

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person	11422 Newfoundland Limited
Date of Document	August , 2007
Summary of Order/Relief Sought or statement of purpose in filing:	Application of 11422 Newfoundland Limited for a general order lifting the stay on the proceeds of all assets of Hickman Equipment and for the payment to 11422 Newfoundland Limited of proceeds in the possession of the Receiver from the sale of various assets of Hickman Equipment
Court Sub-File Number:	7:

2002 01T 0352

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN THE MATTER OF the Companies' Creditors Arrangement Act, Chapter C-36 of the Revised Statutes of Canada, 1985, as Amended

AND IN THE MATTER OF the plan of compromise or Arrangement of Hickman Equipment (1985) Limited ("Hickman Equipment")

AND IN THE MATTER OF 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 (the "BIA")

AND

District of Newfoundland
Court No. 9733
Estate No. 100813

**INTERLOCUTORY APPLICATION
(INTER PARTES)**

This is an application by 11422 Newfoundland Limited (the "Applicant") seeking an Order of this Honourable Court (a) directing the payment to the Applicant of proceeds in the possession of the Receiver from the sale of certain assets of Hickman Equipment and (b) lifting the stay of proceedings so as to permit the Applicant to enforce, at its discretion, its security over certain of the residual assets of Hickman Equipment. The Application states as follows:

1. By Order of this Honourable Court granted on March 13, 2002 and filed with this Honourable Court on March 14, 2002, it was ordered that PricewaterhouseCoopers Inc. be appointed Receiver of Hickman Equipment (the "Receiver").
2. By a Receiving Order (the "Receiving Order") made on March 13, 2002 pursuant to the provisions of the BIA and filed with the Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency on March 14, 2002, Hickman Equipment was adjudged bankrupt and PricewaterhouseCoopers Inc. was appointed Trustee of the Estate of the bankrupt in bankruptcy.
3. Canadian Imperial Bank of Commerce ("CIBC"), a secured creditor of Hickman Equipment, holds first position security over those assets of Hickman Equipment not specifically charged in favour of any other creditor pursuant to the following security:
 - (a) General Assignment of Accounts, etc.;
 - (b) Debenture; and
 - (c) General Security Agreement;all as described in more detail below.
4. Pursuant to a Final Determination Report filed by the Receiver dated December 3, 2002 (the "CIBC Final Determination"), CIBC was determined to have a total claim against the estate of Hickman Equipment in the amount of \$15,269,395.00, together with interest and costs (the "Total Debt Allowed").

General Assignment of Accounts, Etc.

5. The Receiver, in the CIBC Final Determination, allowed CIBC's claim to a security interest in the assets of Hickman Equipment based on, *inter alia*, a General Assignment of Accounts, etc. (the "GABD") dated January 4, 1985, as security for the Total Debt Allowed. The GABD was registered at the Assignment of Book Debts Registry on January 16, 1985 as registration no. 16040 and continued under the *Personal Property Security Act* (Newfoundland and Labrador) on June 29, 2001 as registration no. 1063565.
6. Pursuant to the GABD, Hickman Equipment assigned and transferred to CIBC, *inter alia*:

... all debts, accounts, claims, moneys, and choses in action which now are or which may at any time hereinafter be due or owing to or owned by the undersigned, and also all securities, bills, notes and other documents now held or owned or which may be hereafter taken, held or owned by the undersigned or anyone on behalf of the undersigned in respect of the said debts, accounts, claims, moneys, and choses in action or any part thereof, and also all books and papers recording, evidencing or relating to said debts, accounts, claims, moneys and choses in action or any part thereof.
7. The Receiver's decision with respect to the GABD was not appealed.

Debenture

8. The Receiver, in the CIBC Final Determination, also allowed CIBC's claim to a security interest in the assets of Hickman Equipment based on, *inter alia*, a Floating Charge Debenture in the amount of \$3,000,000 dated January 7, 1985 and registered at the Newfoundland and Labrador Registry of Deeds (the "Registry of Deeds") at Roll 77, Frame 70, supplemented and confirmed by supplemental debentures which ultimately increased the principal amount of the Debenture to \$20,000,000.00 (collectively, the "Debenture").
9. Pursuant to the Debenture, Hickman Equipment assigned and transferred to CIBC, *inter alia*:

... all its undertaking, property and assets, both present and future, of every nature and kind and wherever situate (other than such as are at all times validly subjected to the first fixed and specific mortgage and charge hereby created) including, without limitation, its franchises and uncalled capital.

10. The Receiver, in the CIBC Final Determination, allowed CIBC's claim to a security interest in the assets of Hickman Equipment based on, *inter alia*, the Debenture but held that the Debenture was subordinated to "Permitted Encumbrances" including unperfected holders of purchase money security interests. Pursuant to the Claims Plan approved by an Order of the Honourable Mr. Justice Hall dated May 14, 2002 (the "Claims Plan"), the validity and priority of the Debenture was ultimately the subject of an appeal to the Newfoundland and Labrador Court of Appeal. The Court of Appeal held that the Debenture was valid and enforceable, subordinate to, *inter alia*, purchase money security liens held by creditors over specific assets of Hickman Equipment.

General Security Agreement

11. Hickman Equipment granted to CIBC a General Security Agreement (the "GSA") dated January 25, 2000, as security for the Total Debt Allowed. The GSA was registered at the Newfoundland and Labrador Personal Property Registry on January 28, 2000 as Registration No. 78490.
12. Pursuant to the GSA, Hickman Equipment assigned and transferred to CIBC, *inter alia*:

All Personal Property: all of the Customer's present and after-acquired undertaking and Personal Property (including any property that may be described in Schedule A).
13. The Receiver, in the CIBC Final Determination, disallowed CIBC's claim to a security interest in the assets of Hickman Equipment based on, *inter alia*, the GSA. Pursuant to the Claims Plan, the validity and priority of the GSA was ultimately the subject of an appeal to the Newfoundland and Labrador Court of Appeal. The Court of Appeal held that the GSA was valid and enforceable, subordinate to purchase money security interests over specific assets of Hickman Equipment ("PMSIs") perfected in accordance with the

provisions of the *Personal Property Security Act* (Newfoundland and Labrador) applicable to PMSIs.

Liquidation of Hickman Equipment Assets

14. Pursuant to an Order of this Honourable Court granted on May 14, 2002, the Receiver commenced and completed the liquidation of substantially all of the assets of Hickman Equipment.
15. By an agreement dated January 14, 2005, made between CIBC and the Applicant (the "Assignment"), CIBC assigned unto the Applicant, *inter alia*, all its right, title and interest in the Total Debt Allowed, together with the security interests held by CIBC in connection therewith, including but not limited to the GABD, the Debenture and the GSA.
16. To date, CIBC or the Applicant, as assignee, has received monies from the Receiver with respect to the assets of Hickman Equipment, as follows:

	Date	Gross Amount	Deduction for Cost Allocation	Distribution to Creditor
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
11422 Newfoundland Limited				

	12/13/2005	1,053,750	(158,063)	895,688
	12/13/2005	1,053,750	(158,063)	895,688
	4/13/2006	44,500	(6,675)	37,825
	4/13/2006	409,145	(61,372)	347,773
	4/13/2006	72,186	(10,828)	61,358
	4/26/2006	506,125	(75,919)	430,206
	5/12/2006	407,257	(61,089)	346,169
	9/20/2006	950,000	(142,500)	807,500
	10/23/2006	566,163	(84,924)	481,239
	3/14/2007	62,000	(9,300)	52,700
			Total	\$7,777,696

17. The present indebtedness of Hickman Equipment to the Applicant, which is the Total Debt Allowed, plus interest and costs, minus recoveries by CIBC and the Applicant to date, is in excess of \$11,000,000.00.

18. According to Schedule "B" of the Twenty-Ninth Report of the Receiver dated May 23, 2007, "Schedule of Assets with Gross Proceeds Remaining for Distribution" the Receiver continues to hold the sum of \$3,735,734 in the form of or coming from the disposition of a number of the assets of Hickman Equipment. The Applicant, as assignee of CIBC, holds priority over the following of such assets and proceeds totaling \$2,085,134.00 (collectively, the "CIBC Assets"):

<u>Asset</u>	<u>Serial Number</u>	<u>Proceeds</u>
I/R XP825 Compressor	172821	\$9,656.00
CAT 320B Excavator	06CR04706	\$135,000.00
CAT 320B Excavator	06CR05244	\$140,000.00
CAT 320B Excavator	06CR05245	\$135,000.00
CAT D8N Dozer	5TJ02858	\$165,149.00
Terex Articulated Truck	74TDC7364	\$800.00

CAT 320B Excavator/Harvester	9SJ000289	\$67,500.00
Timbco T425B Harvester	AT4C761111995	\$24,000.00
I/R ECM370 Hydraulic Drill	C9569AR	\$13,000.00
Timberjack 1110B Forwarder	10DH1027	\$190,000.00
John Deere 690E Excavator/ Harvester	DW690EL565134	\$30,000.00
John Deere 200LC Excavator	FF0200X051172	\$199,500.00
John Deere 200LC Excavator	FF0200X500457	\$115,000.00
John Deere 200LC Excavator	FF0200X500917	\$103,500.00
John Deere 330LC Excavator	FF0330X080078	\$133,000.00
John Deere 790E Excavator	FF790EL010023	\$39,000.00
FF992EX007040	John Deere 992E Excavator	\$100,000.00
Accounts Receivable	PWC AR	\$1,561.00
Buckets/other items not on master list	PWC auction2	\$143,250.00
Redemption of Share – Credit Bureau	PWC CB	\$3,833.00
Buckets/setup JD machines purchased by JD	PWC JDattachmt	\$60,000.00
Steel Cargo Containers	PWC Misc 1	\$3,500.00
Office Equipment	PWC Office	\$2,315.00
Used Parts Parts – sold to Ontrac	PWC Parts4	\$20,000.00
Used Parts – electric motors & power units	PWC Parts5	\$13,500.00
I/R EXM350 Air Track	R10031	\$12,070.00
John Deere 750C Dozer	T0750CX882592	\$125,000.00
John Deere 850C Dozer	T0850CX848745	\$100,000.00
	Total	\$2,085,134.00

19. Priority to proceeds from the remaining assets listed in Schedule "B" of the Twenty-Ninth Report of the Receiver dated May 23, 2007, being proceeds from the sale of 10 items of heavy equipment in respect of which it is asserted by the claimant that some form of subordination agreement or waiver letter was provided by CIBC, remains at issue (the "Contested Proceeds"). The Contested Proceeds are the subject matter of applications in the within proceeding bearing sub-file nos. 7:39 and 7:40.

Concurrent Activities

20. By Order of this Honourable Court dated June 25, 2003, the Honourable Justice Robert Hall lifted the stay of proceedings as imposed by the Receivership Order of March 13, 2002 (the "Stay") so as to permit CIBC, at its discretion, to enforce its security for recovery of bonuses, commissions or other payments as set forth in the Interlocutory Application filed by the Receiver in relation thereto. The Order further granted leave to CIBC to apply for further lifting of the stay in relation to enforcement of its security upon notice of such an Application being given to all Interested Parties. This right to enforce its security is now the right of the Applicant by virtue of the Assignment.
21. By Statement of Claim issued out of the Newfoundland and Labrador Supreme Court, Trial Division on March 9, 2006, Court No. 2006 01T 1258, 11422 Newfoundland Limited, as Plaintiff, commenced an action against Gary W. Hillyard, as Defendant, in relation to certain bonuses and commissions received by the Defendant as an employee of Hickman Equipment. This action is currently ongoing.
22. By Statement of Claim issued out of the Newfoundland and Labrador Supreme Court, Trial Division, on March 9, 2006, Court No. 2006 01T 1257, 11422 Newfoundland Limited, as Plaintiff, commenced an action against William Eric Parsons, as Defendant, in relation to certain bonuses and commissions received by the Defendant as an employee of Hickman Equipment. This action is currently ongoing.
23. By Interlocutory Application issued out of this Honourable Court on December 17, 2003, the Receiver sought leave to file a Statement of Claim against Deloitte & Touche LLP and Deloitte & Touche. By Order of this Honourable Court dated December 22, 2003, the Honourable Mr. Justice Leo Barry granted the Receiver leave to file the Statement of Claim as requested, however ordering that a further order of the Court would be required prior to proceeding to serve the Statement of Claim.

24. The Receiver caused to be issued out of this Honourable Court a Statement of Claim dated December 24, 2003 against Deloitte & Touche, and Deloitte & Touche LLP as Defendants (the "Deloitte Action"). By Order of this Honourable Court dated September 19, 2005, leave was granted to serve the Statement of Claim by October 21, 2005, on the agreement of the Applicant to be responsible for the Receiver's fees and costs associated with such service. Deloitte was served with the Statement of Claim on or about October 6, 2005. Any further step by the Receiver in the Deloitte Action is subject to further directions from this Honourable Court.
25. Other than with respect to the Contested Proceeds, the Applicant now has uncontested priority over any remaining assets of Hickman Equipment. With the possible exception of the Deloitte Action, any recoveries from such remaining assets would be well below the balance of the Total Debt Allowed remaining owing to the Applicant.
26. The Applicant therefore submits that it would be cost effective for all parties having an interest in the Hickman Equipment estate that the Stay be lifted so that the Applicant may realize upon its security over the assets of Hickman Equipment, other than the Deloitte Action and the Contested Proceeds, without having to engage the Receiver in the enforcement of such security other than as may be necessary and, in such instances, at the cost of the Applicant.

Order Sought

27. The Applicant repeats the foregoing and applies to this Honourable Court for an Order:
 - (a) that the Receiver pay to 11422 Newfoundland Limited the sum of \$1,772,363.90, being the proceeds of the CIBC Assets in the amount of \$2,085,134 less the 15% on account of costs pursuant to the Cost Allocation Plan approved by Order of this Honourable Court on May 14, 2002;

- (b) lifting the stay of proceedings as imposed by the Receivership Order of March 13, 2002, said stay having been amended from time to time, so as to permit 11422 Newfoundland Limited, at its discretion, to enforce its security for realization of the Residual Assets other than the Deloitte Action and the Contested Proceeds;
- (c) that at its discretion, 11422 Newfoundland Limited may engage the Receiver to assist in its enforcement of its security on such terms as are acceptable to the Receiver;
- (d) that any expenses incurred by 11422 Newfoundland Limited in relation to the enforcement of the 11422 Newfoundland Limited security in relation to the matters set out in paragraph (b) of this Order, including any assistance provided by the Receiver in respect thereof, shall be the responsibility of 11422 Newfoundland Limited and not of the Estate of Hickman Equipment.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 24th day of August, 2007.



Robert P. Stack
Cox & Palmer
Solicitors for 11422 Newfoundland Limited
whose address for service is:
Suite 1000, Scotia Centre
235 Water Street, St. John's, NL
A1C 1B6

To:

ABN Amro Bank Canada/ ABN Amro Leasing & Tramac Equipment Ltd.	Aubrey L. Bonnell, Q.C./ Amy Crosbie 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	416-218-1831
Daimler Chrysler Financial Services/Daimler Chrysler Capital Services/Mercedes- Benz of Canada Inc.	Philip Buckingham/ Peter O'Flaherty Elaine Gray	722-4720 416-863-3527
Fabtek Corp.	Linc A. Rogers Rhodie E. Mercer, Q.C.	416-863-2653 726-5705
GE Capital	Harvey Chatton Frederic Scalabrini	416-218-1849 905-319-4855
GMAC	Thomas R. Kendall, Q.C.	722-1763
Ingersoll-Rand Canada Inc.	R. Barry Learmonth, Q.C. Jonathan Wigley	739-8151 416-863-6275
John Deere Ltd./ John Deere Credit Inc.	Neil L. Jacobs/ Bruce Grant/Maureen Ryan	722-4565
MTC Leasing Inc./	R. Paul Burgess	754-0915

National Leasing Group Inc.

ORIX Financial Services Canada Ltd.	Donald Yaeck	416-236-3010
Goodman Associates	Paul G. Goodman	902-425-3777
PricewaterhouseCoopers Inc.	Carl Holm	902-429-8215
Royal Bank of Canada	Thomas O. Boyne, Q.C.	902-463-7500
TD Asset Finance Corp.	D. Bradford L. Wicks	753-5221
Wells Fargo Equipment Finance Co.	Richard B. Jones	416-361-6303

ISSUED AT St. John's, Newfoundland and Labrador, this 11th day of September, 2007.

Agd R O'Keefe -
Court Officer

2002 01T 0352

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADeR

IN THE MATTER OF the Companies' Creditors Arrangement Act, Chapter C-36 of the Revised Statutes of Canada, 1985, as Amended

AND IN THE MATTER OF the plan of compromise or Arrangement of Hickman Equipment (1985) Limited ("Hickman Equipment")

AND IN THE MATTER OF 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 (the "BIA")

NOTICE

You are hereby notified that the foregoing Application will be made to the Judge presiding in Chambers at the Court House in St. John's, Newfoundland and Labrador, on *Friday*, the *28th* day of *September*, 2007, at *10 a.m.*, or so soon thereafter as the Application can be heard.

To:

ABN Amro Bank Canada/ ABN Amro Leasing & Tramac Equipment Ltd.	Aubrey L. Bonnell, Q.C./ Amy Crosbie 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/	319-399-4760

	Francoise Belzil	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	416-218-1831
Daimler Chrysler Financial Services/Daimler Chrysler Capital Services/Mercedes- Benz of Canada Inc.	Philip Buckingham/ Peter O'Flaherty Elaine Gray	722-4720 416-863-3527
Fabtek Corp.	Linc A. Rogers Rhodie E. Mercer, Q.C.	416-863-2653 726-5705
GE Capital	Harvey Chatton Frederic Scalabrini	416-218-1849 905-319-4855
GMAC	Thomas R. Kendall, Q.C.	722-1763
Ingersoll-Rand Canada Inc.	R. Barry Learmonth, Q.C. Jonathan Wigley	739-8151 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
PricewaterhouseCoopers Inc.	Carl Holm	902-429-8215
Royal Bank of Canada	Thomas O. Boyne, Q.C.	902-463-7500
TD Asset Finance Corp.	D. Bradford L. Wicks	753-5221
Wells Fargo Equipment Finance Co.	Richard B. Jones	416-361-6303

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person	11422 Newfoundland Limited
Date of Document	August , 2007
Summary of Order/Relief Sought or statement of purpose in filing:	Application of 11422 Newfoundland Limited for a general order lifting the stay on the proceeds of all assets of Hickman Equipment and for the payment to 11422 Newfoundland Limited of proceeds in the possession of the Receiver from the sale of various assets of Hickman Equipment
Court Sub-File Number:	7:

2002 01T 0352

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN THE MATTER OF the Companies' Creditors Arrangement Act, Chapter C-36 of the Revised Statutes of Canada, 1985, as Amended

AND IN THE MATTER OF the plan of compromise or Arrangement of Hickman Equipment (1985) Limited ("Hickman Equipment")

AND IN THE MATTER OF 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 (the "BIA")

AND

District of Newfoundland
Court No. 9733
Estate No. 100813

AFFIDAVIT

I, Albert E. Hickman, of the City of St. John's, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. I am a director of 11422 Newfoundland Limited, the Applicant herein, and as such have knowledge of the matters herein deposed.
2. I have read the within Application and that the facts contained therein are true to the best of my knowledge, information and belief.

SWORN TO at St. John's, in the
Province of Newfoundland and
Labrador, this 24th day of
2007, before me:


ALBERT E. HICKMAN