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SUMMARY OF APPLICATION	
Name of Issuing Part of Person	Cedarapids, Inc.
Date of Document	6 February 2003
Summary of Order/Relief Sough or Statement of Purpose in Filing	Interlocutory Application of Cedarapids Inc ("Cedarapids") to the Application of Canadian Imperial Bank of Commerce ("CIBC") for the payment to CIBC of the Proceeds from the sale by the Receiver of: MVP 450 Rollercone (s/n R10162) C380 Plant (s/n 50104) 1328 Screening and Wash PLT (s/n 49395) JP 3042 Jaw Plant (s/n 50310) CR 461 Rubber Track Paver (s/n 51059) 6 x 20 Screen Plant (s/n 50340) 2236 Jaw Crusher (s/n 40842)
Court Sub-File Number	7:51 (AND RE. 7-48)

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 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")

INTERLOCUTORY APPLICATION (INTER PARTES)
OF CEDARAPIDS, INC.

The Interlocutory Application (Inter Partes) of Cedarapids, Inc. (the "Applicant") says as follows:

1. By order of the Honourable court 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") by appointed receiver (the "Receiver") of Hickman Equipment (the "Receivership Order").

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SUPREME COURT

- 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 on the 14th day of March, Hickman Equipment was adjudged bankrupt and PWC was appointed as trustee of the estate of the bankrupt (the "Trustee").
- 3. Pursuant to an Order of this Honourable Court dated the 14th day of May 2002, PWC commenced and completed the liquidation of substantially all of the assets of Hickman Equipment by auction including the following units:

MVP 450 Rollercone (s/n R10162)
 C380 Plant (s/n 50104)
 1328 Screening and Wash PLT (s/n 49395)
 ✓JP 3042 Jaw Plant (s/n 50310)
 CR 461 Rubber Track Paver (s/n 51059)
 6 x 20 Screen Plant (s/n 50340)
 2236 Jaw Crusher (s/n 40842)


for total proceeds of \$1,867,500.00

(hereinafter referred to as the Cedarapids Collateral).

- 4. That as of March 11th 2002 the Applicant was owed \$3,138,788.00 by Hickman Equipment (the "Indebtedness").
- 5. That the Applicant has a valid secured claim against the Cedarapids Collateral for the Indebtedness pursuant to a Domestic Distributors Agreement dated July 10, 2001 made between it and Hickman, registered under the *Personal Property Security Act* on January 24, 2002 as registration number 1565176.
- 6. That the Applicant filed a proof of claim in the bankruptcy of Hickman Equipment dated April 15, 2002. The Trustee wrote to the Applicant's solicitors, Sharek Reay LLP on December 11, 2002 enclosing the Trustee's Amended Final Determination (the "Final Determination") pursuant to which it determined that the Applicant's claim to the Cedarapids Collateral was a valid secured claim. The Trustee also confirmed that it claims no interest in the assets that are the subject of the claim.
- 7. That CIBC has a prior registered claim against the Cedarapids Collateral and that such claim is subordinate to that of the Applicant by virtue of a subordination clause in the Demand Debenture made between CIBC and Hickman dated January 7, 1985 and section 41 of the *Personal Property Security Act*.
- 8. CIBC applied on December 19, 2002 to this Honourable Court for an Order approving the payment to the CIBC by the Receiver of the proceeds from the sale of the Cedarapids Collateral.

9. Cedarapids hereby applies to this Honourable Court for an Order approving the payment to Cedarapids by the Receiver of the proceeds from the sale of the Cedarapids Collateral.
10. The Applicant has a prior ranking security interest in the Cedarapids Collateral. CIBC's claim is subordinate to that of the Applicant by virtue of a subordination clause in the debenture made between CIBC and Hickman dated January 7, 1985 and section 41 of the *Personal Property Security Act*.
11. The Applicant therefore objects to the Applicant brought by CIBC for an Order approving the payment to CIBC by the Receiver of the proceeds from the sale of the Cedarapids Collateral and asserts a prior entitlement to the proceeds from the sale of the Cedarapids Collateral.

DATED at Edmonton, in the Province of Alberta, the 6 day of February, 2003.



Françoise H. Belzil
Sharek Reay LLP
Solicitors for Cedarapids, Inc.
Whose address for service is:
701, 10060 Jasper Avenue
Edmonton, Alberta T5J 3R8, or in the
alternative,

R. Barry Learmonth, Q.C.
Learmonth, Dunne and Clarke
22 Church Hill, P.O. Box 700, Stn. C.
St. John's Newfoundland A1C 5L4

ISSUED at the City of St. John's, in the Province of Newfoundland and Labrador, this 7th day of February, 2003.



Clerk of the Court
Supreme Court of Newfoundland and Labrador

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
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")

NOTICE

You are hereby notified that the foregoing application will be made to the Judge presiding in chambers at the Court House, Duckworth Street, St. John's Newfoundland and Labrador on Tuesday, the 11th day of February, 2003 at 10:00 a.m. or so soon thereafter as the within application can be heard. (return date)

TO: See attached distribution list.

Distribution List Name: Hickman Distribution List

Members:

- Aubrey L. Bonnell, Q.C. abonnell@curtisdawe.nf.ca
- Bruce Grant bgrant@smss.com
- Carl Holm cholm@merrickholm.com
- D. Bradford L. Wloks bwicks@wmm.nf.net
- David Bugaresti BugarestiDavidR@JohnDeere.com
- David Timms david.timms@abnamro.com
- Elaine Gray elaine.gray@gowlings.com
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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 IN THE MATTER OF of the application of Cedarapids Inc.

AFFIDAVIT

I, R. Barry Learmonth, of St. John's, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. **THAT** I am a member of the law firm of Learmonth, Dunne & Clarke, agent of the solicitors for Cedarapids Inc..
2. **THAT** the contents of the attached Interlocutory Application (Inter Partes) are true to the best of my knowledge, information and belief.

SWORN to at St. John's, NL,
this 6 day of February, 2003,
before me:





SUSAN J. MANUEL, a Commissioner
of the Supreme Court and for the Province of
Newfoundland, No. 8442 My Commission
expires on 31st day of December A.D., 2008