

2002 01T 0352

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN THE MATTER OF a Court ordered
Receivership of Hickman Equipment (1985) Limited
("Hickman Equipment") pursuant to Rule 25 of the
Rules of the Supreme Court, 1986 under the
Judicature Act, R.S.N. 1990, c. J-4, as amended

AND IN THE MATTER OF the *Bankruptcy and
Insolvency Act*, Chapter B-3 of the Revised
Statutes of Canada, 1985, as amended

**FIRST REPORT OF THE RECEIVER
AND
STATEMENT OF RECEIPTS AND DISBURSEMENTS**

BACKGROUND

1. By order of this Honourable Court (the "Receivership Order") granted on the 13th day of March 2002 and filed with the Court on the 14th day of March 2002 it was

ordered that PricewaterhouseCoopers Inc. (“PWC”) be appointed Receiver of the Assets of Hickman Equipment (the “Receiver”).

2. By a Receiving Order (the “Receiving Order”) made on the 13th day of March, 2002, pursuant to the provisions of the BIA and filed with the Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency on the 14th day of March, 2002, Hickman Equipment was adjudged bankrupt and the Receiver was appointed as trustee of the estate of the bankrupt in bankruptcy (the “Trustee”).
3. The Receivership Order issued on March 13, 2002 terminated proceedings under the Companies’ Creditors Arrangement Act (“CCAA”) which had commenced on February 7, 2002.
4. The Receivership Order required the following:
 - a) The Receivership Order gives the Applicant the overall mandate of developing a plan and procedural structure for the liquidation of the assets of Hickman Equipment, as defined at paragraph 6 of the Receivership Order, and also a plan for the determination of the legal and equitable rights of all creditors and claimants.

- b) Paragraph 32 of the Receivership Order requires the Applicant to make regular reports to this Honourable Court on the status of affairs relating to the performance of its duties pursuant to the Receivership Order. The Applicant is also required, pursuant to paragraph 27 of the Receivership Order, to provide the Court, on a regular basis, with an accounting of its accrued fees and disbursements.
- c) Paragraph 10(e) of the Receivership Order provided that the Receiver was to develop a plan for the efficient resolution of the disputes relating to security status and priority among various creditors claims to Assets. The Receiver has prepared and presents for the Court and creditor's consideration a plan for resolution of such issues the "**Claims Plan**".
- d) Paragraphs 10(c) provided that the Receiver was to "*develop and recommend the optimal method for disposition of the Assets and the distribution of property or proceeds to those claimants or creditors entitled thereto*". The Receiver has prepared and presents for the Court and creditors' consideration a realization plan (the "**Realization Plan**").

e) Paragraphs 6, 9(d), 10(d), 10(e), 11 and 15 of the Receivership Order contemplate the Applicant conducting certain initial investigations and analyses of a forensic nature to assist in the identification of any potential issues and disputes which may need to be addressed by the Court and creditors. These would include such issues as legal and equitable rights of claimants and creditors, legal and equitable tracing and an examination of the accounting of the assets, money and other property of Hickman Equipment. The Receiver has prepared an investigation plan (the “**Investigation Plan**”) for consideration by the Court and creditors.

f) Paragraphs 10(c) and (e) of the Receivership Order provided that the Receiver recommend to the Court the appropriate allocation of the costs associated with carrying out of the Receiver’s mandate under the Receivership. Attached as an exhibit to the Affidavit of Kirby is a Cost Allocation Plan that makes such recommendations for the Court and creditor’s consideration (the “**Cost Allocation Plan**”).

RECEIVERSHIP MATTERS – GENERAL

POSSESSION OF ASSETS AND RECORDS

- On March 13, 2002, the Receiver took possession of the Assets and accounting records of Hickman Equipment;
- The Receiver's staff counted all equipment inventory located at former Hickman Equipment locations in Mount Pearl, Happy Valley-Goose Bay and Grand Falls-Windsor and engaged Paul Snow, CA to do the same in Corner Brook, parts inventory was also test checked to the satisfaction of the Receiver;
- Shortly thereafter, the Receiver removed approximately 750 banker's boxes full of accounting records;
- The Receiver immediately took possession of information contained on certain computers records;
- The Receiver received records of the CCAA monitor, Deloitte & Touche Inc.;
- The Receiver immediately obtained possession of or access to records of Hickman Equipment relating to the remaining assets, including accounts receivable, corporate income tax refunds,

parts inventory, inventory of heavy equipment, assets of Show
Tech and Celebration Rent-Alls divisions.

INSURANCE

The Receiver met with representatives of Hickman's insurance agent, Baine Johnson, and confirmed that insurance coverage remained in place with the following coverages:

Parts inventory	\$4M
Rental inventory	\$5M
Equipment dealer floater	\$15M

The Receiver also determined that coverage is in place in the amount of \$500,000 for employee defalcation.

USE OF PREMISES

Group Holdings Limited, a related company, previously rented the former Hickman Equipment locations in Mount Pearl, Grand Falls-Windsor and Corner Brook to Hickman Equipment. An independent landlord previously rented the location in Happy Valley-Goose Bay to Hickman Equipment. Ontrac Equipment Services Limited ("Ontrac"), as part of a transaction sanctioned by the Court on February 22, 2002, became the tenant in these four locations. Meanwhile, the heavy equipment inventory, parts inventory,

computers and accounting records remained within the premises now in the possession of Ontrac.

The two divisions not involved in the heavy equipment operations, Show Tech and Celebration Rent-Alls, were also in rented premises in St. John's.

5. ASSETS

a) Assets of Celebration Rent-Alls and Show Tech

- (i) By Order of this Honourable Court dated 28 March 2002, the Applicant was granted leave to offer for sale by public tender certain assets of two divisions of Hickman Equipment, specifically, the assets of Celebration Rent-Alls and Show Tech, the particulars of which tender process are more particularly set out in the Order of Mr. Justice Hall of 28 March 2002 (the "March 28 Order"). The Applicant states that it has now completed the tendering process for the Show Tech and Celebration Rent-Alls assets and has considered all of the bids submitted.
- (ii) The March 28 Order also granted leave to the Applicant to appear before this Honourable Court, subsequent to the tender closing and to seek direction with respect to the final disposition of those assets.

(iii) The March 28, 2002 Court Order directed that these assets be offered for sale in a tender with a closing date of April 25, 2002. A detailed tender report is attached as Appendix B. The Receiver recommends acceptance of the high bids received under the tender process in the aggregate amount of \$772,165.

b) Heavy Equipment inventory

There are 293 pieces of heavy equipment in the possession of the Receiver with several exceptions. A list of the heavy equipment is attached as Appendix to this report. The Receiver commissioned an appraisal of the heavy equipment inventory by Maynards Appraisal Limited. The results of this appraisal are being kept confidential at present.

The Receiver has reviewed several options for the sale of the heavy equipment inventory, including:

- Conducting an auction for all heavy equipment immediately;
- Combination of sale by Equipment Remarketing Services, Ontrac and auction;

- Sale by Ontrac; and
- Sale by a method known as the “stalking horse process”.

After consideration, the Receiver rejected the third and fourth options and further investigated the first two options, including the preparation of analysis of the likely results of each of these two methods. The Receiver also consulted with members of the Creditors’ Committee to review the projected amounts recoverable under each method and the risks involved.

The Receiver also requested auction proposals from the major auction firms in Canada and offers in writing from Ontrac and Equipment Remarketing Services. The Receiver received four (4) written proposals from auctioneers as well as written proposals from Ontrac and Equipment Remarketing Services.

The benefits of the auction proposals may be summarized as follows:

- Certainty of a sale of all equipment;
- Certainty of cash from the sale within a short time;
- Independence of the auctioneer;
- Receiver’s costs relating to the sale of heavy equipment would not continue much beyond the auction sale date;

- Purchasers from the rest of Canada and parts of the USA would be attracted;
- Timing of the sale may enhance proceeds;
- Holding costs such as security and insurance would terminate with the auction;
- Auction terms determined on a competitive basis already, including the possibility of net minimum guarantees with participation above certain sales levels if the auction is very successful.

The benefits of the combination of sale by Equipment Remarketing Services, Ontrac and auction may be summarized as follows:

- Potential for more proceeds than an auction estimated to be in the range of 15%;
- Sale of John Deere and Timberjack inventory within all of Canada and the USA at prices approximately wholesale values;
- Sales of many remaining pieces here in Newfoundland and Labrador through Ontrac and its network of sales agents with access to service, trade-in arrangements and financing alternatives.

After consultation with the Creditors' Committee and review of the two methods of sale and the risks involved, the Receiver recommends that the Court authorize the Receiver to enter into a contract with LVG Auctions ("LVG") whose proposal is judged by the Receiver to be in the best interests of the creditors. The LVG auction proposal provides a minimum guarantee of \$17.5M for 293 units and any amounts received over this amount are for the benefit of the Receivership. LVG will charge a buyer's premium of 7% as it means of collecting a commission. The LVG offer specifically states that costs including transportation to Halifax for sale, refurbishing the equipment to LVG's auction standards and advertising will be at no cost to the Receiver.

This offer provides a substantial upside for creditors if the proceeds exceed the minimum guarantee. The LVG proposal also provides the best return if we are required to remove 24 or 30 items claimed by JD as consigned stock or secured and consigned. The LVG minimum guarantee is \$14.25M if 24 allegedly consigned units are removed by JD and \$14M if another 6 units are removed by JD claiming a security interest in new equipment. Each of these offers is clearly better than other auction alternatives.

The Receiver recommends that it be authorized to permit LVG, where LVG recommends and the Receiver is satisfied there will be benefit, to sell individual pieces by private sale before the auction date. As an example, the Receiver contemplates the possibility it may be advantageous to sell a piece of equipment located in Labrador to a user there rather than to transport it to Halifax. LVG will receive a buyer's commission of 5% on such sales.

c) Parts Inventory

(i) Non-John Deere parts

There is approximately \$4M at cost of non-John Deere parts inventory spread among the four locations and several other sites. The Receiver recommends that the sale of non-John Deere parts be pursuant to a consignment arrangement with Ontrac. Ontrac would be obliged to pay to the Receiver 95% of Hickman's cost for any parts that are sold. An appraisal of the parts conducted by Maynards Appraisal Limited confirms that the Ontrac consignment arrangement is beneficial, depending upon the amount of parts sold under this process. The Ontrac consignment to be otherwise based on the terms of an agreement to be negotiated between the Receiver and Ontrac.

The Receiver seeks authority to remove these parts from Ontrac and sell them through the LVG auction and/or *en bloc* to other dealers if a satisfactory agreement cannot be made with Ontrac or the Receiver is not satisfied with Ontrac sales.

(ii) John Deere parts

John Deere (“JD”) claims security against the JD parts and claims their security has priority over the Canadian Imperial Bank of Commerce (“CIBC”) pursuant to various agreements. The Receiver is proposing that the security issue be dealt with pursuant to the Claims Plan. At present, sales of the JD parts await determination of the validity and priority of the respective security.

d) Accounts Receivable

The Receiver hired Mr. David Bradbury to collect the accounts receivable. Mr. Bradbury has many years experience as a credit manager in St. John’s. Collections to the end of April total approximately \$600,000.

We anticipate a full review of recent receivable collections as part of this process. The Receiver intends to use all legal remedies available for the collection of accounts as may be appropriate.

Issues such as set off rights will be reviewed with Receiver's counsel. Claims for set off, including warranty receivables and other claims total \$954,000.

(e) Corporate Income Tax Returns

The Receiver has obtained corporate tax returns for the last six (6) years and upon review by our tax specialist will file appropriate tax returns to maximize any tax refunds. Refunds anticipated from this appear to be \$1.2 million or greater.

(f) Cash

The Receiver received a cheque in the amount of \$125,000 as security for the Ontrac consignment parts sales which it is holding pending determination of whether this transaction will be proceeded with.

The amount of \$165,200 is held in an account at the CIBC in the name of Hickman Equipment in trust, which the Receiver has asked be turned over in trust to the Receiver. This account was set up to hold money which accrues to asset lenders for two sales which occurred just prior to the CCAA filing.

6. **THE INVESTIGATION PLAN**

a) FINDINGS FROM ACCOUNTING RECORDS

Some matters have already come to the attention of the Receiver, including the payment of substantial bonuses and dividends and the redemption of shares. In his affidavit in support of the CCAA application, Albert Hickman stated as follows:

“In the fall of 2001, it became apparent that Hickman Equipment had serious cash flow and profitability issues. An investigation of the source of those issues, which is currently underway, suggests that they arose largely as a result of an ill-conceived and executed sales approach apparently intended to gain market share and were further impacted by increases in Hickman Equipment’s debt load and debt service requirements that were not properly matched to revenue inflows from operations. It is also likely that improper activity on the part of one or more individuals may have caused all or some of these problems. All of this adversely affected Hickman Equipment’s cash flow, working capital and liquidity and equity positions.”

Various creditors have provided the Receiver with information which shows that the sold out of trust (“SOT”) situation started as far back as 1998. Attached to the Statement of Affairs in the bankruptcy is a list of secured creditors with a total outstanding debt of \$90,148,667. Many of these lenders had fixed charge security against specific equipment, however, over \$60,000,000 of this debt is unsecured because Hickman apparently sold specifically charged equipment without paying the secured asset lender, thereby creating many SOT situations.

There are allegations of improper activities in relation to the conversion of assets secured by a number of asset lenders. The Investigation will identify the full scope of this problem.

b) Potential Beneficiaries of the Accounting Review

The Investigation Plan is intended to do the following:

- To investigate and analyze Hickman Equipment alleged to have been sold out of trust and other related inventory issued which resulted in the alleged inventory shortfall.
- To investigate source and use of funds at Hickman.

- To investigate allegations that documents relevant to the issues subject of this proposed investigation were shredded, the nature of such documents, and the utility and ability to reconstruct or retrieve shredded documents from other sources.

The results of Phase 1 and subsequent phases may provide information sufficient to file an appropriate claim for employee defalcation, to claim restitution from perpetrator, information for tracing purposes and information which could be used in future claims against other third parties.

PLANS

Attached as Appendices “A”, “B”, “C” and “D” are the Receiver’s proposed Claims Plan, Realization Plan, the Investigation Plan (Phase One), and the Cost Allocation Plan. The Receiver and Receiver’s counsel have sought input from creditors and/or their solicitors relating to each of these Plans.

ACCRUED FEES OF THE RECEIVER AND LEGAL COUNSEL

Attached as Appendix “E” is a summary of the accrued fees of the Receiver and Receiver’s Counsel to April 30, 2002.

STATEMENT OF RECEIPT AND DISBURSEMENTS

Attached as Appendix "F" is a Statement of Receipts and Disbursements for the period from March 13, the date of the Receiver's appointment to April 30, 2002.

The above is respectfully submitted as of the 6th day of May, 2002.

Yours very truly,
PricewaterhouseCoopers Inc.
Receiver and Manager of
Hickman Equipment (1985) Limited

J. A. Kirby

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Hickman Equipment (1985) Limited
Billing and Hours Summary – Receiver and Lawyers engaged by Receiver
To April 30, 2002

	Period Ending		April 30, 2002		Totals	
	March 31, 2002 Hours	Amount	Hours	Amount	Hours	Amount
PricewaterhouseCoopers Inc.	834.30	240,796.35	1,048.10	213,405.09	1,882.40	454,201.44
Patterson Palmer	95.54	20,305.27	350.45	65,778.24	445.99	86,083.51
Merrick Holm	-	-	168.20	49,617.37	168.20	49,617.37
White Ottenheimer & Baker	89.00	18,858.84	-	-	89.00	18,858.84
	1,018.84	279,960.46	1,566.75	328,800.70	2,585.59	608,761.16

IN THE MATTER OF THE RECEIVERSHIP OF
HICKMAN EQUIPMENT (1985) LTD
STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD ENDING APRIL 30, 2002

RECEIPTS	\$
Accounts receivable - Hickmans	583311.54
Accounts receivable - Showtech	8184.74
Accounts receivable - Celebrations	2936.53
Cash on Hand	3790.66
Harmonized sales tax	-
TOTAL RECEIPTS	598223.47
DISBURSEMENTS	\$
Tender advertising	5745.52
Appraisal Fee	400
Bank Charges	257.89
Casual Labour	180
Creditors' Meeting Expenses	257.64
Filing fee	-
Funds Transfer	684.25
HST Paid	39871.38
Legal Fees	34144.7
Light and heat	938.57
Locksmith	99.6
Office Expenses	11842.9
Payroll	2347.92
Payroll Remittance	425.82
Rent	2773.06
Repairs & Maintenance	1446.53
Security	108.3
Telephone	444.96
Travel Expenses	505.73
Receiver's fee	209388.13
TOTAL DISBURSEMENTS	311862.9
EXCESS OF RECEIPTS OVER DISBURSEMENTS	286360.57
DISTRIBUTION	0
FUNDS ON HAND	286360.57