

# GOODLAND O'FLAHERTY

BARRISTERS & SOLICITORS

Philip J. Buckingham  
Direct Line: (709) 722-5600  
Email: philip@goodlandoflaherty.com

October 16, 2006

File No: 453

**Via Facsimile: 754-2701**

John French  
French, Nosworthy & Associates  
Suite 122, Elizabeth Towers  
100 Elizabeth Avenue  
St. John's, NL A1B 1S1

Dear Sir:

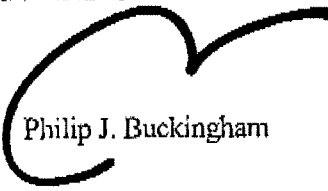
**Re: Hickman Equipment (1985) Limited  
LC Excavator: P00160X041361**

With respect to the above matter, please find enclosed an Affidavit of Mary Monardo, the original of which has been filed with the Supreme Court of Newfoundland and Labrador, Trial Division, on today's date.

Trusting this is satisfactory, I remain

Yours faithfully,

**GOODLAND O'FLAHERTY**



Philip J. Buckingham

PJB:tm  
C: Anna Locke  
C: Jim Kirby  
C: Thomas Kendall  
C: Geoffrey Spencer

SUMMARY OF CURRENT DOCUMENT													
Name of Issuing Party or Person	DaimlerChrysler Financial Services (debis) Canada Inc. (hereinafter "DCFS")												
Date of Document	October 2006												
Summary of Order/Relief Sought or Statement of Purpose in Filing	Application of DCFS for the payment to DCFS of the Proceeds from the sale by the Receiver of: <table border="1"> <thead> <tr> <th>Stock #</th> <th>Make</th> <th>Serial #</th> <th>Proceeds</th> </tr> </thead> <tbody> <tr> <td>160LC</td> <td>John Deere</td> <td>P00160X041361</td> <td>\$110,000</td> </tr> <tr> <td></td> <td></td> <td></td> <td><u>\$110,000</u></td> </tr> </tbody> </table>	Stock #	Make	Serial #	Proceeds	160LC	John Deere	P00160X041361	\$110,000				<u>\$110,000</u>
Stock #	Make	Serial #	Proceeds										
160LC	John Deere	P00160X041361	\$110,000										
			<u>\$110,000</u>										
Court Sub-File Number	7:40												

2002 01 T0352

## 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 Revised Statutes of Canada, 1985, as amended (the "BIA")

## AFFIDAVIT

I, Mary Monardo, of the City of Mississauga, in the Province of Ontario, make oath and say:

1. That I am an Operations Support Analyst for DaimlerChrysler Financial Services Canada Inc. formerly DaimlerChrysler Financial Services (debis) Canada Inc. ("DCFS"), a creditor of Hickman Equipment (1985) Limited ("Hickman Equipment") and as such have knowledge of the statements made in this affidavit.

2. This Affidavit is made in support of the Application by DCFS to receive payment of the proceeds from the sale by the Receiver of Hickman Equipment for the following unit:

<u>Model No.</u>	<u>Make</u>	<u>Serial No.</u>	<u>Proceeds</u>
160LC	John Deere	P00160X041361	\$110,000


(hereinafter referred to as the "DCFS Unit").


3. That on May 9<sup>th</sup>, 2000 DCFS by facsimile sent to Canadian Imperial Bank of Commerce did request that CIBC postpone and subordinate any interest CIBC may have against the assets of Hickman Equipment in relation to certain chattels and in particular that the CIBC security did not extend to the following unit:

<u>Model No.</u>	<u>Make</u>	<u>Serial No.</u>
160LC	John Deere	P00160X041361

4. That DCFS was informed by CIBC by facsimile transmission received by DCFS on May 11<sup>th</sup>, 2000 that any interest of CIBC in the DCFS unit was postponed and subordinated to the security interests of DCFS. A true copy of this request and acknowledgement is attached hereto as Exhibit "A".
5. That I have been further informed by Philip J. Buckingham of Goodland O'Flaherty that CIBC may claim an interest in the DCFS Unit in priority to DCFS.
6. I swear this affidavit in support for DCFS's claim for priority to the DCFS Unit pursuant to paragraph 21 of the Claims Plan and section 68 of the PPSA and for no other or improper purpose.

SWORN before me at the City of  
Mississauga, in the Province of Ontario,  
this 12<sup>th</sup> day of October, 2006

  
\_\_\_\_\_  
Mary Monardo

  
\_\_\_\_\_  
A Notary Public in and for  
the Province of Ontario


02/10/02 TUE 11:49 FAX 905 811 8307 MERCEDS-BENZ CREDIT CAN  
FILE No. 886 05/11 '00 14:26 10:00VUEK LEASE CLM? FAX: 613 226 8091 PAGE 1 @ 030  
MAY-11-2006 16:16 816832 789 576 8744 P. 01/02

**debis**  
Financial Services

May 9, 2006

This is Exhibit "A" to the Affidavit of  
Mary Monardo, sworn to before me  
this 12<sup>th</sup> day of October, 2006:

Canadian Imperial Bank of Commerce  
Atlantic Place  
P.O. Box 340  
Mount Pearl, Newfoundland  
A1C 5J9

  
A Notary Public

Attn: Barry Chalk

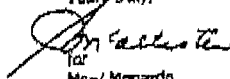
Dear Mr. Chalk:

**RE: Security over Assets of Hickman Equipment (1985) Limited**

A recent search under the Personal Property Registry reveals that you may have a security interest in the assets of Hickman Equipment (1985) Limited. Debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. ("debis") desires to finance the equipment described in Schedule "A" attached, so that Hickman Equipment (1985) Limited can operate or use this equipment in its business. Debis will finance this transaction, however, only if debis can be assured that it has a first ranked security position over this equipment and the proceeds thereof.

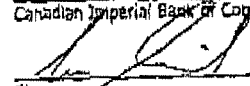
In order to ensure our priority we desire to receive from you your agreement that your various present and future security interests in the assets of Hickman Equipment (1985) Limited do not and will not operate as a perfected security interest as against debis in the equipment described at any particular time, and the proceeds thereof. To the extent that your security interests or agreements do nevertheless give you a security interest in these items, you agree that such interests and agreements are postponed to the security interest held by debis. Please acknowledge your agreement by signing below and on the attachment and returning a signed copy to us by fax and mail.

Yours truly,

  
for  
Mary Monardo  
Sales & Marketing Coordinator

Attachment

Canadian Imperial Bank of Commerce agrees with the foregoing.

 CLS Title May 11, 2006 Date

5781 Financial Drive, Suite 200  
Mississauga, Ontario L5M 2Z7  
Inc.

Phone (800) 903-3247  
(905) 813-4997  
(905) 903-2373

A Division of  
Mercedes-Benz Credit of Canada


02/18/02 TUE 13:50 FAX 905 821 8597 MERCEDES-BENZ CREDIT COA  
FILE NO. 900 00/11 00 14/27 MULTITEK LEASE CORP. HANOVER, MD 21076  
MAY-11-2000 16:10 918033 789 570 8744 P. 02/02

Schedule "A"

Attachment to a letter from Debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. To Canadian Imperial Bank of Commerce dated describing the vehicle.

Unit	Make/Model	Description	Serial Number
One (1) New	John Deere 50	Compactor Excavator	FF050ZK240118
Two (2) New	John Deere 250C	Articulated Truck Tractors	BE250CT200116 BE250CT200117
One (1) New	John Deere 150LC	Excavator	P00160XD41361
One (1) New	John Deere 310SE	Backhoe Loader	T0310SE857336

CANADIAN IMPERIAL BANK OF COMMERCE

  
Signature \_\_\_\_\_ TITLE CLS Date MAY 11 2001