

2002 01T 0352
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN THE MATTER OF the 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

NINETEENTH REPORT OF THE RECEIVER

This quarterly report deals with matters as of October 31, 2004. PricewaterhouseCoopers Inc. ("PwC") in its capacity of Receiver of Hickman Equipment, previously filed reports to the Court for the period from our appointment date to July 31, 2004.

NINETEENTH REPORT OF RECEIVER

October 31, 2004

IMPLEMENTATION OF COURT APPROVED PLANS

REALIZATION PLAN

UNREALIZED ASSETS

During the quarter we realized an additional \$450 from collection of accounts receivable and \$8,155 from the sale of used parts.

USED PARTS

All used parts, consisting of crusher parts, electric motors, diesel generators and power units have now been sold by private sale or auction and all proceeds from sale have been received.

Items remaining since our last report of July 31, 2004 were sold by Roche's Auctioneering Services resulting in gross realization of \$8,155 for a net realization of \$7,396. The proceeds are reflected in the quarterly statement ending October 31, 2004.

NINETEENTH REPORT OF RECEIVER

October 31, 2004

CLAIMS PLAN AND FINAL DETERMINATIONS

As at October 31, 2004 Final Determinations have not yet been issued for the related companies, Group Holdings Limited, Hickman Holdings Limited and Hickman Leasing Limited.

The decision of Justice Hall dealing with the Receiver's Final Determination for CIBC was appealed. The appeal decision was rendered in August 2004. See below "Court Proceedings and Orders" for additional information.

COST ALLOCATION PLAN

To date the Court has authorized a holdback of 15% from distributions to creditors for the cost allocation plan with the exception of the holdback related to distribution of proceeds from sale of leased vehicles. By court order, sub-file 7:60, the 15% holdback in this case is reduced by 25% which is \$13,477.

DISTRIBUTIONS

During the quarter, as set out above, there was a reduction of \$13,477 in the holdback for distribution of proceeds from sale of leased vehicles. The gross amount of distributions at October 31, 2004 remains at \$6,436,101, less a reduced holdback of \$951,938, for net distributions of \$5,484,163. A separate schedule of distributions is attached as Appendix A to this report.

NINETEENTH REPORT OF RECEIVER

October 31, 2004

AUDITOR ISSUE

The analysis of the Deloitte & Touche working papers was completed and a report was forwarded by the Receiver to its legal counsel on July 7, 2004. On October 6, 2004, the Court heard the Receiver's Application for Court direction regarding the release of documents and other information provided to the Receiver by Deloitte & Touche LLP and Deloitte & Touche Inc. The Court ordered that the Receiver release its Report/Opinion and certain other information, subject to certain conditions with respect to privilege, confidentiality and the use of such information.

COURT PROCEEDINGS AND ORDERS

The following court proceedings were in process or took place from August 2004 to October 2004. Relevant documents and submissions can be found on the PricewaterhouseCoopers website.

7:21 - The Application of GMAC for the payment of proceeds relating to 4 Terex trucks, originally scheduled for Nov.12th 2003, was set over to November 24th, then to December 10th, then to January 15th 2004, then to January 29, 2004, then to February 19th 2004, then to March 10th 2004, then to March 23rd, then to May 4th, then to July 13th, 2004, then to September 27th, then to November 29th.

NINETEENTH REPORT OF RECEIVER

October 31, 2004

7:55 -The Receiver's application to Court for advice and directions involving a claim for set off by United Rentals of Canada Inc. in the amount of \$329,254 was brought before the Court on March 12, 2003 and adjourned sine die with instructions to Receiver's counsel to seek a date for hearing if the matter was not resolved by mid-September, 2003. John Deere Limited, John Deere Credit Inc, CIBC and United Rentals are the only parties which have expressed an interest in the Receiver's application. No date has been set for this matter.

7:59 – On December 17, 2003, the Receiver filed Application 7:59, an Interlocutory Application (ex parte) seeking leave to issue a Statement of Claim against Deloitte & Touche LLP and Deloitte & Touche. This Application was heard by Justice Barry on December 22, 2003 who ordered that the Statement of Claim be issued but that it is not to be served without further Order of the Court. The Receiver filed the Statement of Claim on December 24, 2003 but it has not been served on the defendants. The deadline for service appears to be one year after filing. See the Auditor issue section above for additional comments.

NINETEENTH REPORT OF RECEIVER

October 31, 2004

7:60 – The Application of GMAC’s Leaseco for recovery of cost allocation for units sold by it was heard in court on February 16, 2004. However, it was adjourned to enable the Receiver to bring its application with respect to cost allocation. This was heard on June 8th 2004 and the decision of the Court was filed on September 1st, 2004. The decision of Judge Hall ordering payment to the Applicant by the Receiver in the amount of \$13,477 is posted on the Receiver’s website.

7:61 – The Application of the Receiver for Court Approval of a proposal for the allocation of the costs associated with the process of the receivership of Hickman Equipment was filed on March 17th, 2004. It was called in Court on March 29th, 2004 but with the agreement of all counsel, it was set over to be heard on June 8, 2004. It was also agreed that the Receiver would bring on an application for approval of its fees on that same date. On June 8th, the matter was brought forward but was postponed to June 29th as a return date. At that time, Judge Hall Ordered that the matter be set over for 3 days in the fall. The Court registry assigned October 6, 7 and 8, 2004. At that time, the matter was set over to November 29th, 2004.

NINETEENTH REPORT OF RECEIVER

October 31, 2004

7:62 – On June 8th, 2004, the Receiver brought its application for approval of the fees of the Receiver and of the Receiver's counsel for the period May 2003 to May 2004. The matter was brought forward but was postponed to June 29th as a return date. At that time, Judge Hall Ordered that the matter be set over for 3 days in the fall. The Court registry assigned October 6, 7 and 8, 2004. At that time, the matter was set over to November 29th, 2004.

7:63 – On October 6, 2004, the Court heard the Receiver's Application for Court direction regarding the release of documents and other information provided to the Receiver by Deloitte & Touche LLP and Deloitte & Touche Inc. The Court ordered that the Receiver release its Report/ Opinion and certain other information, subject to certain conditions with respect to privilege, confidentiality and the use of such information.

Decisions were rendered by the Court of Appeal in two matters (the Appeal of CIBC and that of John Deere). Also, see Auditor Issue above.

NINETEENTH REPORT OF RECEIVER

October 31, 2004

In the Appeal of **John Deere v. CIBC (2004 NLCA 48)**, Madam Justice Cameron of the Court of Appeal, speaking on behalf of all three judges, defined the issue as follows:

*[15] The first issue is whether CIBC, to maintain its priority beyond the transition period, complied with the requirements of the **PPSA** and the Regulations. If CIBC did what was required, that ends the matter. If the transition financing statement of November 29, 2001 is wanting in some way the question becomes whether the curative provision of the **PPSA** can be used to support CIBC's position.*

On this basis, she concluded that:

*[44] ... the Trial Division judge was correct when he held that the supplementary debentures had been properly transitioned pursuant to the **PPSA**. The appeal is therefore dismissed. CIBC is entitled to its taxed costs, on this appeal, as against John Deere.*

NINETEENTH REPORT OF RECEIVER

October 31, 2004

In the Appeal of **CIBC v. John Deere et al. (2004 NLCA 47)**, Mr. Justice Rowe of the Court of Appeal, speaking on behalf of all three judges, considered certain agreements between Hickman Equipment and CIBC in the context of the PPSA. In particular the court was called upon to consider two issues:

- (1) Is the **Bank Act** security valid; and
- (2) Do unperfected PMSI's rank in priority to the security interests held by CIBC pursuant to:
 - (a) the Debenture and Supplemental Debentures,
 - (b) the Credit Agreement,
 - (c) the GSA?

The Court of Appeal affirmed the Trial Division judge's decision that CIBC's **Bank Act** security was invalid and unenforceable as against the Trustee.

In going on to consider the second issue, the Court of Appeal concluded as follows:

[50] The Trial Division judge's decision is:

- (a) affirmed as regards his holding that CIBC does not have a valid secured claim under the **Bank Act** security dated October 18, 2000;*
- (b) affirmed as regards the priority of un-registered purchase money security interests over the Debenture;*
- (c) set aside as regards his holding that un-registered purchase money security interests have priority over the GSA of January 25, 2000 and the Credit Agreement of June 19, 2000; instead, I would hold that the GSA and the Credit Agreement (if it is registered) have priority over un-registered purchase money security interests.*

NINETEENTH REPORT OF RECEIVER

October 31, 2004

ACCRUED FEES OF THE RECEIVER AND LEGAL COUNSEL

Attached as Appendix "B" is a summary of the accrued fees of the Receiver and Receiver's Counsel to October 31, 2004.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

Attached as Appendix "C" is a Statement of Receipts and Disbursements for the period from March 13, 2002, the date of the Receiver's appointment, to October 31, 2004.

The above respectfully submitted as of the 26th day of November, 2004.

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

Per: _____
James A. Kirby, C.A., C.I.R.P.
Senior Vice-President

JAK/cmc
Encl.
ReportToCourt-#19.doc

Hickman Equipment (1985) Limited
PricewaterhouseCoopers Inc., Receiver
STATEMENT OF DISTRIBUTIONS
FOR THE PERIOD ENDING October 31, 2004

Appendix "A"

Creditor	DATE	Deduction for Cost		Distributions to Creditors
		Gross Amount	Allocation	
		\$	\$	\$
Cat Finance				
	9/22/2003	47,500	(7,125)	40,375
CIBC				
	2/12/2003	393,000	(48,950)	344,050
	3/31/2003	2,607,000	(391,050)	2,215,950
	3/31/2003	904,514	(135,677)	768,837
	4/3/2003	-	(10,000)	(10,000)
	9/22/2003	23,750	(3,563)	20,188
	10/9/2003	63,454	(9,518)	53,936
	11/14/2003	26,445	(3,967)	22,478
	1/20/2004	7,190	(1,078)	6,111
		4,025,353	(603,803)	3,421,550
CIT				
	10/17/2003	572,162	(85,824)	486,338
GMAC				
	9/18/2004		10,517	10,517
	11/24/2003	280,444	(42,067)	238,377
	11/27/2002	526,100	(78,915)	447,185
		806,544	(110,465)	696,079
GMAC & CIBC				
	9/18/2004		2,961	2,961
	9/24/2003	24,800	(3,720)	21,080
	10/3/2003	54,150	(8,123)	46,028
		78,950	(8,882)	70,068
John Deere Credit Inc.				
	9/22/2003	23,750	(3,563)	20,188
John Deere Limited				
	2/10/2003	750,806	(112,621)	638,185
	10/9/2003	55,852	(8,378)	47,475
	1/20/2004	4,984	(748)	4,236
		811,642	(121,746)	689,896
National Leasing				
	8/15/2003	70,200	(10,530)	59,670
Total October 31, 2004				
		6,436,101	(951,938)	5,484,163

Hickman Equipment (1985) Limited

To October 31, 2004

Appendix "B"

	Total	Receivership General	Receivership Realization	Receivership Claims	Bankruptcy	Investigation	Disbursements
Receiver's fees							
PricewaterhouseCoopers							
Paid to April 30, 2003	1,287,336	731,951	262,871	68,139	0	175,000	49,375
# 18	30,996	14,667	15,774				555
Subtotal: Court Approved	1,318,332	746,618	278,645	68,139	0	175,000	49,930
#19	2,430	2,430					
#20	20,489	20,489					
#21	16,986		16,986				
#22	8,924	8,924					
#23	13,632		13,632				
#24	6,159		6,076				83
#25	3,499	3,451					48
#26	7,725		7,546				179
#27	10,468		10,356				112
#28	11,889	11,717					172
#29	12,039	11,880					159
#30	28,374		27,690				684
#31	15,467	15,254					213
#32	5,336		5,283				53
#33	7,290	7,176					114
#34	19,403		18,927				476
#35	2,452	2,370					82
#36	36,250		36,189				61
#37	814	797					17
#38	11,381	11,070					311
#39	56,246		55,396				850
#40	60,977		60,082				895
#41	12,290	11,983					307
Apr. 2004	6,028	5,857					171
Apr. 2004	103,763		100,270				3,493
May 2004	33,595		30,518				3,077
May 2004	5,134	4,983					151
June 2004	28,506		28,290				216
June 2004	4,231	4,139					92
July 2004	1,145		1,123				22
July 2004	652	635					17
Aug. 2004	1,378		1,356				22
Aug. 2004	899	858					41
Sept. 2004	892		879				13
Sept. 2004	1,770	1,720					50
Total Paid to Oct. 31, 2004	1,876,846	872,352	699,245	68,139	0	175,000	62,111
Outstanding at Oct 31/04							
Oct. 2004	3,385	3,204					181
Oct. 2004	1,075		1,045				30
Total PwC	1,881,306	875,556	700,290	68,139	0	175,000	62,322

Legal fees

Patterson Palmer							
Paid to April 30, 2003	411,021						
# 14	3,587						
Subtotal: Court Approved	414,608	274,637	10,574	129,660		3,958	
Note: fees approved exceed billing by:		-4,220					
#16	9,728	9,728					
#17	4,811	4,811					
#18	2,243	1,978					265
#19	2,461	1,987	428				46
#20	6,303	5,742					561
#21	16,800	16,208					592
#22	2,909	2,190					719
#23	14,155	13,280					875
#24	2,201	2,201					
#25	9,693	9,504	189				
#26	10,948	10,813	135				
April 2004	25,885	25,748					138
May 2004	10,545	10,502					43
May 2004	424		424				
June 2004	10,016	8,953					1,064

Hickman Equipment (1985) Limited

Appendix "B"

To October 31, 2004

	Total	Receivership General	Receivership Realization	Receivership Claims	Bankruptcy	Investigation	Disbursements
July 2004	1,260	1,070					190
July 2004	98		98				
Aug. 2004	2,016	1,891					125
Sept. 2004	4,839	4,828					11
Total Paid to Oct 31, 2004	551,941	401,847	11,848	129,660	0	3,958	4,629
Outstanding at Oct 31/04							
Oct. 2004	5,262	5,040					222
Total Patterson Palmer	557,204	406,887	11,848	129,660	0	3,958	4,851
Merrick Holm							
Paid to April 30, 2003	404,731						
# 13	2,696						
Subtotal: Court Approved	407,426	255,410	28,413	97,858	0	3,983	21,764
#14	15,836	15,836					
#15	1,608	1,590					18
#16	6,387	1,980	4,350				57
#17	120		120				
#18	7,812	7,812					
#19	3,630		3,630				0
#20	2,739	1,950					789
#21	2,078	2,060					18
Total Paid to Dec 31, 2003	447,638	286,638	36,513	97,858	0	3,983	22,647
Apr. 2004	1,145	1,050					95
Total Merrick Holm	448,782	287,688	36,513	97,858	0	3,983	22,742
White Ottenheimer & Baker							
# 1	16,471	16,471					
Paid to May 31, 2002	16,471	16,471					
Total WOB	16,471	16,471					
TOTAL LEGAL FEES	1,022,456	711,046	48,360	227,517	0	7,941	27,593

**IN THE MATTER OF THE RECEIVERSHIP OF
HICKMAN EQUIPMENT (1985) LTD
STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD ENDING OCTOBER 31, 2004**

Appendix "C"

	March 13/02 - July 31/04	Aug 1 to Oct 31	March 13/02 - October 31/04
	\$	\$	\$
RECEIPTS			
Accounts receivable	896,383	450	896,833
Accounts receivable - sundry	10,789		10,789
Auction commission	1,193,473		1,193,473
Auction of equipment and attachment inventory	14,594,020		14,594,020
Cash on hand	4,087		4,087
Cost allocation	181,165		181,165
HST collected	2,977,841		2,977,841
HST Refund	20,000		20,000
Interest	754,921	99,285	854,206
Interest other trust - monitor, Wells Fargo, leased vehicles		9,962	9,962
Recovery of freight	20,000		20,000
Rental Income - Sublet to RCMP	11,100		11,100
Redemption of Share - Credit Bureau	3,833		3,833
Sale of assets by tender - Show Tech and Celebration	772,165		772,165
Sale of equipment inventory	3,272,725	8,155	3,280,880
Sale of parts inventory	1,487,676		1,487,676
Sale of Vehicles	373,400		373,400
Third party auction proceeds	407,840		407,840
Trust Funds from Monitor	165,200		165,200
US Exchange	6,193		6,193
TOTAL RECEIPTS	27,152,811	117,852	27,270,663
DISBURSEMENTS			
Advances to Trustee	31,714		31,714
Auction commission to LVG	1,193,473		1,193,473
Auction - Other expense	17,189	758	17,947
Commission on sale of vehicles	13,180		13,180
Equipment storage costs	115,798		115,798
HST paid and remitted	3,111,835	4,074	3,115,909
Legal fees	998,013	19,181	1,017,194
Monitor's fees	123,204		123,204
Monitor's legal fees	35,188		35,188
Other expenses (see schedule)	262,155	1,363	263,518
Receiver's fee	1,870,110	6,736	1,876,846
Reimbursement of third party auction proceeds	407,840		407,840
TOTAL DISBURSEMENTS	8,179,699	32,112	8,211,811
EXCESS OF RECEIPTS OVER DISBURSEMENTS	18,973,112	85,740	19,058,852
DISTRIBUTIONS - Schedule attached			
Distribtions	6,436,101		6,436,101
Less: Deduction for Cost Allocation	(965,415)	13,477	(951,938)
DISTRIBUTIONS - NET OF COST ALLOCATION	5,470,686	13,477	5,484,163
FUNDS ON HAND COMPRISED OF THE FOLLOWING	13,502,426	72,263	13,574,689
Funds on Hand - General	2,251,173	152,691	2,403,864
Canada T-Bill \$3,000,000 Due July 16, 2005	2,934,060		2,934,060
Canada T-Bill \$3,000,000 Due Sept 8, 2005		2,919,930	2,919,930
Canada T-Bill \$5,000,000 Due July 14, 2005		4,906,650	4,906,650
Canada T-Bill \$3,000,000 Due Sept 9, 2004	2,963,670	(2,963,670)	
Canada T-Bill \$5,000,000 Due Oct 21, 2004	4,953,300	(4,953,300)	
Funds on hand - In Trust re Equipment Sale & Wells Fargo	250,750	7,459	258,209
Funds on hand - In trust from Monitor's Equip. sales	95,564	1,416	96,980
Funds on hand - In trust re Sale of leased vehicles	53,909	1,087	54,996
TOTAL FUNDS ON HAND	13,502,426	72,263	13,574,689
ACCOUNTING FOR THIRD PARTY RECOVERY			
Proceeds from recovery of management bonuses	1,050,000		1,050,000
Distribution of recovery to creditor and trustee's fees	1,050,000		1,050,000

IN THE MATTER OF THE RECEIVERSHIP OF
HICKMAN EQUIPMENT (1985) LTD

Appendix "C"

STATEMENT OF EXCESS OF RECEIPTS NET OF ACCRUALS
AT OCTOBER 31, 2004

	March 13/02 - July 31/04 \$	Aug 1 to Oct 31 \$	March 13/02 - October 31/04 \$
TOTAL FUNDS ON HAND	13,502,426	72,263	13,574,689
Receiver's Accruals			
HST Payable	(113,994)	(4,073)	(118,067)
Legal Fees			
General		5,262	5,262
Receiver's fee			
Receivership - General	652	2,733	3,385
Receivership - Realization	1,145	(70)	1,075
Bankruptcy			
Unrealized (Gain)/Loss on T-Bills	(50,380)	43,000	(7,380)
TOTAL RECEIVER'S ACCRUALS	(162,577)	46,852	(115,725)
EXCESS OF RECEIPTS NET OF ACCRUALS	13,665,003	25,410	13,690,413

INVESTED FUNDS SUMMARY
AT OCTOBER 31, 2004

Investments	Due Date	Type	Date Invested	Effective Yield	Investment at Cost Oct. 31, 2004
Funds on Hand - General		demand account		Prime-1.90%	2,403,864
Canada T-Bill \$3,000,000	6/16/2005	T-Bill	7/28/2004	2.48%	2,934,060
Canada T-Bill \$3,000,000	9/8/2005	T-Bill	9/9/2004	2.68%	2,919,930
Canada T-Bill \$5,000,000	7/14/2005	T-Bill	10/21/2004	2.56%	4,906,650
Funds on hand - In Trust re Equipment Sale & Wells Fargo		GIC	11/24/2003	2.00%	105,311
		GIC	10/1/2004	1.75%	152,898
Funds on hand - In trust from Monitor's Equip. sales		demand account		Prime-1.90%	96,980
Funds on hand - In trust re Sale of leased vehicles		GIC	9/8/2004	1.60%	54,996
Total Investments at Cost					13,574,689

SCHEDULE "OTHER EXPENSES" TO STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD ENDING OCTOBER 31, 2004

	March 13/02 - July 31/04 \$	Aug 1 to Oct 31 \$	March 13/02 - October 31/04 \$
OTHER EXPENSES			
Appraisal fee	35,701		35,701
Computer file maintenance and training	10,349	600	10,949
Court costs	3,060		3,060
HST consultant's fee	28,222		28,222
Insurance	37,228		37,228
Miscellaneous expenses	27,266	163	27,429
Office expenses	14,902		14,902
Rent and occupancy costs	48,797	600	49,397
Repairs & maintenance	9,471		9,471
Salaries and benefits	24,978		24,978
Security	11,412		11,412
Tender advertising	8,117		8,117
Travel expenses	2,652		2,652
Total Other Expense	262,155	1,363	263,518