

## **Adjudicator's Determination**

### **Pursuant to the Northern Territory of Australia Construction Contracts (Security of Payments) Act 2004**

#### **Adjudication 18.09.07**

#### **Applicant**

And

#### **Respondent**

1. I, Brian J Gallagher, as the Appointed Adjudicator pursuant to the *Construction Contracts (Security of Payments) Act*, determine that the Adjudicated Amount for the Applicant in respect to the Application served 8 July 2009 is \$659,041.98 including GST.
2. The date payable is 30 May 2009. Interest due and payable to 7 August 2009 is \$13,081.53 and interest continues to accrue at the rate of \$189.59 per day until payment is made.
3. The Adjudicator's costs are to be shared equally between the Applicant and the Respondent.

**Appointment of Adjudicator**

4. The Applicant served the Adjudication Application on the Territory Construction Association 7 July 2009.
5. I was appointed as Adjudicator by the Territory Construction Association 8 July 2009. The appointment was confirmed with the parties via notification from the Adjudicator 9 July 2009.
6. The Adjudicator has been properly appointed in accordance with the *Construction Contracts (Security of Payments) Act 2004*.

**Documents Regarded in Making the Determination**

7. In making the determination I have had regard to the following.
  - 7.1. The provisions of the *Construction Contracts (Security of Payments) Act 2004*. (as in force 8 January 2008)
  - 7.2. The provisions of the *Interpretation Act*. (as in force 17 May 2007)
  - 7.3. Application from the Applicant dated 6 July 2009.
  - 7.4. Response from the Respondent dated 22 July 2009.
  - 7.5. Unsolicited submission from the Applicant dated 24 July 2009.
  - 7.6. Respondent's reply to Adjudicator's request dated 31 July 2009.
  - 7.7. Applicant's reply to Adjudicator's request dated 31 July 2009

**The Adjudication Application**

8. The Adjudication Application was served on the Respondent on 8 July 2009 and consists of the following documents;
  - 8.1. Adjudication Application, and
  - 8.2. 33 Attachments comprising a statutory declaration with supporting documentation.
  - 8.3. 12 part appendix providing invoicing information.

**The Response**

9. The Adjudication Response was served on the Respondent 22 July 2009 and consists of the following documents;
  - 9.1. Respondent's reply to the Application, and
  - 9.2. 5 Attachments comprising a statutory declaration with supporting documentation, and
  - 9.3. Respondent's submission on costs.

## Jurisdiction

10. The dispute arises out of a contract between the parties for the Applicant to hire [redacted] equipment to the Respondent to resource the Respondent's requirements on a construction project.
11. The specific nature and terms of the agreement between the parties is disputed. However on either construction the arrangements between the parties would meet the definitions of a construction contract and construction work as defined in Section 6 of the Act. The works are on a site in the Northern Territory and the contract is therefore a construction contract according to the Act.
12. I have previously adjudicated an unrelated dispute involving the Respondent. I have had no prior dealings with the Applicant. The parties were advised accordingly and raised no objection to my declaration of no conflict to declare.
13. The parties have provided no advice of the dispute being "subject of any other order, judgment or other finding".
14. In relation to these specific requirements, I determine on the balance of probabilities the Adjudicator has jurisdiction to adjudicate the dispute in accordance with the Act.

## The Payment Claim

15. The payment claim referred to in the Application relates to an Invoice No 1461 dated 1 May 2009 and sent to the Respondent on or around that date. The Invoice was provided with 11 Appendices which itemise the outstanding claimed amounts in relation to each item of equipment and expense.
16. The Invoice No 1461 presented to the Respondent on or around 1 May 2009 summarises the claim as follows:

Payment claim	\$844, 628.57
Add GST	<u>\$84,462.87</u>
<b>Amount claimed</b>	<b>\$929,091.54</b>

## Issues to be Determined

17. The parties are not in agreement in relation to which contractual terms and conditions apply. The Applicant submits that in failing to provide a purchase order or clear advice to the contrary the Respondent tacitly accepted the Applicant's terms and conditions when the first items of equipment were put to work on the site. The Respondent submits that in ultimately executing the Respondent's form of agreement the applicant has acknowledged that the Respondent's terms and conditions apply.

18. The Respondent disputes the Applicant's entitlement to make the claims for payment as set out in the application. It is argued that the Respondent's terms and conditions deny any such entitlement.
19. The Respondent argues the Applicant's claim is based on various invoices all of which had been previously submitted to the Respondent and either paid in part or disputed. The Respondent asserts the Applicant "is precluded from agitating the invoices" (it has previously issued) in the Application.
20. The Respondent identifies discrepancies between the original invoice 1461 submitted by the Applicant 1 May 2009 and the invoice 1461 provided with the Application. The Respondent also queries the Adjudicator's jurisdiction in relation to invoice 1476 relating to interest claimed and attached to the Application.
21. If it is established that a legitimate claim exists then quantum must be determined.
22. The due date for the payment of any legitimate claim is to be determined along with any interest due.

### **The contract between the parties.**

23. The Applicant asserts by way of affidavit the following:
  - 23.1. Upon inquiry in April 2008 the Respondent indicated a demand for various items of [redacted] equipment.
  - 23.2. The applicant detailed pricing and availability and submitted its standard terms and conditions under the banner of a potential joint venture partner.
  - 23.3. The first item of equipment commenced work 26 April 2008.
  - 23.4. Following several requests for a purchase order the Respondent provided a copy of its standard terms and conditions 19 May 2008. An amended version was provided 20 May 2008 to correct errors in the first version.
  - 23.5. 1 June 2008, first invoices issued under Applicants terms and conditions
  - 23.6. 1 July 2008, second round of invoices issued. Respondent raises issues of hire dockets.
  - 23.7. 8 July 2008, Applicant notifies Respondent of non payment of May invoice and seeks payment advice on June invoice.
  - 23.8. 15 August 2008, Respondent advises agreement to increase hire rates on excavators and graders in response to higher than normal travel wear.
  - 23.9. 19 August 2008, Respondent advises further payments conditional upon Applicant signing Respondents form of agreement.
  - 23.10. The Respondent's [redacted] Agreement was signed by the Applicant 22 September 2008 and by the Respondent 2 October 2008.
  - 23.11. The Applicant continues to maintain he only signed the Respondent's form of agreement under threat of non receipt of payments due.

24. The Respondent does not dispute the matters of fact in the above sequence of events. However there is a different perspective of the events presented above. Essentially this describes those events as a series of steps in negotiating mutually acceptable terms and conditions. I see no value in testing the voracity of the Applicant's claims in relation to duress. The commercial reality is that the parties have signed an agreement which defines the terms and conditions under which their business is to be conducted. I accept the arguments presented by the Respondent and determine on the balance of probabilities that the signed agreement governs all of the business between the parties in relation to the plant hire for the project in question.

### **Applicant's Entitlement to Claim Under the Terms of the Signed Agreement**

25. The Applicant's claim can be classified under the following broad descriptions of claim;
- 25.1. Ordinary Daily Hire
  - 25.2. Cost of repairs to equipment damage caused by the Respondent.
  - 25.3. Cost of transport to and from damage repairer's premises.
  - 25.4. Recovery of income lost while damage caused by Respondent is repaired.
26. Clause 18.1 of the Hire agreement defines a construction schedule of 28 days on and 9 days off with a nominal 10 hours per day. Clause 18.2 provides that the day rates provided in the Schedule of Rates are per working day on site. There is no payment for the 9 day break between work cycles.
27. Elements of the Applicant's claim which relate directly to ordinary daily hire are legitimate claims subject to determination of days hired.
28. Clause 5 requires the Respondent to use the equipment only for the express purposes for which it was hired, not used beyond its rated capacity and operated in accordance with the Respondent's Plant Procedures and the manufacturer's operating instructions. Clause 6.1 provides for routine maintenance and servicing as per the Applicant's requirements and all at the Respondent's expense. Clause 6.2 effectively allocates the responsibility for all other repairs "which are caused by fair wear and tear" directly to the Applicant. In the event of a breakdown Clause 7 provides that the rental of the equipment shall cease from the time of the breakdown until such time as it is repaired and ready for immediate operation. Clause 8 requires the Respondent to indemnify and save harmless the Applicant against all claims arising in connection with negligent operation of the equipment by the Respondent.
29. The Adjudicator advised the parties of a preliminary view that the wording of Clause 8 appeared to allow claims for consequential loss of hire income and that the wording of Clause 7 did not prevent such a claim based on the rental rates for the equipment. The parties were invited to make submissions on these preliminary views.

30. The Applicant responded to the Adjudicator's request with the following:
- 30.1. The Applicant does not concede that the Respondent's terms and conditions do not apply to the contract between the parties.
  - 30.2. However if those conditions do apply then the Applicant seeks recovery of itemised amounts as detailed on invoice 1461 under Clause 8 of the Agreement on the basis of negligence by the Respondent.
31. The Respondent replied under the two broad headings of negligence and consequential loss.
- 31.1. The Respondent contends "The issue of negligence has not been raised by the Applicant in the Application. There is no evidence of negligence supplied by the Applicant. The request for further submissions is a reformulation of the Applicant's Claim. The Applicant's suggestion that equipment was misused by the Respondent is not supported by any evidence. The allegation of misuse does not amount to an allegation of negligence". In addition to that the Respondent argues that along with no evidence; the issue of negligence has not been determined; there is no means of testing evidence; there is no basis to assess damages and finally allowing such a claim would be a denial of natural justice.
  - 31.2. Under the head of consequential loss the Respondent asserts that the Applicant has specifically rejected the position that the claim is in respect of consequential loss.
32. Consider the Respondent's claim of denial of natural justice. The Respondent has argued that his conditions of contract apply and that under those conditions the Applicant's claim is not eligible. I advised my preliminary support of the Respondent's position that his terms and conditions applied. That position is now confirmed at paragraph 24 above. The question then arises 'Is the applicant's claim legitimate under the Respondent's terms and conditions?' Again I advised my view that it could be under Clause 8 of the contract. The Respondent was provided with 5 days to make a submission on that question. I therefore determine on the balance of probabilities there has been no denial of natural justice.
33. The Applicant did not raise the question of negligence in the Application because he argued the claim was a direct entitlement under his terms and conditions which he believed applied to the agreement between the parties. In the subsequent submission the Applicant now claims negligence.
34. The Respondent's position that misuse does not constitute negligence is difficult to support. Macquarie defines negligence as "the failure to exercise that degree of care which, in the circumstances, the law requires for the protection of those interests of other persons which may be injuriously affected by the want of such care". Misuse is defined "to use wrongly or improperly". As noted in Paragraph 28 above Clause 5 of the Agreement defines the standards of equipment operation. It is reasonably apparent that the Respondent has not adhered to these standards (refer further explanation below). Logically the wrong or improper use of the equipment is a failure to adhere to a specific condition of the agreement which by implication is a

failure to exercise the degree of care the law requires to protect the Applicant's interests which are injuriously affected by want of such care; ipso facto – negligence.

35. The Respondent asserts there is no evidence of negligence supplied by the Applicant. By way of examples the following three extracts of e-mail between the parties are informative;
- 35.1. Respondent to Applicant 7 July 2008 “The counter weight damage will be covered by us as with any other panel on the completion of the project. The operator is not coming back from cycle break and I will leave it at that.”
- 35.2. Respondent to Applicant 21 October 2008 “Yes, you have approval for repairs to jack shaft and associated repairs due to this failure”. This in response to Applicants advice that the failure had been independently assessed as caused by “lack of grease”. i.e. lack of maintenance as required by the terms of the agreement.
- 35.3. 3 November 2009 Applicant queries “We are beginning to wonder just you put in our machines to operate them. They were practically brand new when they came to you and now they look like they are just fit for the wrecker's yard”. The Respondent replies “We too have noted the damage as you have listed below”.
36. In relation to the Respondent's claim that there is no means to test evidence and no basis to assess damages I rely upon Clause 34 (1) (b) of the Act which relieves me from the strict rules of evidence and Clause 33 (1) (b) of the Act which requires me to make a determination “on the balance of probabilities”. In that regard considering the facts and issues described in paragraphs 34 and 35, I determine that on the balance of probabilities the Respondent has been negligent in his operation of the equipment and that the question of damages must then be considered.
37. The Respondent asserts there is no basis on which damages can be assessed. The Applicant has presented invoices claiming either actual or quoted repair costs. The emails between the parties provide reasonable evidence of attempts by the Applicant to arrange mutual inspections and forge an agreement on liability. The Respondent has elected to rely on insurance assessments and then proffered no further advice apparently because of a disagreement with its insurance company on the application of excess payments.
38. In the Response the Respondent includes Payment Schedule No 8. This document was prepared in reply to the Applicant's Invoice 1461 and is similar to documents required under NSW Security of Payment Legislation. The document has no status under the *Construction Contracts (Security of Payments) Act 2004* other than to serve as a notice of dispute with the claims raised in Invoice 1461. Page 2 of this document states “The scheduled amount is less than the claimed amount for the reasons addressed within this submission and on the basis of facts evidenced in the enclosed spreadsheet”. That spreadsheet is not provided in the Response. It seems odd that the Respondent who was then claiming he had reasons and evidence to discount or deny the Applicant's Claims is now claiming there is no basis to assess the damage. In these circumstances the only available evidence is that presented by

the Applicant and it stands unchallenged. On the balance of probabilities I accept the Applicant's claims for damage as presented subject to them being reasonable in accordance with the contract agreement.

39. The Applicant's statement that consequential loss does not apply is based on the erroneous assumption that his terms and conditions apply. That statement is immediately followed with "Alternatively, the loss of hire amounts during these periods is a direct and foreseeable damage suffered by the Applicant." Whether these claims for loss of income are consequential or a direct damage is of little import given Clause 8 relates to "all claims in connection with negligent operation". On the balance of probabilities I accept the Applicant's claims for loss of income subject to them being reasonable in accordance with the contract agreement.

### **Status of the "Payment Claim"**

40. The Respondent cites Justice Southwood and lists his essential requirements for a valid payment claim under the Act viz;
- *The payment claim must be made pursuant to a constructions contract and not some other contract.*
  - *The payment claim must be in writing*
  - *The payment claim must be bona fide and not fraudulent*
  - *The payment claim must state the amount claimed*
  - *The payment claim must identify the obligations the contractor claims to have performed and to which the amount claimed relates in sufficient detail for the Respondent to consider if the payment claim should be paid, part paid or disputed.*

#### *Constructions Contract*

- 40.1. The executed agreement between the parties has been determined at paragraphs 11 and 14 to be a construction contract as defined in the Act.

#### *In Writing*

- 40.2. The claim is in writing.

#### *Bona Fide and not Fraudulent*

- 40.3. The Respondent argues that the Adjudicator should dismiss the application as the claim referred to in the Application is a duplication of earlier claims which had been disputed and not paid.
- 40.4. As the Adjudicator of Adjudication 18-07-05 I dismissed that application under Section 33(1)(a)(ii) on the basis that the claim referred for adjudication was a resubmission of an earlier claim which had been rejected by the Respondent in that action.
- 40.5. Adjudication decision 18-07-05 was set aside on appeal by G R Cavenagh M, 10 March 2008, who issued the following orders in the Local Court at Darwin.



- 40.5.1. The Adjudicator's decision of the 26 November 2007 is hereby set aside.
- 40.5.2. The Applicant's Application for adjudication be remitted to the Adjudicator for determination under Section 33(1)(b) pursuant to Section 48(2) of the *Construction Contracts (Security of Payments) Act 2004*.
- 40.6. G R Cavenagh M commented that there was no limitation in the contract on the number of times a contractor could lodge the same claim. Hence each claim had to be considered separately on its merits.
- 40.7. The circumstances surrounding this Application are very similar to those in Adjudication 18.07.05 with the only difference being the claim referred for adjudication is a consolidation of invoices previously presented but remaining unpaid. The agreement between the parties does not specifically preclude the resubmission of an unpaid claim.
- 40.8. The Respondent quite correctly points out the differences in the values shown on Invoice 1461 presented as the Payment Claim 1 May 2009 and version of Invoice 1461 provided with the Application. Whilst this difference in values complicates any determination of quantum in the adjudication it does not denigrate the status or integrity of the initial version of 1461 as the presented claim as required by the Act.

*State the Amount Claimed*

- 40.9. Invoice 1461 presented 1 May 2009 claims a total of \$929,014.54 (incl. GST).

*Identify the claim in sufficient detail to enable consideration*

- 40.10. The Respondent's remarks on its Payment Schedule No 8 "The Scheduled Amount is less than the claimed amount for the reasons addressed within this submission and on the basis of the facts evidenced in the enclosed spreadsheet" indicate compliance with this requirement.
41. The executed agreement between the parties has clear written provisions covering how the Applicant is to make a payment claim on the Respondent. The Implied Provisions of the Act only apply where the contract between the parties has no provisions. The implied provisions do not serve to establish minimum requirements and supplement contractual provisions. The Respondent cannot rely upon the Implied provisions. The Claim is presented in the form of a signed invoice as required by Clause 13 of the agreement between the parties.
42. On the balance of probabilities I determine Invoice 1461 presented to the Respondent on or about 1 May 2009 is a legitimate Claim for Payment under the Act.

## Status of the Application

43. The Payment claim was dated 1 May 2009. Payment was then due on either the 28<sup>th</sup> or 30<sup>th</sup> May depending in the actual day of submission and whether the provisions of Section 13 of the Act override Clause 13 of the Contract. The Respondent has effectively placed the claim in dispute with the presentation of its Payment Schedule No 8 on 14 May 2009.
44. Section 28 (2)(b)(ii) of the Act requires the Application to “state the details of or have attached to it any payment claim that has given rise to the payment dispute”. The Applicant has clearly nominated the invoice 1461, as submitted 1 May 2009 and as evaluated by the Respondent in Payment Schedule No 8, to be the “payment claim”. I consider that as compliance of the requirement “to state the details”. I do not consider the attachment of a later version of that invoice with additional charges where it is possible to correlate values within 1% of the “payment claim” (refer paragraph 46 and Appendix 1) as a fatal flaw in regard to compliance with the Act.
45. The Application for Adjudication was served 8 Jul 2009, 55 days after the payment dispute arose and within the 90 day period required by the Act. I therefore determine on the balance of probabilities that the Application is a legitimate Application under the requirements of the Act.

## Claim Quantum

46. As noted above there are differences between Invoice 1461 which is determined as the legitimate claim under the Act and the invoice 1461 submitted with the Application.
  - 46.1. The comparative analysis at Appendix 1 indicates that the differences between the two versions predominantly relate to the inclusion of interest charges and the addition of charges accrued post May 1. When these charges are removed from the individual plant item detail sheets the sum of those details is within \$10,201 or 1.21% of the Invoice 1461 total, (refer the net variance figures as tabulated in Appendix 1 – first page.)
  - 46.2. I have evaluated the Payment Claim Invoice 1461 using the supporting details provided with the later version of the invoice provided in the Application. Where these later details have a positive variance from the earlier invoice 1461, I have reduced the assessed amount by that variance. This ensures that the Applicant is not receiving any entitlement in excess of his payment claim. I consider this approach reasonable given the latitude in the Act on evidential requirements and the need to determine on the balance of probabilities.

47. The Appendix 1 assessments on the individual plant charges are also based on the following interpretations;
- 47.1. The durations of the lost earnings periods have been reduced to match the extension of the 28 days on and 9 days off work cycle ignoring public holidays. This results in lost earnings periods of 21 days in November, 22 days in December, 22 days in January, 22 days in February, 28 days in March and 21 in April.
- 47.2. On the plant items where the hire rate was increased to accommodate high wear conditions I have reduced the rate to the initial tender rate as high wear does not apply whilst the equipment is idle.
- 47.3. Invoice amounts for repairs are accepted as presented since the Respondent has presented no contesting detail.
- 47.4. All amounts claimed for interest on late payments are denied. The agreement between the parties has no provisions for these claims. Interest due and payable under the Act is determined at paragraph 56.
48. From the relevant calculations at Appendix 1 and on the balance of probabilities I determine quantum as:

Total Value Admissible from Invoice 1461	\$640,379.07
Add GST	<u>\$64,037.91</u>
	\$704,416.98
Less Amount Paid by Respondent	<u>\$45,375.00</u>
<b>Quantum Determination</b>	<b>\$659,041.98</b>

### Adjudicator's Costs

49. Clause 36 (1) of the Act requires the parties to bear their own costs.
50. Clause 36 (2) of the Act empowers the adjudicator to award costs if he is satisfied that the submissions of a party are unfounded or that the conduct of a party is frivolous or vexatious.
51. I have considered the Respondent's arguments in relation to costs however I am satisfied that the submissions from both parties have merit and are neither frivolous nor vexatious.
52. I therefore determine that adjudicator's costs are to be shared equally by the parties.

**Interest**

53. The Applicant's claim was dated 1 May 2009. As noted at paragraph 43 the latest possible date for payment was 30 May 2009.
54. The contract between the parties does not have a written provision about interest to be paid on any payment that is not made at the time required by the contract. Hence the implied provisions of the Act apply in this regard.
55. Section 7 of the Implied Provisions Schedule requires interest on payments for the period between the due date for payment and the actual date of payment. Interest rate is prescribed as that fixed for Rule 35.8 of the Federal Court Rules. This rate is presently 10.5% per annum.
56. On the balance of probabilities I determine as follows;
- 56.1. The payment was due on or before 30 May 2009.
- 56.2. Interest is accruing at the rate of 10.5% of  $\$659,041.98 / 365 = \$189.59$  per day.
- 56.3. Interest due and payable up to 7 August 2009 is \$13,081.53

**Conclusion**

57. As requested I have conducted the adjudication and concluded as follows:
- 57.1. For the reasons set out in the Adjudication, I determine the Adjudicated Amount for the Applicant is \$659,041.98 including GST.
- 57.2. The date payable is 30 May 2009. Interest due and payable to 7 August 2009 is \$13,081.53 and interest continues to accrue at the rate of \$189.59 per day until payment is made.
- 57.3. The Adjudicator's costs are to be shared equally between the Applicant and the Respondent.

Brian J Gallagher  
**NT Registered Adjudicator No 18.**  
**7 August 2009**

## Appendix 1

### Comparative Analysis of Payment Claim Invoice 1461 and Application Invoice 1461A

Item	Exc 01	Exc 02	Exc 03	Exc 04	Loader 01	Loader 02
Detail with Application (incl GST)	\$178,425.31	\$261,486.71	\$99,739.29	\$231,270.72	\$3,960.00	\$7,840.00
Detail with Application (excl GST)	\$162,204.83	\$237,715.19	\$90,672.08	\$210,246.11	\$3,600.00	\$7,127.27
1461A with Application (excl GST)	\$168,384.20	\$245,084.88	\$94,743.98	\$215,835.60	\$3,904.41	\$7,692.76
Variance (Detail:1461A)	\$6,179.37	\$7,369.69	\$4,071.90	\$5,589.49	\$304.41	\$565.49
Interest (excl GST)	\$6,179.30	\$7,369.69	\$4,071.89	\$5,589.49	\$304.41	\$565.51
1461 Original Claim (excl GST)	\$159,825.39	\$205,084.64	\$93,837.61	\$194,135.20	\$3,904.41	\$7,692.76
Variance 1461A:1461	\$8,558.81	\$40,000.24	\$906.37	\$21,700.40	\$0.00	\$0.00
Deduct May and June inclusions	-\$8,000.00	-\$40,000.00		-\$21,700.00		
Net Variance	\$558.81	\$0.24	\$906.37	\$0.40	\$0.00	\$0.00
Adjudicator assess from detail (following pages)	\$125,258.59	\$150,886.18	\$79,472.08	\$161,273.38	\$2,400.00	\$4,727.27
Deduct Positive Variance	\$558.81	\$0.24	\$906.37	\$0.40	\$0.00	\$0.00
Adjudicator determines	\$124,699.78	\$150,885.94	\$78,565.71	\$161,272.98	\$2,400.00	\$4,727.27
<b>Item</b>	<b>Grader 01</b>	<b>Grader 02</b>	<b>Truck 02</b>	<b>Truck 03</b>	<b>Breaker</b>	<b>Item Totals</b>
Detail with Application (incl GST)	\$14,420.97	\$11,949.79	\$51,701.10	\$74,182.36	\$45,540.00	\$980,516.25
Detail with Application (excl GST)	\$13,109.97	\$10,863.45	\$47,001.00	\$67,438.51	\$41,400.00	\$891,378.41
1461A with Application (excl GST)	\$13,807.32	\$11,508.59	\$49,983.88	\$70,677.97	\$42,906.24	\$924,529.83
Variance (Detail:1461A)	\$697.35	\$645.14	\$2,982.88	\$3,239.46	\$1,506.24	\$33,151.42
Interest (excl GST)	\$697.35	\$645.14	\$2,982.87	\$3,239.45	\$1,806.24	\$33,451.34
1461 Original Claim (excl GST)	\$10,547.35	\$8,781.31	\$50,256.60	\$67,356.96	\$43,206.24	\$844,628.47
Variance 1461A:1461	\$3,259.97	\$2,727.28	-\$272.72	\$3,321.01	-\$300.00	\$79,901.36
Deduct May and June inclusions						-\$69,700.00
Net Variance	\$3,259.97	\$2,727.28	-\$272.72	\$3,321.01	-\$300.00	\$10,201.36
Adjudicator assess from detail (following pages)	\$12,759.97	\$7,686.17	\$43,801.00	\$62,888.51	\$0.00	\$651,153.15
Deduct Positive Variance	\$3,259.97	\$2,727.28		\$3,321.01		\$10,774.08
Adjudicator determines	\$9,500.00	\$4,958.89	\$43,801.00	\$59,567.50	\$0.00	\$640,379.07
<b>Sub Total Determination</b>	<b>\$640,379.07</b>					
Add GST	\$64,785.09					
Less Amount Paid	\$45,375.00					
<b>Determination</b>	<b>\$659,789.16</b>					

**Excavator 01 – Assessment of Details with Application**

<b>Item</b>	<b>Invoice Ref</b>	<b>Qty</b>	<b>Unit</b>	<b>Rate</b>	<b>Adjudicator's Assessment</b>
October 08 Work Time	1348	5	Days	\$750.00	\$3,750.00
October 08 Lost Earnings	1360	3	Days	\$700.00	\$2,100.00
November 08 Lost Earnings	1383	21	Days	\$700.00	\$14,700.00
November 08 Float Fees	1378	1	No.	\$10,000.00	\$10,000.00
December 08 Lost Earnings	1401	22	Days	\$700.00	\$15,400.00
December 08 Servicing	1451	1	No	\$2,579.55	\$2,579.55
January 09 Lost Earnings		22	Days	\$700.00	\$15,400.00
February 09 Lost Earnings	1427	22	Days	\$700.00	\$15,400.00
March 09 Lost Earnings	1440	19	Days	\$700.00	\$13,300.00
March 09 Repairs	1436	1	No.	\$22,629.04	\$22,629.04
April 09 Float Fees	1456	1	No.	\$10,000.00	\$10,000.00
July 09 Excess Track Time	1475	1	No.	\$0.00	\$0.00
<b>Excavator 01 - Total</b>					<b>\$125,258.59</b>

**Excavator 02 - Assessment of Details with Application**

<b>Item</b>	<b>Invoice Ref</b>	<b>Qty</b>	<b>Unit</b>	<b>Rate</b>	<b>Adjudicator's Assessment</b>
October 08 Work Time	1349	20	Days	\$750.00	\$15,000.00
October 08 Lost Earnings	1361	2	Days	\$700.00	\$1,400.00
November 08 Lost Earnings	1384	21	Days	\$700.00	\$14,700.00
November 08 Float Fees	1379	1	No.	\$10,000.00	\$10,000.00
December 08 Lost Earnings	1402	22	Days	\$700.00	\$15,400.00
December 08 Servicing	1452	1	No	\$2,398.41	\$2,398.41
January 09 Lost Earnings	1416	22	Days	\$700.00	\$15,400.00
February 09 Lost Earnings	1428	19	Days	\$700.00	\$13,300.00
March 09 Lost Earnings	1443	22	Days	\$700.00	\$15,400.00
March 09 Repairs	1435	1	No.	\$23,187.77	\$23,187.77
April 09 Lost Earnings	1449	21	Days	\$700.00	\$14,700.00
April 09 Float Fees	1456	1	No.	\$10,000.00	\$10,000.00
July 09 Excess Track Time	1475	1	No.	\$0.00	\$0.00
<b>Excavator 02 - Total</b>					<b>\$150,886.18</b>

**Excavator 03 - Assessment of Details with Application**

<b>Item</b>	<b>Invoice Ref</b>	<b>Qty</b>	<b>Unit</b>	<b>Rate</b>	<b>Adjudicator's Assessment</b>
October 08 Work Time	1352	25	Days	\$1,000.00	\$25,000.00
November 08 Lost Earnings	1381	21	Days	\$700.00	\$14,700.00
November 08 Float Fees	1380	1	No.	\$10,000.00	\$10,000.00
December 08 Lost Earnings	1399	10	Days	\$700.00	\$7,000.00
March 09 Repairs	1438	1	No.	\$22,772.08	\$22,772.08
<b>Excavator 03 - Total</b>					<b>\$79,472.08</b>

**Excavator 04 - Assessment of Details with Application**

Item	Invoice Ref	Qty	Unit	Rate	Adjudicator's Assessment
October 08 Work Time	1353	6	Days	\$700.00	\$4,200.00
November 08 Lost Earnings	1382	21	Days	\$700.00	\$14,700.00
November 08 Float Fees	1387	1	No.	\$10,000.00	\$10,000.00
December 08 Lost Earnings	1400	22	Days	\$700.00	\$15,400.00
January 09 Lost Earnings	1414	22	Days	\$700.00	\$15,400.00
February 09 Lost Earnings	1430	22	Days	\$700.00	\$15,400.00
March 09 Lost Earnings	1442	28	Days	\$700.00	\$19,600.00
March 09 Repairs	1437	1	No.	\$41,873.38	\$41,873.38
April 09 Lost Earnings	1450	21	Days	\$700.00	\$14,700.00
April 09 Float Fees	1458	1	No.	\$10,000.00	\$10,000.00
May 09 Lost Earnings	1450	0	Days	\$700.00	\$0.00
<b>Excavator 04 - Total</b>					<b>\$161,273.38</b>

**Loader 01 - Assessment of Details with Application**

Item	Invoice Ref	Qty	Unit	Rate	Adjudicator's Assessment
October 08 Work Time	1344	4	Days	\$600.00	\$2,400.00
<b>Loader 01 - Total</b>					<b>\$2,400.00</b>

**Loader 02 - Assessment of Details with Application**

Item	Invoice Ref	Qty	Unit	Rate	Adjudicator's Assessment
October 08 Work Time	1345	6	Days	\$600.00	\$3,600.00
October 08 Lost Earnings	1357	0	Days	\$600.00	\$0.00
December 08 Servicing	1455	1	No	\$1,127.27	\$1,127.27
<b>Loader 02 - Total</b>					<b>\$4,727.27</b>

**Grader 01 - Assessment of Details with Application**

Item	Invoice Ref	Qty	Unit	Rate	Adjudicator's Assessment
October 08 Lost Earnings	1358	7	Days	\$700.00	\$4,900.00
December 08 Repairs	1394	1	No	\$4,600.00	\$4,600.00
December 08 Servicing	1453	1	No	\$3,259.97	\$3,259.97
<b>Grader 01 - Total</b>					<b>\$12,759.97</b>

**Grader 02 - Assessment of Details with Application**

Item	Invoice Ref	Qty	Unit	Rate	Adjudicator's Assessment
October 08 Work Time	1358	9	Days	\$700.00	\$6,300.00
December 08 Servicing	1453	1	No	\$1,386.17	\$1,386.17
<b>Grader 02 - Total</b>					<b>\$7,686.17</b>

**Truck 02 - Assessment of Details with Application**

Item	Invoice Ref	Qty	Unit	Rate	Adjudicator's Assessment
October 08 Work Time	1350	7	Days	\$450.00	\$3,150.00
October 08 Lost Earnings	1355	18	Days	\$450.00	\$8,100.00
November 08 Lost Earnings	1385	21	Days	\$450.00	\$9,450.00
November 08 Float Fees	1362	1	No.	\$4,000.00	\$4,000.00
November 08 Repairs	1367	1	No.	\$5,201.00	\$5,201.00
December 08 Lost Earnings	1397	22	Days	\$450.00	\$9,900.00
April 09 Float Fees	1459	1	No.	\$4,000.00	\$4,000.00
<b>Truck 02 - Total</b>					<b>\$43,801.00</b>

**Truck 03 - Assessment of Details with Application**

Item	Invoice Ref	Qty	Unit	Rate	Adjudicator's Assessment
October 08 Work Time	1351	6	Days	\$450.00	\$2,700.00
October 08 Lost Earnings	1356	19	Days	\$450.00	\$8,550.00
October 08 Float Fees	1363	1	No.	\$4,000.00	\$4,000.00
November 08 Lost Earnings	1386	21	Days	\$450.00	\$9,450.00
December 08 Lost Earnings	1398	22	Days	\$450.00	\$9,900.00
January 09 Lost Earnings	1412	22	Days	\$450.00	\$9,900.00
March 09 Repairs	1439	1	No.	\$11,067.51	\$11,067.51
April 09 Repairs	1447	1	No.	\$3,321.00	\$3,321.00
April 09 Float Fees	1460	1	No.	\$4,000.00	\$4,000.00
<b>Truck 03 - Totals</b>					<b>\$62,888.51</b>

**Breaker - Assessment of Details with Application**

Item	Invoice Ref	Qty	Unit	Rate	Adjudicator's Assessment
November 08 Lost Earnings	1396	0	Days	\$300.00	\$0.00
December 08 Lost Earnings	1403	0	Days	\$300.00	\$0.00
January 09 Lost Earnings	1417	0	Days	\$300.00	\$0.00
February 09 Lost Earnings	1429	0	Days	\$300.00	\$0.00
March 09 Lost Earnings	1441	0	Days	\$300.00	\$0.00
<b>Breaker - Totals</b>					<b>\$0.00</b>