

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person	PricewaterhouseCoopers Inc., Court – Appointed Receiver.
Date of Document:	17 March, 2004.
Summary of Order/Relief Sought or statement of purpose in filing:	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 to the date of this Application.
Court Sub-File Number:	7: 61

**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.L. 1990, c. J-4*, as amended.

**AND IN THE MATTER OF** the *Bankruptcy and  
Insolvency Act*, Chapter B-3 of the R.S.C., 1985, as amended.

**INTERLOCUTORY APPLICATION**  
**(Inter Partes)**

The Application of PricewaterhouseCoopers Inc., Court appointed Receiver of Hickman Equipment ("PWC" or the "Applicant") says as follows:

1. This is an Application for Court Approval of PWC's proposal for the allocation of the costs associated with the process of the Receivership of Hickman Equipment to the date of this Application.

## **Background**

2. On or about February 7, 2002, by an Originating Application (*Ex Parte*) Hickman Equipment applied to this Honourable Court for relief pursuant to the *Companies Creditors Arrangement Act* (the "CCAA"). By an Order of this Honourable Court dated February 7, 2002 and filed on February 8, 2002, Hickman Equipment was granted such relief (the "Original Order"). The Original Order effectively covered all assets of Hickman Equipment, in its possession as owner or as agent for others; secured or otherwise. The Original Order made no distinction between owned, consigned or secured goods (the "Property"). The protection granted to Hickman Equipment effectively covered all Property in its possession under any circumstance (ref: paragraph 4(a) of the Original Order).

Original Order, Book of Orders & Related Materials [Tab 1]

3. The Original Order also included provisions with respect to a stay of proceedings and Debtor in Possession ("DIP") financing. It also appointed Deloitte & Touche Inc. as the Monitor pursuant to the CCAA.
4. By early March, 2002, it was evident that Hickman Equipment was hopelessly insolvent and there was no prospect for a successful CCAA process concluding. By a Receiving Order (the "Receiving Order") made on the 13<sup>th</sup> 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 14<sup>th</sup> day of March, 2002, Hickman Equipment was adjudged bankrupt and PWC was appointed as trustee of the estate of the bankrupt (the "Trustee").

Receiving Order, Book of Orders & Related Materials [Tab 2]

5. By an Order of this Honourable Court granted on the 13<sup>th</sup> day of March, 2002 and filed with the Court on the 14<sup>th</sup> day of March, 2002 it was ordered that PWC

become the Court Appointed Receiver of Hickman Equipment (the "Receivership Order").

**Receivership Order, Book of Orders & Related Materials [Tab 3]**

6. The Receivership Order gave PWC 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. In particular, paragraphs 10 and 11 of the Receivership Order gave PWC a detailed mandate to carry out the receivership. Some of the tasks of this mandate include:

- (a) Communication with secured and unsecured creditors and dissemination of information to them;
- (b) Valuation of the assets;
- (c) Development and implementation of a plan for realization of the assets (the "Realization Plan");
- (d) Development and implementation of a plan for the determination of the rights and entitlement of creditors to the assets (the "Claims Plan");
- (e) Development and implementation of a plan for the equitable distribution of the costs associated with the entire process (the "Cost Allocation Plan"); and
- (f) Review and investigation with respect to the books and records of Hickman Equipment to determine if assets have been properly accounted for (the "Investigation Plan").

**Order approving Realization Plan, Book of Orders & Related Materials [Tab 4]**

**Order approving Other Plans, Book of Orders & Related Materials [Tab 5]**

7. Accordingly, on or about May 13, 2002, PWC presented to the Court the Realization Plan. It was approved by this Honourable Court by an Order dated May 14, 2002 and filed on May 16, 2002. On or about May 14, 2002, PWC

presented to the Court, among other things, the Claims Plan, an Investigation Plan (phase one) and the Cost Allocation Plan. These were approved by this Honourable Court by an Order dated May 14, 2002 and filed May 17, 2002.

### **Implementation of the Claims Plan**

8. Following Court approval, PWC implemented the Claims Plan. It prepared and circulated among the creditors documents entitled "Initial Opinions" that set out PWC's initial preliminary security review on a creditor by creditor basis. This commenced a dialogue between PWC and each of the secured creditors whereby additional documentation and further particulars were provided to PWC to enable it to assess the security position of each creditor. The initial Opinions were followed by Draft Final Determinations for each creditor. In the draft Final Determinations, based on the information provided to and gathered by PWC, PWC made a determination as to whether the creditor had a perfected security interest (as defined in the *Personal Property Security Act*) in each of the assets claimed by that secured creditor. Following this, the drafts were revised into Final Determinations.
9. There were a number of early efforts to retrieve goods from the Receivership by certain creditors. These efforts included claims to 30-day goods under the BIA (e.g. the application and Order relating to Gillis Truckways Inc., sub-file 7:09) and other claims to ownership (e.g. the application and Order relating to John Deere's claim to consigned goods, sub-file 7:03; the application and Order relating to Caterpillar Financial Services Ltd., sub-file 7:29). As is more particularly described below, this resulted in two orders for goods return that had a specific Order for cost allocation associated with it.

Gillis Truckways Order, Sub-file 7:09, Book of Orders & Related Materials [Tab 6]

John Deere Order, Sub-file 7:03, Book of Orders & Related Materials [Tab 7]

Caterpillar Financial Services Ltd., Sub-file 7:29, Book of Orders & Related Materials [Tab 8]

10. Pursuant to the Interlocutory Application (Inter Parties) of the Applicant dated 4 February 2003 (sub-file 7:23), this Honourable Court approved 12 Final Determinations and set return dates for the 6 contested Final Determinations.

Order re: Final Determinations, Sub-file 7:54, Book of Orders & Related Materials [Tab 9]

11. Since then, a process of creditors' priority rights determinations has occurred: individual creditors have brought Interlocutory Applications claiming priority to the proceeds from certain assets that the Receiver had sold (the "Proceeds Applications"). Those creditors contesting such claims have participated in the Proceeds Applications. Two such applications, that were decided upon by Judge Hall (CIBC's Application sub-file 7:28(a) and GMAC's Application sub-file 7:34), have been appealed to the Court of Appeal of this Province. As the outcome of these Appeals will be relevant to the other Proceeds Applications, the other Proceeds Applications have been adjourned *sine die*, pending the outcome of the Appeals. The adjournment of the Proceeds Applications is more particularly described in the 13<sup>th</sup> and 14<sup>th</sup> Reports of the Receiver, filed with this Honourable Court.

CIBC Application, Sub-file 7:28A, Book of Orders & Related Materials [Tab 10]

CIBC Notice of Appeal, Book of Orders & Related Materials [Tab 11]

GMAC Application, Sub-file 7:34, Book of Orders & Related Materials [Tab 12]

GMAC Notice of Appeal, Sub-file 7:34, Book of Orders & Related Materials [Tab 13]

### **Implementation of the Realization Plan**

12. The Realization of the assets took place prior to any consideration of title or the relative interests of the creditors. The assets were sold and the proceeds from such sales were retained by PWC pending a determination of which of the creditors would be entitled to claim the proceeds.

13. Pursuant to the Realization Plan, PWC commenced and completed the liquidation of substantially all of the assets of Hickman Equipment. The assets were sold by way of public auction, by tender, by way of negotiated sale agreement or pursuant to Court Order (for example, the Orders dated February 20, 2003 (Receiver's Application sub-file 7:19 for Court Approval of a proposed method for disposition of certain assets) and March 12, 2003 (Receiver's Application sub-file 7:52 for direction from the Court with respect to the sale of certain units of the Hickman Equipment inventory). The results of the sale of the assets, however effected, have been detailed in the regular reports to Court prepared and filed by PWC.

Receiver's Application, Sub-file 7:19, Book of Orders & Related Materials [Tab 14]

Receiver's Application, Sub-file 7:52, Book of Orders & Related Materials [Tab 15]

#### **Implementation of the Cost Allocation Plan**

14. Since the granting of the Receivership Order and disposition of the assets of Hickman Equipment, many of the secured creditors of Hickman Equipment have brought Interlocutory Applications for payment to them of proceeds arising from the sale by PWC of assets secured by them.
15. In order to allow for the expeditious completion of such applications for proceeds, PWC developed a practice, accepted by the various applicant secured creditors and by the Court, of agreeing to payment of proceeds, as Ordered by the Court, but retaining a holdback of 15% of the proceeds as a contribution to the Cost Allocation Plan. This was done under the understanding that the matter of the allocation of costs would be revisited upon the completion of the realization process.
16. Some of the secured creditors have made requests for special consideration or exception in terms of their proportionate share of cost allocation. These include:

- National Leasing (sub-file 7:44);
- Caterpillar Financial Services Limited (sub-file 7:29); and
- GMAC (sub-files 7:58, 7:33, 7:35).

National Leasing, Sub-file 7:44, Book of Orders & Related Materials [Tab 16]

Caterpillar Financial Services Limited, Sub-file 7:29, Book of Orders & Related Materials [Tab 8]

GMAC, Sub-files 7:58, 7:33, 7:35, Book of Orders & Related Materials [Tabs 17-19]

17. By Court Order, two matters have already been given special consideration in terms of cost allocation, and have paid less than 15%:

- The claim of John Deere for the return of consigned goods located in the United States of America (sub-file 7:03); and

John Deere, Sub-file 7:03, Book of Orders & Related Materials [Tab 7]

- The claim of Gillis Truckways Inc. relating to "30 day goods" (sub-file 7:09).

Gillis Truckways Inc, Sub-file 7:09, Book of Orders & Related Materials [Tab 8]

18. PWC also anticipates that the cost allocation with respect to the Receiver's potential action against the auditors of Hickman Equipment (as is more particularly described herein) may also warrant special consideration. At the present time, PWC is in the process of preparing a recommendation to this Honourable Court with respect to whether or not to proceed with an action against the auditors of Hickman Equipment (sub-file 7:59). Should this Honourable Court direct that such an action proceed, PWC submits that the costs associated therewith may need to be allocated differently than the overall cost allocation scheme. It is also likely that a different funding mechanism will be required as the ongoing cost of an action, if one is taken, will be substantial and the current amount held back will not adequately fund the likely cost of the litigation, if it is actually pursued.

**Receiver's Application for Leave to Issue Statement of Claim, Sub-file 7:59, Book of Orders & Related Materials [Tab 20]**

**Implementation of the Investigation Plan (Phase One)**

19. In accordance with the Investigation Plan (Phase One), PWC commenced its investigations and analyses of a forensic nature to assist in the identification of any potential issues and disputes to be addressed by the Court and the creditors.
20. PWC implemented phase one of the Investigation Plan, starting with the seizure of the books and records of Hickman Equipment.
21. Having completed phase one of the investigation, on or about August 14, 2002, PWC prepared and filed with this Honourable Court a report of the findings of Phase One of its investigation.

Deemed confidential - Provided to the Court in August, 2002.

**Other Work & Final Tasks**

22. In addition to the implementation of the above-noted Court-approved plans, the work of PWC has included several other tasks of a more general or administrative nature. These have included, but are not limited to:



- (a) Development of the Hickman Equipment website where PWC and creditors could post and share documentation and information relating to the Receivership;
- (b) Court reporting on a regular basis;
- (c) Completion of various statutory duties such as the completion of filings and returns; and
- (d) Various meetings with creditors and responding to the requests of creditors.

23. On 27 February, 2003, by an Interlocutory Application (Inter Partes), PWC sought directions from this Honourable Court with respect to further tasks to be undertaken, if any (sub-file 7:52).

**Receiver's Application, Sub-file 7:52, Book of Orders & Related Materials [Tab 21]**

24. As well, in order to obtain a clear understanding of what tasks were and were not within the mandate of PWC, it brought an Interlocutory Application (Inter Partes) for Court approval of the Receiver's Plan for the final tasks of the mandate of the Court-Appointed receiver (sub-file 7:57). By an Order dated June 25<sup>th</sup>, 2003 and filed August 3, 2003, this Court confirmed that, without court approval, PWC would carry out only those tasks listed in the schedule to the Order.

**Receiver's Application, Sub-file 7:57, Book of Orders & Related Materials [Tab 22]**

25. Also on-going by PWC is the work associated with the potential court action against the auditors of Hickman Equipment (as mandated by Court Order, sub-files 7:52, 7:56, 7:57 and 7:59). The status of this work has been reported on in the routine Court reports filed by the Receiver.

Receiver's Application, Sub-file 7:59, Book of Orders & Related Materials [Tab 20]

Receiver's Application, Sub-file 7:52, Book of Orders & Related Materials [Tab 21]

Receiver's Application, Sub-file 7:57, Book of Orders & Related Materials [Tab 22]

Receiver's Application, Sub-file 7:56, Book of Orders & Related Materials [Tab 23]

26. PWC states that should this Honourable Court order it to proceed with an action against the auditors of Hickman Equipment, then PWC shall, at that time, seek the directions from this Honourable Court as to how such an action shall be funded. As such, the Proposal for cost allocation attached hereto as Schedule "A" does not factor in the funding of such an action.

### **This Present Application**

27. Now that much of the Applicant's work with respect to the Receivership of Hickman Equipment has been finalized, and in accordance with the provisions of the Cost Allocation Plan, PWC must bring forth a proposal for the equitable distribution of the costs related to the Receivership.

28. The Applicant's Proposal is attached hereto as Schedule "A" to the within Application.
29. As indicated therein, PWC recognizes that unlike the claims of the other creditors, the circumstances of National Leasing Group Inc. (sub-file 7:44) and the GMAC sub-files (7:58, 7:33 and 7:35), PWC was not required to do as much work with respect to realization as compared to what was required for the other assets of the receivership. To account for this in as equitable a manner as possible, the proposal allows a 15% reduction on the overall contribution to costs from these two creditors.
30. PWC believes that 15% is a reasonable reduction to account for the fact that was not required to do as much work with respect to realization as compared to what was required for the other assets of the receivership, since, as of April 2003, when most of the assets had been liquidated, realization costs accounted for approximately 15% of the overall costs of the receivership. In June of 2003 an Order was granted that circumscribed the work of PWC except as set out in that Order (sub-file 7:57, Tab 22 of the Book of Orders and Related Materials) after which time all realization work was done for the general body of creditors or would be specifically charged to a creditor who was to benefit from the work. This is more particularly described in Exhibit 1 to the Affidavit of James A. Kirby, filed in support of this Application.

31. Therefore, in accordance with the Cost Allocation Plan, the Applicant applies to this Honourable Court for an Order approving its proposal for Cost Allocation with respect to the Receivership of Hickman Equipment.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 17<sup>th</sup> day of March, 2004.

  
PATTERSON PALMER  
Solicitors for the Court Appointed Receiver  
PricewaterhouseCoopers Inc.  
whose address for service is:  
Suite 1000, 235 Water Street  
P.O. Box 610  
St. John's, NL A1C 5L3

For: **Attention: Frederick J. Constantine**

To: Hickman Equipment (1985) Ltd. Distribution List

## **SCHEDULE "A"**

Receiver's Proposal for the Allocation of the Costs associated with the Receivership of Hickman Equipment (up to and including the date of this Application)

### **National Leasing Group Inc. (sub-file 7:44)**

1. The Receiver was not required to do as much work with respect to realization for the asset claimed by National Leasing in its Application (sub-file 7:44) as compared to the work required for the other assets of the receivership. As such, it shall be entitled to a 15% reduction on its overall prorated contribution to cost allocation as follows:

Holdback as Ordered (7:44) - \$10,530.00

15% of Holdback = \$1579.50.

Total to be paid by National Leasing = \$8950.50 (\$10,530 - \$1579.50)

### **GMAC/ GMAC Leaseco (sub-files 7:58, 7:33 and 7:35)**

2. The Receiver was not required to do as much work with respect to realization for the assets claimed by GMAC/ GMAC Leaseco in 3 Applications (sub-files 7:58, 7:33 and 7:35) as compared to the work required for the other assets of the receivership. As such, it shall be entitled to a 15% reduction on its overall prorated contribution to cost allocation as follows:

#### **7:58**

Holdback as Ordered (7:58) - \$42,066.58

15% of Holdback = \$6309.99

Total to be paid by GMAC = \$35,756.59 (\$42,066.58 - \$6309.99)

**7:33**

By Order of the Court, proceeds were paid to McInnes Cooper in Trust for the benefit of GMAC and CIBC.

Holdback as Ordered (7:33) - \$8,122.50

15% of Holdback = \$1218.38.

Total to be paid = \$6904.12 (\$8,122.50 - \$1218.38)

**7:35**

By Order of the Court, proceeds were paid to McInnes Cooper in Trust for the benefit of GMAC and CIBC.

Holdback as Ordered (7:38) - \$3,720.00

15% of Holdback = \$558.00.

Total to be paid = \$3162.00 (\$3,720 - \$558)

3. Other than the two exceptions set out in one and two above, all creditors shall be subject to a payment of 15% of the overall proceeds to which they would otherwise be entitled, as their contribution to the overall costs associated with the Receivership.

## Schedule "A"

### Parties who have been Served

ABN Amro Bank Canada/ ABN Amro Leasing & Tramac Equipment Ltd.	Aubrey L. Bonnell, Q.C./ David Timms Brent Keenan	722-7521  905-331-2020
Bombardier Capital Leasing & Culease Financial Services	John French	754-2701
Caterpillar Equipment	Colin D. Grant	905-849-5512
CAT Finance	James Smyth, Q.C./ Philip Warren	754-5662
Cedarrapids	Nathan Mixdorf/ Francoise Belzil	319-399-4760 780-413-3152
CIBC	R. Wayne Myles/ Geoffrey Spencer	579-2647
CIBC Equipment Finance Ltd. /CIT Financial Ltd./	Gregory W. Dickie	722-9210
Contract Funding Group Inc.	Mark G. Klar/ Vern Da Rae	416-218-1831
Daimler Chrysler Financial Services/ Daimler Chrysler Capital Services/ Mercedes- Benz of Canada Inc.	Philip Buckingham	722-4720  416-863-3527
Fabtek Corp.	Linc A. Rogers Rhodie E. Mercer, Q.C.	416-863-2653 726-5705
GE Capital	Harvey Chaiton Frederic Scalabrini	416-218-1849 905-319-4855
GMAC	Thomas R. Kendell, Q.C.	722-1763
Group Holdings Ltd./ Hickman Equipment/ Hickman Holdings Ltd.	Robert Stack/ Griffith D. Roberts	726-2992
Ingersoll-Rand Canada Inc.	R. Barry Learmonth, Q.C.	739-8151

	Jonathan Wigley	416-863-6275
John Deere Ltd./ John Deere Credit Inc.	Neil L. Jacobs / Bruce Grant/ Maureen Ryan	722-4565
MTC Leasing Inc./ National Leasing Group Inc.	R. Paul Burgess	754-0915
ORIX Financial Services Canada Ltd.	Donald Yaeck	416-236-3010
Goodman Associates	Paul G. Goodman	902-425-3777
Royal Bank of Canada	Thomas O. Boyne, Q.C.	902-463-7500
TD Asset Finance Corp.	D. Bradford L. Wicks	753-5221
United Rentals	Robert Frank/ Jim Walsh	416- 360-8277
Wells Fargo Equipment Finance Co.	Neil L. Jacobs / Bruce Grant/ Maureen Ryan	722-4565
Deloitte & Touche LLP	JL McDougall/ Brian Leonard	416-863-4592



**Schedule "B"**  
**Parties who have been heard**

Frederick J. Constantine Counsel for PricewaterhouseCoopers Inc., Court  
appointed Receiver

**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.L. 1990, c. J-4, as amended.

**AND IN THE MATTER OF** the *Bankruptcy and*  
*Insolvency Act*, Chapter B-3 of the R.S.C., 1985, as amended.

**NOTICE**

You are hereby notified that the foregoing application will be made to the Judge presiding in Chambers at the Court House at St. John's, Newfoundland and Labrador on March 29 and 30<sup>th</sup>, 2004, at 10:00 a.m. or so soon thereafter as the application can be heard.

TO: See attached distribution list.

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person	PricewaterhouseCoopers Inc., Court - Appointed Receiver.
Date of Document:	March, 2004.
Summary of Order/Relief Sought or statement of purpose in filing:	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 to the date of this Application.
Court Sub-File Number:	8:

2002 01T 0352

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR**

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**AND IN THE MATTER OF** the *Bankruptcy and  
Insolvency Act*, Chapter B-3 of the R.S.C., 1985, as amended.

**ORDER ON INTERLOCUTORY APPLICATION (INTER PARTES)**

OF PRICEWATERHOUSECOOPERS INC. AS RECEIVER OF HICKMAN  
EQUIPMENT(1985) LIMITED ("HICKMAN EQUIPMENT")

**BEFORE THE HONOURABLE M** \_\_\_\_\_ **Justice** \_\_\_\_\_

**WHEREAS** this matter having come on for hearing on the 29<sup>th</sup> and 30<sup>th</sup> of March 2004;

**AND WHEREAS** the parties listed in Schedule "A" to this Order having been served with notice of this application in the manner ordered by this Court on March 28, 2002;

**AND WHEREAS** the parties listed in Schedule "B" to this Order having appeared and having been heard;

**AND UPON** reading the Affidavit of James Kirby, C.A., CIRP, Senior Vice President of PricewaterhouseCoopers Inc., St. John's, Newfoundland and Labrador, dated 17 March, 2004 (the "Kirby Affidavit");

**IT IS THIS DAY ORDERED AS FOLLOWS:**

1. The Receiver's proposal for cost distributed, attached hereto, is hereby approved.

**DATED** at St. John's, in the Province of Newfoundland and Labrador this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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**REGISTRAR**

SUMMARY OF CURRENT DOCUMENT	
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Court Sub-File Number:	7: 61

**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.L. 1990, c. J-4, as amended.

**AND IN THE MATTER OF** the *Bankruptcy and Insolvency Act*, Chapter B-3 of the R.S.C., 1985, as amended.

**AFFIDAVIT**

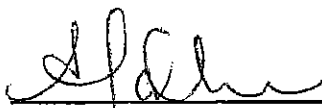
I, James A. Kirby, C.A., CIRP, Senior Vice-President of PricewaterhouseCoopers Inc. of St. John's, in the Province of Newfoundland and Labrador say as follows:

1. I have personal knowledge of the matters herein deposed or, where indicated, I have had advice from various members of the staff of my offices, former staff of Hickman Equipment as well as people employed by third parties who have direct and indirect knowledge of matters related to the subject receivership. When relying upon the advice of others, I have determined and verily believe the advice used in compiling this affidavit is true.

2. Attached as Exhibit "1" to this my Affidavit is a spreadsheet providing a breakdown of the total costs of the Receivership as of April 2003, which were subsequently approved by the Court (sub-file 7:53).
3. As indicated in the spreadsheet, as of April 2003, the costs associated with realization amount to approximately 15% of the overall costs of the receivership.
4. As is more particularly described in the Application for which this Affidavit is sworn, subsequent to April 2003, the realization tasks undertaken by the Receiver were not specific to any one creditor but were tasks for the overall benefit of the Receivership as mandated by the Court.
5. As is more particularly described in the Application for which this affidavit is sworn, three of the creditors have sought special consideration with respect to cost allocation. These are: National Leasing (sub-file 7:44) GMAC. GMAC Leaseco (sub-files 7:58, 7:33 and 7:35) and Caterpillar Financial Services Limited (sub-file 7:29). Having reviewed each of these claims and having considered the amount of work undertaken with respect to realization for each of these three claimants, my offices have concluded that the claims of National Leasing (sub-file 7:44) and GMAC/ GMAC Leaseco (sub-files 7:58, 7:33 and 7:35) are entitled to special consideration with respect to cost allocation as set out in the Schedule to the Application. Such special consideration is warranted since the Receiver was not required to realize upon the assets associated with these claims.
6. In contrast, my offices have concluded that the claim of Caterpillar Financial Services Limited (sub-file 7:29) is not so different from the individual claims of the overall body of creditors as to warrant special consideration with respect to cost allocation.

7. I have reviewed the Application for which this affidavit is sworn along with the Schedule attached thereto and the information contained therein is true to the best of my knowledge, information and belief.

**SWORN TO** at St. John's, in the  
Province of Newfoundland and  
Labrador this 17<sup>th</sup> day of  
March 2004 before me:

  
\_\_\_\_\_  
A Benister.

  
\_\_\_\_\_  
JAMES A. KIRBY

Receiver's and Legal Fees as Taxed to April 2003

Month	Total	Receiver'ship General	Receiver'ship Realization	Receiver'ship Claims	Bankruptcy	Investigation	Disbursements
Total PwC as Taxed April 2003	\$ 1,318,332	\$ 746,619	\$ 278,645	\$ 68,139	\$ -	\$ 175,000	\$ 49,930
Total Legal taxed to April 2003	\$ 838,505	\$ 542,297	\$ 38,987	\$ 227,517	\$ -	\$ 7,941	\$ 21,764
Total PwC and Legal taxes to April 2003	\$ 2,156,837	\$ 1,288,916	\$ 317,631	\$ 295,656	\$ -	\$ 182,941	\$ 71,694
% of total	100%	60%	15%	14%	0%	8%	3%

Note: Distribution of legal shown for January 2003 is distribution of total from March 2002 to January 2003 as taxed at court

THIS IS EXHIBIT "1" TO  
THE AFFIDAVIT OF  
JAMES A. Kirby  
Sworn before me  
This 17<sup>th</sup> day of MARCH  
2004  
[Signature]  
A. Bonister