 85004 US

James C. Sell  
c/o Jaburg & Wilk. P.C.  
3200 N. Central Avenue  
Suite 2000  
Phoenix, AZ 85012

U.S. TRUSTEE  
OFFICE OF THE U.S. TRUSTEE  
230 NORTH FIRST AVENUE  
SUITE 204  
PHOENIX, AZ 85003

ALLTEL  
PX323CV  
P O BOX 79029  
PHOENIX AZ 85062-9029

ARIZONA LIEN SERVICE  
P O BOX 36750  
TUCSON AZ 85740

BANK ONE  
0569-1576, 0205-790  
CASA GRANDE AZ 85222

BENJAMIN SALNZ MONGO  
407 N HILL #C  
MESA AZ 85203

CARLOS PARDO RENDON  
2249 W MAIN STREET #21  
MESA AZ 85201

CATERPILLER  
001-0245409-000  
P O BOX 100647  
PASADENA CA 91189-0647

APACHE CONCRETE CUTTING  
c/o Cheifetz Iannitelli Marcolini, P.C.  
1850 N. Central Avenue, 19th Floor  
Phoenix, AZ 85004

DANA KEPNER COMPANY  
c/o Parker & Thompson  
141 E. Palm Ln.  
Suite #111  
Phoenix, AZ 85004

LOBO EXCAVATING & UNDERGROUND, INC  
1452 S GLENVIEW  
MESA, AZ 85204

U.S. Bankruptcy Court, Arizona  
230 North First Avenue, Suite 101  
Phoenix, AZ 85003-1727

AMERICAN CAR CARE CENTERS  
8139 S PRIEST DRIVE  
TEMPE AZ 85284

ARIZONA PUBLIC SERVICE  
P O BOX 53920  
TREASURY OPS- MAIL STATION 9996  
PHOENIX AZ 85072-3920

BANK ONE  
4246311201047971  
P O BOX 50882  
HENDERSON NV 89016-0882

BOB'S BARRICADE  
P O BOX 31169  
TAMPA FL 33631-3169

CASE CREDIT  
61098001  
P O BOX 371974  
PITTSBURG PA 15250-7974

CERTEGY PAYMENT RECOVERY SERVICE  
11601 ROOSEVELT BLVD  
ST PETERSBURG FL 33716

CASE CREDIT CORPORATION  
45 N. Tucson Blvd.  
Tucson, AZ 85716 US

FORD MOTOR CREDIT COMPANY  
4600 EAST SHEA BLVD., SUITE 100  
PHOENIX, AZ 85028

RDO Financial Services Co.  
c/o David N. Ingrassia, P.C.  
Phoenix, AZ

A-1 PAVING AND GRADING INC  
23169 N 79TH AVENUE  
PEORIA AZ 85238

APACHE CONCRETE CUTTING  
3825 S 27TH STREET  
PHOENIX AZ 85040

ASAP CONCRETE CUTTING

BEE WIRELESS

BRANCO MACHINERY  
1205 N MCQUEEN ROAD  
GILBERT AZ 85233-1750

CASE CREDIT VANTAGE  
5043935500802579  
P O BOX 2032  
RACINE WI 53401

CITY OF GLENDALE  
5850 W GLENDALE AVE  
GLENDALE AZ 85301-2599

CITY OF PHOENIX  
400219033  
P O BOX 78815  
PHOENIX AZ 85062-8815

CONTECH  
1001 GROVE STREET  
MIDDLETOWN OH 45044

CREDIT MANAGEMENT SERVICES  
FOR EXCEL FIRE EQUIPMENT  
P O BOX 80650  
PHOENIX AZ 85060

CT PRICE CONTRACTING  
20622 N 63RD DRIVE  
GLENDALE AZ 85308-6614

DANA KEPNER  
56860000  
2401 S 19TH AVENUE  
PHOENIX AZ 85009-6930

DIAMONDBACK CONCRETE CUTTING  
6216 E JANICE WAY  
SCOTTSDALE AZ 85254

DOMINGO CHAVEZ  
16492 N WUSICH STREET  
SURPRISE AZ 85374

DYNAMIC DIESEL  
4757 E GREENWAY ROAD SUITE 103-1  
PHOENIX AZ 85032

EMPIRE MACHINERY  
21230 N BLACK CANYON  
PHOENIX AZ 85027

EXCEL FIRE EQUIPMENT  
7623 N 67TH AVENUE SUITE 306  
GLENDALE AZ 85301

FORD MOTOR CREDIT  
16727097  
P O BOX 239801  
LAS VEGAS NV 89123-0040

HANSEN PIPE AND PRODUCTS, INC  
P O BOX 120001  
DALLAS TX 75312

HERTZ  
IRCINK & MILLER  
3037 NORTHWEST 63RD STREET  
OKLAHOMA CITY OK 73116

JEFF COLE CONCRETE CUTTING  
529 W WILLETTA  
PHOENIX AZ 85003

LEONARD GARZA  
22475 W WILLIAMS DRIVE  
SURPRISE AZ 85387

LIEN AND BOND SERVICES  
931 E SOUTHERN AVENUE #212  
MESA AZ 85204

LP GRADING & PAVING  
9031 W CAMINO DE ORO  
PRORIA AZ 85382

M & J EXCAVATING  
3640 S 36TH STREET  
PHOENIX AZ 85040

MARINO MACHADO-TENA  
5619 W PALM LANE  
PHOENIX AZ 85035

MATHON FUND  
1819 E SOUTHERN SUITE D-10  
MESA AZ 85204

MOBILE MINI  
P O BOX 79149  
TEMPE AZ 85062

MOISES FERNANDEZ  
2705 E MORELAND  
PHOENIX AZ 85008

NATIONAL FIRE CONTROL  
P O BOX 26136  
TEMPE AZ 85285-6136

NATIONS RENT  
JB SCOTT / PENICK & PARR  
P O BOX 846280  
DALLAS TX 75284-6280

NEENAH FOUNDRY  
BOX 729  
NEENAH WI 54957

NES TRENCH SHORING  
34072  
C/O ATKINS, HARRIS & BROWN  
4800 SUGAR GROVE BLVD, SUITE 500  
STAFFORD TX 77477

OLSON PRECAST OF ARIZONA  
P O BOX 21613  
PHOENIX AZ 85036-1613

PHOENIX FUEL  
P O BOX 6176  
PHOENIX AZ 85005-6176

PIPELINE SERVICES INC  
LOBEXC  
3825 S 27TH STREET  
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MESA AZ 85201

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WEST PALM BEACH FL 33406

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GILBERT AZ 85233

SANDPIPER RENTALS  
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SANDVICK EQUIPMENT  
4020 S 15TH AVENUE  
PHOENIX AZ 85041

STEVE & TONY TIRE  
1649 W CARMEL  
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STEWART TRUCKING & EQUIPMENT  
22635 S COOPER ROAD  
CHANDLER AZ 85249-2820

SUNSTATE  
3030  
P O BOX 52581  
PHOENIX AZ 85072-2581

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19749 E VIA DE OLIVOS  
QUEEN CREEK AZ 85242

T&T AUTO SUPPLY  
104 E 1ST AVE  
MESA AZ 85210-1496

TAURMANN ENTERPRISES INC  
2703 N PENNINGTON DRIVE  
CHANDLER AZ 85224

THE LOCATOR  
P O BOX 61174  
PHOENIX AZ 85082-1174

THE MAHONEY GROUP  
2345 W GLENDALE AVE  
PHOENIX AZ 85021-7698

TIREWORKS  
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PHOENIX AZ 85080-1803

TRAFFICADE  
2533 W HOLLY STREET  
PHOENIX AZ 85009

UNITED RENTALS  
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IRVINE CA 92612

US BANK  
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CINCINNATI OH 45201-5229

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Phoenix, AZ 85004

CASE VANTAGE  
PO BOX 3038  
EVANSVILLE, IN 47730

CATERPILLAR FINANCIAL SERVICES CORPORATION  
ATTN: LEGAL DEPARTMENT  
2120 WEST END AVE.  
NASHVILLE, TN 37203

CATERPILLAR FINANCIAL SERVICES CORPORATION  
ATTN: LEGAL DEPARTMENT  
2120 WEST END AVE.  
NASHVILLE, TN 37203

CATERPILLAR FINANCIAL SVCS CORP.  
ATTN: LEGAL DEPT.  
2120 WEST END AVE.  
NASHVILLE, TN 37203

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c/o Parker & Thompson PLLC  
141 E. Palm Ln., Suite #111  
Phoenix, AZ 85004

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MESA, AZ 85204

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5320 INDIAN CAMP RD  
PRESCOTT, AZ 86305

MATHON FUND I, LLC  
KIRK A GUINN, ESQ.  
1819 E SOUTHERN #D-10  
MESA, AZ 85204

PATRICK THOMAS WOLFF  
43565 CORTE LOGRONO  
TEMECULA, CA 92592-3770

RDO Financial Services Co.  
c/o David N. Ingrassia, P.C.  
1212 E. Osborn Road  
Phoenix, AZ 85014

ROYAL SURPLUS LINES INSURANCE COMPANY  
945 EAST PACES FERRY ROAD, STE. 1800  
ATLANTA, GEORGIA 30326

Terry A. Dake  
11811 N. Tatum Blvd.  
Ste. 3031  
Phoenix, AZ 85028-1621

Tim Bennett  
14809 N. Bolivar  
Sun City, AZ 85351

VULCAN MATERIALS COMPANY  
C/O ROBERT F. ROOS  
LEWIS AND ROCA LLP  
40 NORTH CENTRAL  
PHOENIX, AZ 85004

LEONARD GARZA  
22475 W WILLIAMS DR  
SURPRISE, AZ 85387

LOIS GARZA  
22475 W WILLIAMS DR  
SURPRISE, AZ 85387

LOUIS A. MOVITZ  
P.O. BOX 2698  
FLAGSTAFF, AZ 86003

LYNDON B. STEIMEL  
LAW OFFICE OF LYNDON B STEIMEL  
14614 N KIERLAND BLVD #N-135  
SCOTTSDALE, AZ 85254

PATRICK THOMAS WOLFF  
43565 CORTE LOGRONO  
TEMECULA, CA 92592

STEVE & MIRIAM WOLFF  
1452 SOUTH GLENVIEW ROAD  
MESA, AZ 85204

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