

**29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF SAINT CHARLES**

**STATE OF LOUISIANA**

**NO. 64966**

**SEC. "C"**

**BOTTOM LINE EQUIPMENT, L.L.C.**

**VERSUS**

**SMITH & ASSOCIATES CONSULTING, L.L.C., et al**

**FILED**

**DEPUTY CLERK**

**BOTTOM LINE EQUIPMENT, L.L.C.'S**  
**MOTION FOR SUMMARY JUDGMENT**  
**AND/OR SANCTIONS**

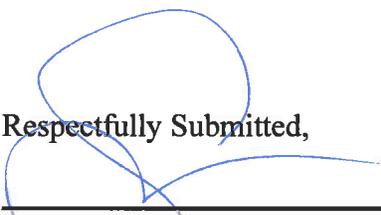
**NOW INTO COURT**, through undersigned counsel, comes Plaintiff, Bottom Line Equipment, L.L.C. (hereinafter referred to as "Bottom Line"), who pursuant to Article 1471 and Article 966(B) of the Louisiana Code of Civil Procedure, respectfully moves this Court for Summary Judgment and Sanctions against Defendant Smith & Associates Consulting, L.L.C.

**PLEASE SERVE:**  
Smith & Associates Consulting, L.L.C.  
Through its attorney of record  
Windi D. Brown  
650 Poydras Street, Suite 1460  
New Orleans, LA 70130

And

Insurance Underwriters, Ltd  
Through its attorney of record  
Marcelle P. Mouledoux  
701 Poydras Street, Suite 3600  
New Orleans, LA 70139-7735

Respectfully Submitted,

  
\_\_\_\_\_  
Scott G. Wolfe, Jr. (Bar Roll 30122)  
THE WOLFE LAW OFFICES, L.L.C.  
4821 Prytania Street  
New Orleans, LA 70115  
P: 504-894-9653  
F: 866-761-8934  
Attorney for Plaintiffs

**29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF SAINT CHARLES**

**STATE OF LOUISIANA**

**NO. 64966**

**SEC. "C"**

**BOTTOM LINE EQUIPMENT, L.L.C.**

**VERSUS**

**SMITH & ASSOCIATES CONSULTING, L.L.C., et al**

---

**FILED**

---

**DEPUTY CLERK**

**STATEMENT OF UNDISPUTED FACTS**

**NOW INTO COURT**, through undersigned counsel, comes Plaintiff, Bottom Line Equipment, L.L.C. (hereinafter referred to as "Bottom Line"), who submits the following to this Court as its statement of undisputed facts:

1. Smith & Associates Consulting, L.L.C. ("Smith") entered into a Rental Agreement with Bottom Line Equipment, L.L.C. on December 6, 2005, to lease a piece of construction equipment, namely a Case 60XT Skid Steer, Serial Number JAF0350393 (See Request for Admission No. 1);
2. Smith entered into a Rental Agreement with Bottom Line Equipment, L.L.C. on December 7, 2005, to lease a piece of construction equipment, namely a Case 70 XT Skid Steer, Serial Number JAF0371633 (See Request for Admission No. 2);
3. Under the terms of both Rental Agreements, Smith was required to maintain a policy of insurance on leased equipment (See Request for Admission No. 3);
4. Under the terms of both Rental Agreements, Smith is liable to Bottom Line Equipment, L.L.C. for any damage to the equipment which is not covered by said policy of insurance (See Request for Admission No. 4);

5. Smith maintained loss insurance coverage in the leased equipment with Travelers Property and Casualty Company of America (See Request for Admission No. 7);
6. The policy with Travelers Property and Casualty Company of America only covered the 60 XT Skid Steer and did not cover the 70 XT Skid Steer at all (See Granting of Travelers' Motion for Summary Judgment, February 11 2008);
7. The policy with Travelers Property and Casualty Company of America only provides for the payment of actual cash value and not for payment of the replacement cost on the equipment ((See Granting of Travelers' Motion for Summary Judgment, February 11 2008);
8. Under the terms of both Rental Agreements, Smith is liable for all rent on the leased equipment during the period of repair to the equipment (See Request for Admission No. 5);
9. The Case 60XT Skid Steer and Case 70XT Skid Steer listed above were stolen while in the possession of the defendant, Smith. (See Request for Admission No. 6);
10. Smith has refused to endorse the checks issued to Bottom Line Equipment, L.L.C. and Smith by Travelers Property and Casualty Company of America, as partial payment for the full obligation due by Smith pursuant to the Rental Agreements (See Request for Admission No. 8);
11. Bottom Line Equipment, L.L.C. has suffered a loss in the amount of \$76,000.00 representing the full replacement value of the equipment stolen while in the possession and custody of Smith (See Request for Admission No. 9);
12. Smith has failed to pay payments due for the stolen equipment (See Request for Admission No. 10);

13. Skid Steer bearing Serial No. JAF0383143 was stolen in March 2006.

Skid Steer bearing Serial No. JAF0350393 was stole in April 2006.

Respectfully Submitted,

---

Scott G. Wolfe, Jr. (Bar Roll 30122)  
THE WOLFE LAW OFFICES, L.L.C.  
4821 Prytania Street  
New Orleans, LA 70115  
P: 504-894-9653  
F: 866-761-8934  
Attorney for Plaintiffs

**PLEASE SERVE:**

Smith & Associates Consulting, L.L.C.  
Through its attorney of record  
Windi D. Brown  
650 Poydras Street, Suite 1460  
New Orleans, LA 70130

And

Insurance Underwriters, Ltd  
Through its attorney of record  
Marcelle P. Mouledoux  
701 Poydras Street, Suite 3600  
New Orleans, LA 70139-7735

**29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF SAINT CHARLES**

**STATE OF LOUISIANA**

**NO. 64966**

**SEC. "C"**

**BOTTOM LINE EQUIPMENT, L.L.C.**

**VERSUS**

**SMITH & ASSOCIATES CONSULTING, L.L.C., et al**

**FILED**

**DEPUTY CLERK**

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
OR IN THE ALTERNATIVE, DEFAULT JUDGMENT AS SANCTIONS**

**NOW INTO COURT**, through undersigned counsel, comes Plaintiff, Bottom Line Equipment, L.L.C. ("Bottom Line"), who respectfully submits this Memorandum in Support of its Motion for Summary Judgment, or alternatively, for Sanctions.

**Introduction and Factual Background**

On December 11, 2006, the Plaintiff filed with this Honorable Court the above-captioned proceedings against Smith & Associates Consulting, L.L.C. (Smith).

The Petition alleged that certain construction equipment was leased from Plaintiff to Smith, and that said equipment was stolen while in Smith's possession. According to the Rental Agreement between the parties, Smith was required to insure the equipment<sup>1</sup>, and to compensate Bottom Line for any loss that exceeds or is not covered by the insurance policy.<sup>2</sup>

On September 11, 2007, the Plaintiff sent Smith its First Request for Admissions, Set of Interrogatories and Request for Production of Documents. Attached Exhibit A.

<sup>1</sup> Insurance is required on all equipment leased from Company....Customer shall remain liable for Co. For any damage to the equipment which is not covered by the customer's insurance.

<sup>2</sup> Customer shall remain liable for all rent on the leased equipment during the period of repair to the equipment so long as the damage occurred while the equipment was in the possession of customer or while under lease to the Customer.

Smith did not answer the same, and accordingly, on June 23, 2008, the Plaintiff filed a Motion to Compel. Attached Exhibit B.

The Motion to Compel was granted by this Court at hearing on August 25, 2008, requiring Smith to respond to the Discovery Requests by October 1, 2008, and to pay sanctions to the Plaintiff in the amount of \$500.00. Attached Exhibit C.

Smith, however, is not in compliance with this order. And as a result of its failure to respond to the Request for Admissions propounded unto them on September 11, 2007, they have procedurally admitted to the requests.

Contemporaneously with this motion, the Plaintiff submits to this Court a *Statement of Undisputed Facts* that outline the facts not in dispute between the parties from a review of the pleadings and discovery.

#### **Standard of Law for Motion for Summary Judgment**

A party may submit a motion for summary judgment as to any and all claims made against that party where there is no genuine issue of material fact. La. C.C.P. Art. 966(C)(1). Summary judgment may be granted as to the entirety of the complaint or any and all subparts or individual claims asserted therein.

A court must grant a motion for summary judgment “if the depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law.” La. C.C.P. Art. 966(B). The summary judgment procedure is favored under our law. Ross v. Conco, Inc., 02-0299 (La. 10/15/02), 828 So.2d 546.

Once the mover for summary judgment makes a prima facie showing that the summary judgment should be granted, the burden of proof shifts to the non-moving party to present evidence demonstrating the existence of issues of material facts which preclude summary judgment. Delphin v. Montealegre, 732 So.2d 757 (La. App. 3rd Cir. 1999). A non-moving party cannot simply rest on mere allegations of the pleadings, but his response must set forth specific facts showing that there is a genuine issue for trial. NAB

Natural Resources, L.L.C. v. Willamette Industries, Inc., 679 So.2d 477 (La. App. 4th Cir. 1996). The failure of the adverse party to produce evidence of a material factual dispute mandates the granting of the summary judgment. Foster v. Consolidated Employment Systems, Inc., 726 So.2d 494 (La. App. 5th Cir. 1999). Due to the amendments of the summary judgment statute, it may now be appropriate to grant a summary judgment in close cases in which a motion for summary judgment may have been denied under the old law. Young v. Dupre Transport Co., 700 So.2d 1156 (La. App. 4th Cir. 1997).

#### **Law and Argument Part I: Compensation for Cost of Equipment**

Through Smith's Answer and Cross Claim, as well as its Admissions, the Plaintiff represents to this Court there is no genuine issue of material fact that:

- (1) Smith leased two skid steers from the Plaintiff;
- (2) that the skid steers were stolen while in Smith's possession;
- (3) that Smith was required to insure the equipment;
- (4) that Smith was required to compensate Bottom Line for any loss that was not paid by insurance;
- (5) The replacement value of the equipment stolen was \$76,000.00; and Traveler's Insurance;
- (6) Travelers paid \$17,600.0 in the adjustment and settlement of the claim on one of the Skid Steers (the 60XT), but this covered only the actual cash value;
- (7) Travelers denied coverage for the other Skid Steer (the 70XT);
- (8) Travelers was granted a summary judgment by this court on September 12, 2007, ruling that the 70XT Skid Steer was not covered under the policy; and
- (9) Travelers was granted a summary judgment by this court on September 12, 2007, ruling that, at the most, only actual cash value was covered at on the 60XT Skid Steer.
- (10) That the difference between the replacement cost value of the 60XT and the 70XT (\$76,000), and the amount covered by Travelers (\$17,600), yields: \$58,400.00.

The Plaintiff avers that it has presented a prima face case that the Defendant Smith & Associates Consluting, L.L.C., is contractually obligated to Bottom Line Equipment, L.L.C. for this difference of \$58,400.00. Bottom Line further avers that there is no genuine issue of material fact as to Smith's obligation, and that the Plaintiff is entitled to a judgment against Smith for the \$58,400.00, as a matter of law.

**Law and Argument Part II: Lost Rents**

Through Smith's Answer and Cross Claim, as well as its Admissions, the Plaintiff represents to this Court there is no genuine issue of material fact that:

- (1) The 60XT Skid Steer was stolen in April 2006 (Smith's Cross Claim ¶ II);
- (2) The 70XT Skid Steer was stolen in March 2006 (*Id.*).
- (3) The 60XT Skid Steer was leased to Smith at the rate of \$2,000.00 per month (*See* Exhibit A to Plaintiff's Petition);
- (4) The 70XT Skid Steer was leased to Smith at the rate of \$1,900.00 per month (*See* Exhibit B to Plaintiff's Petition).
- (5) Rent was not paid by Smith after the equipment was stolen;
- (6) Smith is obligated to Bottom Line for payment of rent during the period of repair to the quipment so long as the damage occurred while the equipment was in the possession of customer or while under lease to the Customer.
- (7) That between May 2006 and December 2008, 31 months have passed, and that during this time Bottom Line Equipment has not been compensated for its loss by Smith. The rent during this "period of repair" would total \$62,000.00 for the 60XT Skid Steer;
- (8) That between March 2006 and December 2008, 33 months have passed, and that during this time Bottom Line Equipment has not been compensated for its loss by Smith. The rent during this "period of repair" would total \$62,700.00 for the 70XT Skid Steer;

The Plaintiff avers that it has presented a prima face case that the Defendant Smith & Associates Consluting, L.L.C., is contractually obligated to Bottom Line Equipment, L.L.C. for the rental payments of \$62,000.00 for the 60XT Skid Steer and \$62,700.00 for the 70XT Skid Steer.

Bottom Line further avers that there is no genuine issue of material fact as to Smith's obligation, and that the Plaintiff is entitled to a judgment against Smith for the \$58,400.00, as a matter of law.

**Alternatively, the Plaintiff seeks Sanctions Against the Defendant Smith, in the form of a Default Judgment against it.**

Louisiana Civil Code of Procedure Article 1471 provides as follows:

A. If a party or an officer, director, or managing agent of a party or a person designated under Article 1442 or 1448 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Article 1464 or Article 1469, the court in which the action is pending may make such orders in regard to the failure as are just, and among others any of the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

(5) Where a party has failed to comply with an order under Article 1464, requiring him to produce another for examination, such orders as are listed in Subparagraphs (1), (2), and (3) of this Paragraph, unless the party failing to comply shows that he is unable to produce such person for examination.

The Plaintiff respectfully prays to this Court that considering Smith's flagrant disregard for the discovery laws of this State, and the orders of this Court, that the Defendant Smith be sanctioned by the discretionary discovery powers provided to this Court through La. C.C.P. Art. 1471.

In the alternative that this Court deny the above-discussed Motion for Summary Judgment, the Plaintiff specifically prays for the sanction of a default judgment against Smith, awarding to the Plaintiff (a) \$58,400.00 in compensation for the stolen equipment; and (b) \$124,700.00 in compensation for lost rent on the equipment. This sanction is allowed by La. C.C.P. Article 1471(3), which allows a court to render “a judgment by default against the disobedient party.”

While the court has the discretionary power to grant a default judgment in this circumstance, Louisiana jurisprudence is clear that the moving party must still make out a prima facie case. *Clark v. Clark*, 358 So.2d 658, La. App. 1 Cir. 1978.

Bottom Line, however, avers that by its Petition setting forth its facts, the exhibits thereto including the rental agreements in controversy, the affidavit of Kurt Degueyter, the Admissions of Smith & Associates Consulting, L.L.C., and the argument of Bottom Line’s counsel in this instant Motion and Memorandum, it has stated a prima facie case that:

- 1) Smith was obligated to insure the property against loss, and to compensate Bottom Line for any loss above and beyond any insurance coverage. That the property was stolen while in Smith’s possession, and that the compensation owed to Bottom Line for the stolen equipment is equal to \$58,400.00; and
- 2) Smith was obligated to pay “lost rents” for the equipment’s “period of repair,” and that the loss rents due to Bottom Line from the date of the theft until the present day is equal to \$124,700.00.

### **Conclusion**

Accordingly, Bottom Line Equipment, L.L.C. respectfully prays for a Judgment against Smith & Associates Consulting, L.L.C., summary, default or otherwise, awarding it (1) \$58,400.00 for the stolen equipment; and (2) \$124,700.00 for lost rents during the period of repair.

Respectfully Submitted,

---

Scott G. Wolfe, Jr. (Bar Roll 30122)  
THE WOLFE LAW OFFICES, L.L.C.  
4821 Prytania Street  
New Orleans, LA 70115  
P: 504-894-9653  
F: 866-761-8934  
Attorney for Plaintiffs

**PLEASE SERVE:**

Smith & Associates Consulting, L.L.C.  
Through its attorney of record  
Windi D. Brown  
650 Poydras Street, Suite 1460  
New Orleans, LA 70130

And

Insurance Underwriters, Ltd  
Through its attorney of record  
Marcelle P. Mouldoux  
701 Poydras Street, Suite 3600  
New Orleans, LA 70139-7735

**29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF SAINT CHARLES  
STATE OF LOUISIANA**

**NO. 64966**

**SEC. "C"**

**BOTTOM LINE EQUIPMENT, L.L.C.**

**VERSUS**

**SMITH & ASSOCIATES CONSULTING, L.L.C., et al**

\_\_\_\_\_  
**FILED**

\_\_\_\_\_  
**DEPUTY CLERK**

**RULE TO SHOW CAUSE**

**IT IS ORDERED** that the Defendant Smith & Associates Consulting, L.L.C., appear before this Honorable Court on the \_\_\_ day of \_\_\_\_\_ 2008, at \_\_\_\_\_ AM/PM, to show cause as to why Plaintiff's Motion for Summary Judgment, and alternatively Default Judgment and Sanctions, should not be GRANTED.

Signed in St. Charles Parish this \_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
**JUDGE**

**PLEASE SERVE:**

Smith & Associates Consulting, L.L.C.  
Through its attorney of record  
Windi D. Brown  
650 Poydras Street, Suite 1460  
New Orleans, LA 70130

And

Insurance Underwriters, Ltd  
Through its attorney of record  
Marcelle P. Mouledoux  
701 Poydras Street, Suite 3600  
New Orleans, LA 70139-7735

29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF SAINT CHARLES  
STATE OF LOUISIANA

NO. 64966

SEC. "C"

BOTTOM LINE EQUIPMENT, L.L.C.

VERSUS

SMITH & ASSOCIATES CONSULTING, L.L.C., et al

FILED

DEPUTY CLERK

AFFIDAVIT OF BOTTOM LINE EQUIPMENT, L.L.C.

BEFORE ME, undersigned Notary Public, personally came and appeared Kurt Degueyter, Member of and a duly authorized agent of Bottom Line Equipment, L.L.C. (Bottom Line) with knowledge of the facts at controversy and stated within this affidavit, who after being duly sworn, did depose and say:

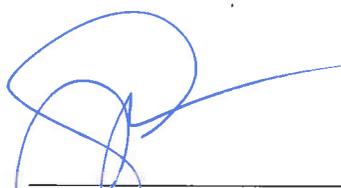
- 1) That he is a member of Bottom Line Equipment, L.L.C., has personal knowledge of the facts stated in this affidavit and is duly authorized to execute this affidavit, and that the facts asserted herein are true to the best of his knowledge, information and belief.
- 2) That on December 6, 2005, Bottom Line entered into a Rental Agreement with Smith & Associates Consulting, L.L.C. (Smith), whereby Bottom Line leased to smith a 60XT Skid Steer at the rate of \$2,000.00 per month. The rental agreement executed was attached to Bottom Line's petition for damages as Exhibit A.
- 3) That on December 7, 2005, Bottom Line entered into a Rental Agreement with Smith & Associates Consulting, L.L.C. (Smith), whereby Bottom Line leased to smith a 70XT Skid Steer at the rate of \$1,900.00 per month. The rental agreement executed was attached to Bottom Line's petition for damages as Exhibit B.
- 4) The 70XT and 60XT Skid Steer ("Equipment") was stolen while in the possession of the Defendant, Smith.

- 5) The replacement cost value of the Equipment was \$76,000.00.
- 6) Smith only partially insured the Equipment, and Travelers paid \$17,600.00 under the policy, receiving an order from this Court that it was not responsible for any further payments under the policy.
- 7) That as a result of the Equipments' theft, Bottom Line has been unable to lease the Equipment to any third parties, and has therefore lost revenue in the amount of \$2,000.00 per month for the 60XT, and \$1,900.00 per month for the 70XT. The loss began in April 2006 for the 60XT and in May 2006 for the 70XT.

Witnesses:

  
MATTHEW SHARP

  
EMILY BULL



Notary Public  
NO: *Scott Wolfe*  
NAME: *CSBA 30122*  
COMMISSION: *life*

Signed 4<sup>th</sup> day of December 2008.

  
Bottom Line Equipment, L.L.C., by  
Kurt Degueyter

**BOTTOM LINE EQUIPMENT, L.L.C.**

**NO: 64,966 SECTION "C"**

**VERSUS**

**29<sup>TH</sup> JUDICIAL DISTRICT COURT**

**SMITH & ASSOCIATES  
CONSULTING, L.L.C., ET AL**

**PARISH OF ST. CHARLES**

**STATE OF LOUISIANA**

**EXHIBIT**  
*A*

**REQUEST FOR ADMISSIONS**

To: Smith & Associates Consulting, L.L.C.  
through its attorney of record  
Ms. Windi D. Brown  
3221 Behrman Place, Suite 205 A  
New Orleans, LA 70114

NOW INTO COURT, through undersigned counsel, comes plaintiff, Bottom Line Equipment, L.L.C., who propounds the following Requests for Admissions to defendant, Smith & Associates Consulting, L.L.C., through its attorney of record Ms. Windi D. Brown, pursuant to the authority granted under Articles 1456, 1466, and 1462. The Request for Admissions are to be answered by you, under oath, within fifteen (15) days after service hereof.

**REQUEST FOR ADMISSION NO. 1:**

Please admit or deny that Smith & Associates Consulting, L.L.C. entered into a Rental Agreement with Bottom Line Equipment, L.L.C. on December 6, 2005 to lease a piece of construction equipment, namely a Case 60XT Skid Steer, Serial Number JAF0350393.

**REQUEST FOR ADMISSION NO. 2:**

Please admit or deny that Smith & Associates Consulting, L.L.C. entered into a Rental Agreement with Bottom Line Equipment, L.L.C. on December 7, 2005 to lease a piece of construction equipment, namely a Case 70XT Skid Steer, Serial Number JAF0371633.

**REQUEST FOR ADMISSION NO. 3:**

Please admit or deny that under the terms of both Rental Agreements Smith & Associates Consulting, L.L.C. was required to maintain a policy of insurance on leased equipment.

**REQUEST FOR ADMISSION NO. 4:**

Please admit or deny that under the terms of both Rental Agreements Smith & Associates Consulting is liable to Bottom Line Equipment, L.L.C. for any damage to the equipment which is not covered by said policy of insurance.

**REQUEST FOR ADMISSION NO. 5:**

Please admit or deny that under the terms of both Rental Agreements Smith & Associates Consulting is liable for all rent on the leased equipment during the period of repair to the

equipment.

**REQUEST FOR ADMISSION NO. 6:**

Please admit or deny that the Case 60XT Skid Steer and Case 70XT Skid Steer listed above were stolen while in the possession of the defendant, Smith & Associates Consulting, L.L.C.

**REQUEST FOR ADMISSION NO. 7:**

Please admit or deny that Smith & Associates Consulting, L.L.C. maintained loss insurance coverage in the leased equipment with The Travelers Indemnity Company / Travelers Property Casualty Company of America for full replacement value of the lease equipment.

**REQUEST FOR ADMISSION NO. 8:**

Please admit or deny that Smith & Associates Consulting, L.L.C. has refused to endorse the checks issued to Bottom Line Equipment, L.L.C. and Smith & Associates Consulting, L.L.C. by The Travelers Indemnity Company / Travelers Property Casualty Company of America as partial payment for the full obligation due by Smith & Associates Consulting, L.L.C. pursuant to the Rental Agreements.

**REQUEST FOR ADMISSION NO. 9:**

Please admit or deny that Bottom Line Equipment, L.L.C. has suffered a loss in the amount of SEVENTY-SIX THOUSAND AND NO/100 (\$ 76,000.00) DOLLARS representing the full replacement value of the equipment stolen while in the possession and custody of Smith & Associates Consulting, L.L.C.

**REQUEST FOR ADMISSION NO. 10:**

Please admit or deny that Smith & Associates Consulting, L.L.C. has failed to pay rental payments due for the stolen equipment.

**Respectfully Submitted By:**  
**STEMMANS & ALLEY**  
**A Professional Limited Liability Company**



**W. MICHAEL STEMMANS (# 12439)**

**M. TODD ALLEY (# 24934)**

**MICHAEL J. TAFFARO (# 28244)**

**JENNIFER E. FREDERICKSON (#30510)**

668 South Foster Drive, Suite 101

Baton Rouge, Louisiana 70806

Telephone: (225) 231-1288

Facsimile: (225) 231-1281

**ATTORNEYS FOR BOTTOM LINE  
EQUIPMENT, L.L.C.**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record by placing same in the U.S. mail postage prepaid and properly addressed, this 11<sup>th</sup> day of September, 2007.



M. TODD ALLEY

**EXHIBIT**

**BOTTOM LINE EQUIPMENT, L.L.C.**

**NO: 64,966 SECTION "C"**

**VERSUS**

**29<sup>TH</sup> JUDICIAL DISTRICT COURT**

**SMITH & ASSOCIATES  
CONSULTING, L.L.C., ET AL**

**PARISH OF ST. CHARLES**

**STATE OF LOUISIANA**

**INTERROGATORIES AND REQUEST FOR PRODUCTION**

To: Smith & Associates Consulting, L.L.C.  
through its attorney of record  
Ms. Windi D. Brown  
3221 Behrman Place Suite 205 A  
New Orleans, LA 70114

Bottom Line Equipment, L.L.C., Plaintiff in the above entitled cause, propound the following interrogatories and requests for production to Smith & Associates Consulting, L.L.C., through its attorney of record, Ms. Windi D. Brown. These interrogatories are to be answered by you, under oath, all in accordance with the Louisiana Code of Civil Procedure, particularly but not exclusively, Articles 1457 and 1458, within fifteen (15) days after service hereof. Bottom Line Equipment, L.L.C. requests the production from the aforesaid party the documents listed below for inspection and copying, pursuant to the provision of Article 1461 and 1462 of the Louisiana Code of Civil Procedure, at 668 South Foster Drive, Baton Rouge, Louisiana 70806 within fifteen (15) days after service hereof. At the option of Smith & Associates Consulting, L.L.C., copies of the below requested documents may be mailed to the undersigned within fifteen (15) days after service hereof.

**INTERROGATORIES**

**INTERROGATORY NO. 1**

Please state the full name, address, job title, present employer and telephone number of all persons providing the facts and information used to answer these Interrogatories.

**INTERROGATORY NO. 2**

Please provide the following information:

- a. The names, addresses, and telephone numbers of each and every person having knowledge of relevant facts such that they may have actual or constructive knowledge of any discoverable matter.
- b. The names, addresses, and telephone numbers of each and every witness you expect to call as a witness at any hearing and if said witness is an expert, his field of expertise.
- c. List and identify each and ever tangible exhibit you plan to introduce at any hearing and/or trial in this matter, including but not limited to any and all documents, reports, physical models, compilation of data, deposition testimony,

and/or materials prepared by any expert in anticipation of trial.

**INTERROGATORY NO. 3**

For each and every person you expect to call as an expert witness, please state the subject matter on which each expert is expected to testify, the mental impressions and opinions held by each expert, and the facts known to each such expert, which relate to or form the basis of the mental impressions and opinions held by the expert.

**INTERROGATORY NO. 4**

For any and all policies of insurance issued to or in favor of Smith & Associates Consulting, L.L.C. and/or Bottom Line Equipment, L.L.C., which were in effect at the time of the alleged loss of the Skid Steers bearing Serial Numbers JAF0383143 and JAF0350393, whether basic, umbrella or excess, which may pay any judgment in this case or provide any defense in this case, please state:

- a. the name and address of the insurer;
- b. the amount of coverage available to satisfy such a judgment; and
- c. the conditions, if any, upon which the insurer has purported to reserve its rights to decline coverage.

**INTERROGATORY NO. 5**

Please state the name and address of any potential party to this lawsuit, not already a party hereto.

**INTERROGATORY NO. 6**

Was it in the regular course of business of the Defendant to conduct a post-incident investigation into a theft of this sort, whether litigation was anticipated or not? If so, state whether an investigation was conducted and the date of same.

**INTERROGATORY NO. 7**

Identify all individuals who conducted any investigation in this matter, including claims adjusters, investigators or otherwise, who conducted any investigation of the loss the Skid Steers bearing Serial Numbers JAF0383143 and JAF0350393

**INTERROGATORY NO. 8**

Please state the exact location and manner in which the Skid Steers bearing Serial Numbers JAF0383143 and JAF0350393 were secured while in your possession but not in use.

**INTERROGATORY NO. 9**

Please state any and all persons, who had access to the Skid Steers bearing Serial Numbers JAF0383143 and JAF0350393.

**INTERROGATORY NO. 10**

Please state the facts and circumstances surrounding the loss of the Skid Steers bearing Serial Numbers JAF0383143 and JAF0350393.

**INTERROGATORY NO. 11**

Do you have any agreements, settlements, deals or understandings of any sort with any other party to this suit concerning the disposition or trial of this case? If so, please state verbatim what such agreements, settlements, deals or understandings consist of, and attach a copy of any documents reflecting same to you interrogatory answer.

**INTERROGATORY NO. 12**

Please state the names and addresses of each and every member, manager, and/or agent of Smith & Associates Consulting, L.L.C., and whether each person was authorized to conduct business on behalf of Smith & Associates Consulting, L.L.C. on December 6, 2005 and December 7, 2005.

**INTERROGATORY NO. 13**

Please specify and identify each affirmative defense/claim you intend to present at trial, and with regard to each affirmative defense/claim set out herein, state the following:

- a. Names, addresses and telephone numbers of each witness you will call in support thereof; and
- b. Identify and specify with particularity each exhibit you intend to introduce in support thereof.

**INTERROGATORY NO. 14**

Please list any and all policies of insurance issued to or in favor of Smith & Associates Consulting, L.L.C. and/or Bottom Line Equipment, L.L.C., which were in effect at the time of the alleged loss of the Skid Steers bearing Serial Numbers JAF0383143 and JAF0350393, whether basic, umbrella or excess, which may pay any judgment in this case or provide any defense in this case.

**REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1**

A true and correct copy of any and all policies of insurance issued to or in favor of Smith

& Associates Consulting, L.L.C. and/or Bottom Line Equipment, L.L.C., which were in effect at the time of the alleged loss of the Skid Steers bearing Serial Numbers JAF0383143 and JAF0350393, whether basic, umbrella or excess, which may pay any judgment in this case or provide any defense in this case.

**REQUEST FOR PRODUCTION NO. 2**

A true and correct copy of any and all applications for policies of insurance issued to and/or in favor of Smith & Associates Consulting, L.L.C. and/or Bottom Line Equipment, L.L.C.

**REQUEST FOR PRODUCTION NO. 3**

A true and correct copy of any and all Certificates of Liability Insurance issued by Insurance Underwriters, Ltd., listing any policy of insurance in effect at the time of the alleged loss of the Skid Steers bearing Serial Numbers JAF0383143 and/or JAF0350393, whether basic, umbrella or excess, which names Smith & Associates Consulting, L.L.C. and/or Bottom Line Equipment, L.L.C. as a Certificate Holder/Loss Payee.

**REQUEST FOR PRODUCTION NO. 4**

A true and correct copy of any and all Rental Agreements entered into by Smith & Associates Consulting, L.L.C. and/or Bottom Line Equipment, L.L.C. for the lease of construction equipment.

**REQUEST FOR PRODUCTION NO. 5**

Any and all checks issued to Smith & Associates Consulting, L.L.C. and/or Bottom Line Equipment, L.L.C. as a result of the alleged loss of the Skid Steers bearing Serial Numbers JAF0383143 and JAF0350393.

**REQUEST FOR PRODUCTION NO. 6**

Any police or other report of investigation of any governmental or private entity relating to the loss of the Skid Steers bearing Serial Numbers JAF0383143 and JAF0350393.

**REQUEST FOR PRODUCTION NO. 7**

Any and all expert's reports which have been prepared in connection with this lawsuit or incident giving rise to this lawsuit, and any and all reports relied on in whole or part by any expert anticipated to testify in this matter.

**REQUEST FOR PRODUCTION NO. 8**

A list of, and legible copies of, any tangible documentation defendants anticipate using at

at the trial of this matter in either exhibit form, demonstration form and/or for witness review during the course of testimony. If you claim privilege for any written materials and/or information of any kind, then please provide a privilege log and include the type of material(s)/ communication(s) you claim are privilege, time of communication (if available), parties involved in the privileged matter, and the subject of the privileged material(s)/ communication(s).

**Respectfully Submitted By:**  
**STEMMANS & ALLEY**  
**A Professional Limited Liability Company**



**W. MICHAEL STEMMANS (# 12439)**  
**M. TODD ALLEY (# 24934)**  
**MICHAEL J. TAFFARO (# 28244)**  
**JENNIFER E. FREDERICKSON (#30510)**  
668 South Foster Drive, Suite 101  
Baton Rouge, Louisiana 70806  
Telephone: (225) 231-1288  
Facsimile: (225) 231-1281  
**ATTORNEYS FOR BOTTOM LINE**  
**EQUIPMENT, L.L.C.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record by placing same in the U.S. mail postage prepaid and properly addressed, this 11th day of September, 2007.



**M. TODD ALLEY**

**EXHIBIT**  
*B*

**29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF SAINT CHARLES**

**STATE OF LOUISIANA**

**NO. 64966**

**SEC. "C"**

**BOTTOM LINE EQUIPMENT, L.L.C.**

**VERSUS**

**SMITH & ASSOCIATES CONSULTING, L.L.C., et al**

**FILED**

**DEPUTY CLERK**

**MOTION TO COMPEL**

**NOW INTO COURT**, through undersigned counsel, comes Plaintiff, Bottom Line Equipment, L.L.C. (hereinafter referred to as "Bottom Line"), who respectfully moves this Court to compel Defendant, Smith & Associates Consulting, L.L.C. (hereinafter referred to as "Smith & Associates"), to respond to Plaintiff's Requests for Admissions, Interrogatories, and Requests for Production of Documents, pursuant to La. Code Civ. P. art. 1469.

FILE FOR RECORD  
CLERK OF COURT  
ST. CHARLES PARISH, LA.  
2008 JUN 23 AM 10:47  
*Diana Paulina*

**SECTION I**

On December 6, 2006, Bottom Line, filed this suit against Smith & Associates.

**SECTION II**

On March 15, 2007, Smith & Associates filed its answer to the petition for damages brought by Bottom Line.

**SECTION III**

On September 11, 2007, Bottom Line served its Requests for Admissions, Interrogatories, and Requests for Production of Documents on Smith & Associates.

**SECTION IV**

On April 2, 2008, Bottom Line sent a letter to Smith & Associates requesting that a Rule 10.1 Discovery Conference take place on April 9, 2008 at 3:00 p.m. at the offices of the Wolfe Law Group, L.L.C. See April 2, 2008 Correspondence to Windi D. Brown, Attached as Exhibit "A".

**SECTION V**

As of the filing of this Motion to Compel, Smith & Associates has failed to reply to Bottom Line's discovery requests and Bottom Line's requests for a Rule 10.1 Discovery Conference in this matter.

**SECTION VI**

As a result of Smith & Associates failure to respond to Bottom Line's amicable attempts to seek answers to discovery, this Motion to Compel is necessary.

**SECTION VII**

Bottom Line is entitled to the information requested in its Requests for Admissions, Interrogatories, and Requests for Production of Documents to Smith & Associates pursuant to La. Code Civ. P. art. 1422.

**SECTION VIII**

To date, Smith & Associates has not responded to nor objected to Bottom Line's discovery requests.

**SECTION IX**

Bottom Line is entitled to recover attorney's fees and costs associated with bringing this Motion to Compel pursuant to La. Code Civ. P. art. 1469.

**THEREFORE**, Plaintiff, Bottom Line Equipment, L.L.C., respectfully moves this court to compel Smith & Associates Consulting, L.L.C. to respond to its Requests for Admissions, Interrogatories, and Requests for Production of Documents, and award Bottom Line Equipment, L.L.C. attorneys' fees and costs associated with bringing this motion.

Respectfully Submitted,

  
\_\_\_\_\_  
Scott G. Wolfe, Jr. (30122)  
James B. Ludwig, Jr. (30921)  
**WOLFE LAW GROUP, L.L.C.**  
4821 Prytania Street  
New Orleans, LA 70115  
P: 504-894-9653  
F: 866-761-8934

Attorneys for Plaintiff,  
**BOTTOM LINE EQUIPMENT, L.L.C.**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleadings have been served on all counsel of record to this proceeding by telephonic facsimile transmission or by placing a copy in the United States Mail, first class postage prepaid and properly addressed this 20 day of June, 2008.

  
\_\_\_\_\_  
James B. Ludwig, Jr.

29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF SAINT CHARLES

STATE OF LOUISIANA

NO. 64966

SEC. "C"

BOTTOM LINE EQUIPMENT, L.L.C.

VERSUS

SMITH & ASSOCIATES CONSULTING, L.L.C., et al

FILE FOR RECORD  
CLERK OF COURT  
ST. CHARLES PARISH, LA.  
2008 JUN 23 AM 10:47  
DEPUTY CLERK

FILED

DEPUTY CLERK

RULE TO SHOW CAUSE

It is ordered that Defendant, Smith & Associates, appear on Aug 25, 2008 at 10:00 (am/pm) and show cause why the motion of Plaintiff, Bottom Line Equipment, L.L.C., to compel responses to the Requests for Admissions, Interrogatories, and Requests for Production of Documents should not be granted and why Smith & Associates should not be ordered to produce the documents and information requested and to bear the attorneys' fees and costs associated with bringing this motion.

Order signed at Hahnville, Louisiana, on June 25, 2008.

Ernie RHP  
JUDGE

PLEASE SERVE:

SMITH & ASSOCIATES CONSULTING, L.L.C.  
Through Counsel of Record  
WINDI D. BROWN  
4007 St. Charles Avenue,  
Suite 308  
New Orleans, LA 70115

29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF SAINT CHARLES

STATE OF LOUISIANA

NO. 64966

SEC. "C"

BOTTOM LINE EQUIPMENT, L.L.C.

VERSUS

SMITH & ASSOCIATES CONSULTING, L.L.C., et al

FILED

DEPUTY CLERK

CERTIFICATE OF CONFERENCE

FILE FOR RECORD  
CLERK OF COURT  
ST. CHARLES PARISH, LA  
2008 JUN 23 AM 10:47  
Dulac, Pauline

I, James B. Ludwig, Jr., do certify that on various dates, but most recently on April 2, 2008, I sent out correspondence to counsel for Smith & Associates regarding Smith & Associates failure to respond to Bottom Line Equipment's Requests for Admissions, Interrogatories, and Requests for Production of Documents. A Rule 10.1 Discovery Conference was asked to be held on April 9, 2008 at 3:00 p.m. with counsel for Defendant, Smith & Associates. To date, I have not received a response to my request for a Rule 10.1 Conference nor have I received responses to Bottom Line's discovery requests.

Respectfully Submitted,

  
\_\_\_\_\_  
Scott G. Wolfe, Jr. (30122)  
James B. Ludwig, Jr. (30921)  
**THE WOLFE LAW GROUP, L.L.C.**  
4821 Prytania Street  
New Orleans, LA 70115  
P: 504-894-9653  
F: 866-761-8934

Attorneys for Plaintiff,  
**BOTTOM LINE EQUIPMENT, L.L.C.**

# WOLFE LAW GROUP

NEW ORLEANS  
4821 PRYTHANIA ST  
NEW ORLEANS, LA  
70115  
(504)894-9653  
1-800-761-8934

STATE OF  
LOUISIANA  
COURT OF  
APPEALS  
EAST DISTRICT  
NEW ORLEANS

To: Windi D. Brown  
Smith & Associates Consulting, LLC  
3221 Behrman Place, Ste 205A  
New Orleans, LA 70114  
Work Fax: (504) 363-0214

April 02, 2008

Re: *BLE v. Smith & Associates Consulting*  
My File: 08-C-C167M07  
Your File: 64966, 29th JDC

SENT VIA FACSIMILE &  
US MAIL

Dear Mrs. Brown:

According to our records, answers to the discovery requests made upon your client by Bottom Line Equipment are now overdue. The requests were sent to your client through your office on September 11, 2007.

Please come to our office at the above address for a Rule 10.1 discovery conference on April 9, 2008 at 3:00 PM. If this date does not work for your schedule, you may contact us to select another date, and further, if you would like to simply participate by telephone, you may initiate a call my office at this time.

Failure to participate in the above-referenced discovery conference will result in this office filing a Motion to Compel.

Additionally, our client would like to formally request proposed dates for the corporate deposition of your client as well as any other persons who may surface from discovery.

Best Regards,  
THE WOLFE LAW OFFICES, L.L.C.



Scott Wolfe, Jr.

SGW/dsr



**EXHIBIT**  
C

**29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF SAINT CHARLES**

**STATE OF LOUISIANA**

**NO. 64966**

**BOTTOM LINE EQUIPMENT, L.L.C.**

**VERSUS**

**SMITH & ASSOCIATES CONSULTING, L.L.C., et al**

FILED FOR RECORD  
CLERK OF COURT  
ST. CHARLES PARISH, LA  
2008 OCT 17 PM 4:20  
DEPUTY CLERK  
*Theresa D...*

**FILED**

**DEPUTY CLERK**

**JUDGMENT ON PLAINTIFF'S MOTION TO COMPEL**

The Motion to Compel filed by the Plaintiff, Bottom Line Equipment, L.L.C., came before this Court on August 25, 2008.

**PRESENT: JAMES B. LUDWIG, JR., COUNSEL FOR PLAINTIFF**

The Court, after consideration of the pleadings, evidence and arguments of counsel and finding same to be in favor of Plaintiffs and against Defendants,

**IT IS ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion to Compel be, and hereby is, **GRANTED**, and further that:

**1.**

Defendant, Smith & Associates Consulting, L.L.C., is hereby ordered to provide discovery responses to Plaintiff's Requests for Admissions, Interrogatories, and Requests for Production of Documents by October 1, 2008.

**2.**

Plaintiff is awarded **TWO HUNDRED FIFTY DOLLARS AND NO CENTS (\$250.00)** for the costs of court associated with bringing this motion.

**3.**

Plaintiff is awarded **FIVE HUNDRED DOLLARS AND NO CENTS (\$500.00)** for attorneys' fees associated with bringing this motion.

ST. CHARLES PARISH, LOUISIANA, THIS 17<sup>th</sup> <sup>October</sup> DAY OF ~~AUGUST~~, 2008.

Ch. NHP.  
JUDGE

**PLEASE NOTIFY OF THE SIGNING OF THIS JUDGMENT:**

SMITH & ASSOCIATES CONSULTING, L.L.C.  
THROUGH ITS COUNSEL OF RECORD,  
WINDI D. BROWN  
650 Poydras Street  
New Orleans, Louisiana 70130

By Wendi D. Brown