

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person:	CIT Financial Limited
Date of Document:	January 14, 2003
Summary of Order/Relief Sought Or Statement of Purpose in Filing:	Interlocutory Application by CIT Financial Limited ("CIT") for payment to CIT of the proceeds from the sale by the Receiver of the equipment referenced in the Application
Court Sub-File Number:	7.33

2002 01 T No. 0352

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

IN THE MATTER OF

a Court ordered Receivership
of Hickman Equipment (1985) Limited
("HEL") 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*
R.S.C. 1985, C. B-3, as amended
(the "BIA")

INTERLOCUTORY APPLICATION (INTER PARTES)
OF CIT FINANCIAL LTD.


The Interlocutory Application (Inter Partes) of CIT says as follows:

1. By a Receiving Order dated March 13, 2002 and filed March 14, 2002 (the "Receiving Order") HEL was adjudged bankrupt and Pricewaterhouse Coopers Inc. ("PWC") was appointed Trustee in bankruptcy in accordance with the BIA.
2. By a Receivership Order dated March 13, 2002 and filed March 14, 2002 (the "Receivership Order") PWC was appointed receiver without security "... of all the property, assets, entitlements and undertakings (the "Assets") of Hickman Equipment wheresoever situate including without limitation all property assets

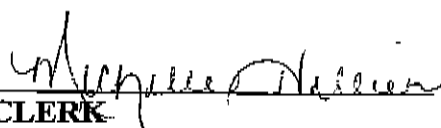
and undertaking comprised in the term "Property" as such term is defined in the Initial Order.

3. In light of the above, and by virtue of the Receiving Order, CIT filed a proof of claim in the Bankruptcy of HEL dated October 22, 2002.
4. In accordance with an Order of this Honourable Court dated May 14, 2002, PWC commenced and completed the liquidation of substantially all of the assets of HEL by auction.
5. As stated in the Final Determination (the "**Final Determination**") of CIT revised December 11, 2002 and posted on PWC's Internet Site for HEL, PWC has allowed, *inter alia*, the claims of CIT in respect of certain units, including, without limitation, the units listed at Schedule "A" to this Application (the "**CIT Units**"). PWC has in the Final Determination concluded that the debts in respect of the CIT Units are owing from HEL to CIT, value has been given by CIT to HEL in respect of the CIT Units, and CIT has a valid and perfected security interest in the CIT Units. CIT also has an unperfected purchase money security interest in the CIT Units. The total indebtedness secured by the CIT Units is \$9,889,878.00, as referenced in Paragraph 7 of the Final Determination.
6. CIT has been advised by PWC that PWC has received as proceeds of the liquidation of each of the CIT Units, the amounts set out in the 3rd column of the table at Schedule "A" to this Application (the "**Proceeds**").
7. CIT has a first ranking security interest in the CIT Units by virtue of the security and other documents referenced by PWC at paragraph 8 in the Final Determination.
8. CIT, therefore, applies to this Honourable Court for an Order approving the payment to CIT by the Receiver of the Proceeds.

DATED AT St. John's, in the Province of Newfoundland & Labrador, this *15th* day of January, 2003.


Gregory W. Dickie
White, Ottenheimer & Baker
Solicitors for CIT Financial Ltd.
whose address for service is:
Baine Johnston Centre
10 Fort William Place
P.O. Box 5457
St. John's, NL
A1C 5W4

ISSUED AT St. John's, in the Province of Newfoundland & Labrador this 15 day
of January, 2003.


CLERK

SCHEDULE "A"

Equipment Description	Serial Number	Auction Proceeds
2000 Terex Truck Model TA 35	A7761186	\$190,000.00
2000 Terex Truck Model TA 35	A7761187	\$190,000.00
2000 Terex Truck Model TA 35	A7761188	\$190,000.00
2000 Terex Truck Model TA 35	A7761195	\$190,000.00
2000 Terex Truck Model TA 35	A7761196	\$190,000.00
TOTAL PROCEEDS		\$950,000.00

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IN THE MATTER OF
a Court ordered Receivership
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("HEL") pursuant to Rule 25 of the
Rules of the Supreme Court, 1986
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AND IN THE MATTER OF
The *Bankruptcy and Insolvency Act*
R.S.C. 1985, C. B-3, 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 & Labrador on the 14 day of May, 2003 at 10:00 a.m. or so soon thereafter as the Application can be heard.

TO: See attached Distribution List hereto as Schedule "A"

SCHEDULE "A"

LIST OF PARTIES TO BE SERVED

ABM Amro Bank Canada/ ABN Amro Leasing & Tramac Equipment Ltd.	Aubrey L. Bonnell, Q.C./ Brian Winsor Terence J. Dolan/John Salmas abonnell@curtisdawe.nf.ca tdolan@mccarthy.ca	722-7521 416-868-0673
Bombardier Capital Leasing & Culease Financing Services	J. Vernon French, Q.C.	754-2701
Caterpillar Equipment	Colin D. Grant	905-849-1023
Cedar Rapids	Les Baumbach fbeizil@sharekreay.com	319-399-4760
CIBC	R. Wayne Myles gspencer@bensonmyles.com wmyles@bensonmyles.com	579-2647
CIBC Equipment Finance Ltd./CIT Financial Ltd./ Tyco Capital	Gregory W. Dickie gdickie@wob.nf.ca	722-9210
Contact Funding Group Inc.	Mark G. Klar Mark-k@chaiton.com	416-218-1831
Daimler Chrysler Financial Services/Daimler Chrysler Capital Services/Mercedes- Benz of Canada Inc.	Philip Buckingham/ Peter O'Flaherty Elaine Gray pjb@goodlaw.nf.ca elaine.gray@gowlings.com	722-4720 416-863-3527
Fabtek Corp.	Linc A. Rogers Rhodie E. Mercer, Q.C. rmercet@mmvf.nf.ca linc.rogers@blakes.com	416-863-2653 726-5705
GE Capital	Harvey Chaiton Frederick Scalabrini	416-218-1849 905-319-4855
Group Holdings Ltd./ Hickman Equipment/ Hickman Leasing Ltd.	Griffith D. Roberts rstack@coxhanson.ca groberts@coxhanson.ca	726-2992
Ingersoll-Rand Canada Inc.	R. Barry Learmonth, Q.C. Jonathan Wigley ldc@nfld.net jonathan.h.wigley@bakernet.com	739-8151 416-863-6275
John Deere Ltd./ John Deere Credit Inc.	Neil L. Jacobs/Bruce Grant Maureen Ryan BugarestiDavidR@JohnDeere.com Njacobs@smss.com	722-4565

MTC Leasing Inc./ National Leasing Group Inc.	R. Paul Burgess pburgess@mwhslaw.nf.com	754-0915
ORIX Financing 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. tboyne@boyneclarke.ns.ca	902-463-7500
TD Asset Finance Corp.	D. Bradford L. Wicks bwicks@wrmm.nf.net	753-5221
Wells Fargo Equipment Finance Co.	Richard Jones rlaw@istar.ca	416-361-6303
PricewaterhouseCoopers Trustee in Bankruptcy	Frederick Constantine James Kirby	722-0483 722-1428

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person:	CIT Financial Limited
Date of Document:	January 14, 2003
Summary of Order/Relief Sought Or Statement of Purpose in Filing:	Affidavit of Guy Giroux filed in support of the Interlocutory Application of CIT Financial Limited (hereinafter "CIT") for payment to CIT of the proceeds from the sale by the Receiver of the equipment referenced in the Application.
Court Sub-File Number:	7:33

2002 01 T No. 0352

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

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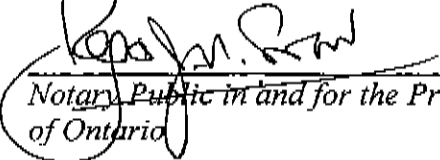
AFFIDAVIT

I, Guy Giroux, of the City of Burlington, in the Province of Ontario, make oath and say as follows:

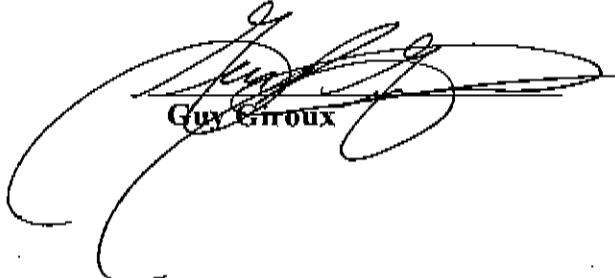
1. I am an Assistant Vice-President Portfolio Management with CIT, the Applicant in an Interlocutory Application for disbursement of proceeds of sale of equipment pledged as security by HEL to CIT (the "Application"), and as such have personal knowledge of the matters set forth herein, except where otherwise noted.

2. By a Receiving Order dated March 13, 2002 and filed March 14, 2002 (the "**Receiving Order**") HEL was adjudged bankrupt and Pricewaterhouse Coopers Inc. ("**PWC**") was appointed Trustee in bankruptcy in accordance with the BIA. A copy thereof is posted on the Internet Site established by PWC for the HEL Insolvency.
3. By a Receivership Order dated March 13, 2002 and filed March 14, 2002 (the "**Receivership Order**") PWC was appointed receiver without security "...of all the property, assets, entitlements and undertakings (the "**Assets**") of Hickman Equipment wheresoever situate including without limitation all property assets and undertaking comprised in the term "**Property**" as such term is defined in the Initial Order." A copy thereof is posted on the Internet Site established by PWC for the HEL Insolvency
4. In light of the above, and by virtue of the Receiving Order, CIT filed a Proof of Claim in the Bankruptcy of HEL, dated October 22, 2002.
5. The contracts between CIT and HEL stated that all security pledged by HEL was held as collective security for the total indebtedness of HEL to CIT. The total debt owing from HEL to CIT is \$9,889,878.00 as is stated at Paragraph 7 of the Final Determination (defined below).
6. I am advised by PWC that PWC, in accordance with an Order of this Honourable Court dated May 14, 2002, commenced and completed the liquidation of substantially all of the Assets of HEL by auction.
7. By Final Determination revised and filed December 11, 2002 (the "**Final Determination**"), PWC has allowed, *inter alia*, the claims of CIT in respect of certain units including, without limitation, the units listed at Schedule "A" to the Application (the "**CIT Units**") and also annexed hereto as Schedule "A". A true copy of the Final Determination is attached as Schedule "B" to this affidavit.
8. As stated by PWC in the Final Determination, CIT has a valid and perfected security interest in the CIT Units. Financing by CIT was used to facilitate the purchase of the CIT Units by HEL, thereby constituting a purchase money security interest, but one which was unperfected.
9. CIT has been advised by PWC that PWC has received as proceeds of the liquidation of each of the CIT Units, the amounts set out in the 3rd column of the table on Schedule "A" hereto (the "**Proceeds**").
10. This affidavit is sworn and filed in support of CIT's Application to this Honourable Court for an Order approving the payment to CIT by the Receiver of the Proceeds.

SWORN before me at Burlington
in the Province of Ontario
this 4th day of January,
2003:



Notary Public in and for the Province
of Ontario



Guy Groux

SCHEDULE "A"

Equipment Description	Serial Number	Auction Proceeds
200 LC Excavator	FF0200X501362	\$135,000.00
850C Dozer	T0850C888907	\$160,000.00
450H Dozer	T0450HX889199	\$127,500.00
Timberjack Forwarder	17DD0305	\$306,000.00
Blaw-Knox Paver	551028-64	\$213,780.00
330 LC Excavator	FF0330X080456	\$170,000.00
330 LC Excavator	FF0330X080518	\$170,000.00
330 LC Excavator	FF0330X080747	\$199,500.00
370 Excavator	FF0370X080344	Not Yet Sold
TOTAL PROCEEDS		\$1,481,750.00

Schedule "B"

FINAL DETERMINATION

(Issued in accordance with paragraph 14 of the Claims Plan)

Secured Party: CIT FINANCIAL LIMITED ("CIT")

1. Introduction

PWC as Receiver continues to hold the Assets of HEL under the terms of the Receivership Order granted on March 13, 2002. The Claims Plan is intended to provide a mechanism by which Claimants assert Claims to these Assets.

Pursuant to paragraph 14 of the Claims Plan a Final Determination is to be made by the PWC as Trustee either allowing or disallowing a Claim as a valid secured claim under section 135(4) of the BIA. This is the Trustee's Final Determination in respect of CIT.

Capitalized terms used in this Final Determination shall have the meaning ascribed to them in the Claims Plan unless otherwise defined herein.

2. Summary Final Determination

Office Equipment

The Claim to office equipment allowed as a valid secured claim. The Trustee claims no interest in the assets that are the subject of the claim.

Heavy Equipment

The Claim is allowed as a valid secured claim. The Trustee claims no interest in the assets that are the subject of the claim.

3. Defined Terms

For ease of Reference in this Final Determination, the Trustee has applied the following definitions/ abbreviations:

"HEL"	-	Hickman Equipment (1985) Ltd.
"JD"	-	John Deere
"Newcourt"	-	Newcourt Financial Ltd.
"PMSI"	-	Purchase Money Security Interest
"PPSA" or "Act"	-	Personal Property Security Act, S.N.L. 1998, c.P - 7.1
"PPR"	-	Personal Property Registry
"Province"	-	Newfoundland and Labrador
"Regulations"	-	Personal Property Security Regulations (103/99)
"s/n"	-	Serial Number

4. The Assets

In total, CIT is making a claim with respect to 123 pieces of heavy equipment, plus a number of smaller items which are in the nature of office equipment. Those pieces of heavy equipment sold at the Trustee's auction are indicated by ***

Heavy Equipment:

1. ECM350 Air Track Drill (CB7361)*
2. ECM350 Air Track Drill (BY7085)*
3. ECM350 Air Track Drill (R10025)*
4. ECM350 Air Track Drill (CB7385)*
5. ECM350 Air Track Drill (4184)*
6. ECM350 Air Track Drill (242657)*
7. ECM350 Air Track Drill (4260)*
8. ECM350 Air Track Drill (4259)*
9. ECM350 Air Track Drill (CB7240)*
10. ECM350 Air Track Drill (R10062)*
11. ECM350 Air Track Drill (R10063)*
12. ECM350 Air Track Drill (CB7497)*
13. ECM350 Air Track Drill (CB7242)*
14. ECM350 Air Track Drill (4244)*
15. ECM350 Air Track Drill (242648)*
16. ECM350 Air Track Drill (S4257)*
17. ECM350 Air Track Drill (T38076)*
18. ECM350 Air Track Drill (CB7238)*
19. EMC350 Air Track Drill (CB7371)*
20. ECM350 Air Track Drill (R10064)*
21. ECM350 Air Track Drill (R10061)*
22. ECM350 Air Track Drill (BY7073)*
23. ECM350 Air Track Drill (S4201)*
24. ECM350 Air Track Drill (CB7369)*
25. ECM350 Air Track Drill (BY7146)*
26. XP825WCU Compressor (175545)*
27. XP825WCU Compressor (184609)*
28. XP825WCU Compressor (178926)*
29. XP825WCU Compressor (183168)*
30. XP825WCU Compressor (186847)*
31. XP825WCU Compressor (175544)*
32. XP825WCU Compressor (184608)*
33. XP825WCU Compressor (186846)*
34. XP825WCU Compressor (183210)*
35. XP825WCU Compressor (189179)*
36. XP825WCU Compressor (193577)*
37. XP825WCU Compressor (207010)*
38. XP825WCU Compressor (207880)*
39. XP825WCU Compressor (173645)*

40. XP825WCU Compressor (V88497)*
41. XP825WCU Compressor (152924)*
42. XP825WCU Compressor (178925)*
43. XP825WCU Compressor (183169)*
44. XP825WCU Compressor (186186)*
45. XP825WCU Compressor (192568)
46. XP825WCU Compressor (192567)*
47. XP825WCU Compressor (191994)*
48. XP825WCU Compressor (189165)*
49. XP825WCU Compressor (173406)*
50. XP825WCU Compressor (173408)*
51. XP825WCU Compressor (173411)*
52. XP825WCU Compressor (206742)*
53. XP825WCU Compressor (192810)*
54. XP825WCU Compressor (206642)*
55. XP825WCU Compressor (206842)*
56. XP825WCU Compressor (209490)*
57. 2000 JD 200LC (FF0200X501358)
58. 2000 JD 850C (T0850CX888907)*
59. 2000 JD 450H (T0450HX889199)*
60. 2000 JD 200LC (FF0200X501345)
61. 2000 JD 310SE (T0310SE889704)
62. 2000 JD 624G (DW624HX577306)
63. 2000 JD 200LC (FF0200X501391)
64. 2000 JD 644H (DW644HX577276)
65. 2000 JD 544H (DW544HX577180)
66. 2000 JD 310SE (T0310SE889712)
67. 2000 JD 200LC (FF0200X501393)
68. 2000 JD TC44H (DWTC44H577307)
69. 2000 JD 200LC (FF0200X501362)*
70. 2000 JD 744H (DW744HX577308)
71. 2000 JD 744H (DW744HX576819)
72. 2000 JD 744H (DW744HX577272)
73. 2000 JD 200LC (FF0200X501390)
74. 2000 JD 310 SE (T0310SE890935)
75. 2000 JD 544H (DW544HX577412)
76. 2000 JD 310SE (T0310SE890549)
77. 2000 JD TC62H (DWTC62H577315)
78. 2000 JD 200LC (FF0200X501455)
79. 2000 JD 200LC (FF0200X501479)
80. 2000 JD 644H (DW644HX577435)
81. 2000 JD 200LC (FF0200X051249)
82. 2000 JD 330LC (FF0330X080747)*
83. 2000 JD 450LC (FF0450X090542)
84. 2000 JD 644H (DW644HX577290)
85. 2000 JD 330LC (FF0330X080883)

86. 2000 JD 330LC (FF0330X080882)
87. 2000 JD 330LC (FF0330X080850)
88. 2000 JD 330LC (FF0330X080881)
89. 2000 JD LC (FF0200X501453)
90. 1999 Terex Truck Model TA 25 (A7581103)
91. 1999 Terex Truck Model TA 25 (A7581118)
92. 2001 Terex Truck Model TA 35 (A7761284)
93. 1999 Terex Truck Model TA 35 (A7761061)
94. 1999 Terex Truck Model TA 35 (A7761062)
95. 1999 Terex Truck Model TA 35 (A7761064)
96. 1999 Terex Truck Model TA 35 (A7761065)
97. 1999 Terex Truck Model TA 35 (A7761066)
98. 1999 Terex Dump (A7761082)
99. 1999 Terex Truck Model TA 35 (A7761086)
100. 1999 Terex Truck Model TA 35 (A7761095)
101. 1999 Terex Truck Model TA 35 (A7761096)
102. 1999 Terex Truck Model TA 35 (A7761097)
103. 1999 Terex Truck Model TA 35 (A7761111)
104. 1999 Terex Truck Model TA 35 (A7761112)
105. 1999 Terex Truck Model TA 35 (A7761113)
106. 1999 Terex Truck Model TA 35 (A7761114)
107. 1999 Terex Truck Model TA 35 (A7761119)
108. 1999 Terex Truck Model TA 35 (A7761120)
109. 1999 Terex Truck Model TA 35 (A7761122)
110. 1999 Terex Truck Model TA 35 (A7761144)
111. 2000 Terex Truck Model TA 35 (A7761166)
112. 2000 Terex Truck Model TA 35 (A7761181)
113. 2000 Terex Truck Model TA 35 (A7761182)
114. 2000 Terex Truck Model TA 35 (A7761186)*
115. 2000 Terex Truck Model TA 35 (A7761187)*
116. 2000 Terex Truck Model TA 35 (A7761188)*
117. 2000 Terex Truck Model TA 35 (A7761195)*
118. 2000 Terex Truck Model TA 35 (A7761196)*
119. 2001 Terex Truck Model TA 35 (A7761280)
120. 2001 Terex Truck Model TA 35 (A7761283)
121. 2001 Terex Truck Model TA 45 (A7811048)
122. 2001 Terex Truck Model TA 45 (A77811050)
123. 2001 Terex Truck Model TA 45 (A7911043)

Office Equipment

- 450 Digital Copier, complete with finisher, 3 -hole punch, paper deck, document feeder, bridge unit.
- M7208 Telephone Set; 2 talkback Horn V048C 1993 and 3 four-pair wiring modules.

- 3 M7310 sets; 3 M7208 sets; a Comp ICS KSU with LS/DS trk cart, a Comp ICS LS/DS Anal trk cart; a Cics Stand 4 x 16 S/W Feat Cart; and a three zone paging control V2003A.
- H.P. Laserjet; 32 MB Kingston UPG HP 400012; Kingston 32 MB UPG for HP 4000; HP Laserjet 4000 Printer; Kingston 8 MB UPG for HP 4000; HP J311OR and a Laserjet 1100 Printer.
- 2 IBM Thinkpads; 3 IBN 56W Ultralim AC Adapter; 3 Numeric Keypads; 2 64MB Ram Upgrade; 1 Xercom Real Port; 1 Real Port Ethernet Cardbio.
- IBM Thinkpad; 1 IBM 56W Ultralim AC Adapter; 1 Numeric Keypad; 1 Realport Ethernet Cardbio; and 1 64 MB Ram Upgrade.
- 1 Kobra 385 Shredder and 1 shelf for Kobra 385.
- 1 SM78PL-semi automatic; 1 5 Kg scale; 1 8854 Interfacs and 1 5KG scale stand.
- 1 AR-150 Digital Copier; 1 Printer Expansion Kit and 1 Stand.
- 1 Sharp Digital Copier; 1 Sharp Digital Fax; 1 Sharp extra cassette; and 1 Sharp Cabinet.

5. Assumptions

In preparing this Final Determination, the Trustee has made the following assumptions:

- i) the genuineness of all signatures, the authenticity of all original Documents and the conformity to authentic originals of all Documents that are copies, whether facsimile, photostatic, certified or otherwise;
- ii) that each party to any of the Documents that create obligations for that party, has duly authorized, executed and delivered such Documents to which it is a party;
- iii) with the exception of security interests created by the Documents, the Documents that create obligations for parties, constitute legal, valid and binding obligations of each party thereto, enforceable against each of them in accordance with their terms;
- iv) that insofar as any obligation under any of the Documents is to be performed in any jurisdiction outside the Province, its performance will not be illegal or unenforceable by virtue of the laws of that other jurisdiction; and
- v) the accuracy and currency of the indices and filing systems maintained in relation to the public registries where we have searched or inquired or have caused searches or inquiries to be conducted.

6. Qualifications

Since there is no title registration system in the Province relating to personal property, any opinion respecting title is based solely upon the relevant Documentation.

For the purpose of determining the validity under prior law of security interests created and registered before the implementation of the PPSA and transitioned by registration in the PPR, the Trustee has only reviewed the security agreements and their registrations referenced in the PPR search report section entitled: "Pre-PPSA registration information continued by this registration", endorsements, if any, on the security agreements reviewed and the pre-PPSA legislation and the applicable common law relating to their registration.

Both the PPSA, and the *Conditional Sales Act* (the latter statute being part of the "prior law") provide that property in goods pass to a purchaser from a seller or trader where the sale is in the ordinary course of business of the seller or trader. In some instances HEL transferred equipment subject to a security interest to a purchaser without discharging the security interest. In some cases the purchaser granted a security interest to another lender, while in other cases the purchaser transferred the equipment to a third party who, in turn granted a security interest to a lender. Due to the lack of evidence concerning all transactions involving the Assets, we are unable to determine if sales by HEL were "in the ordinary course of business" such as to enable the purchaser to receive clear title to the equipment in order to allow a subsequent lender to obtain a valid security interest or a subsequent transferee to obtain clear title.

No opinion is expressed as to the rank or priority of any security interest created by the Documentation.

No opinion is expressed with regard to any collateral covered by the Documentation, but not referred to in this Final Determination.

Pursuant to the terms of the Court Order establishing the Claims Plan, this Final Determination determines the validity of security claimed and whether such security has been properly perfected. For the assistance of readers, the Trustee has sometimes provided comments concerning the priority of such security vis-à-vis other parties but such priority-related comments are made without prejudice to any position which may be taken at any future date by any other party in regards to priorities.

Notwithstanding the findings in this Final Determination concerning the validity of the Claim as secured or otherwise, PricewaterhouseCoopers Inc. is not precluded by such determination from challenging the Claim as being reviewable or fraudulent pursuant to the provisions of the BIA or any applicable provincial legislation.

Except where a specific claim to proceeds has been made and material provided in support of that claim, the Trustee expresses no opinion with respect to claims to proceeds or claims involving tracing. An outline of the proceeds claims processes and issues are set out in s.13.

7. Overview of Claim

CIT's claim is with respect to a number of pieces of office equipment (listed above) and also with respect to the 123 pieces of heavy equipment (listed above). The claim to the office equipment arises from 10 separate lease agreements. The claim to the 123 pieces of heavy equipment arises from 3 specific security agreements entered into in July and August 2000 and a general security agreement (wholesale) dated November 9, 2001 taking security over all present and after-acquired personal property of HEL.

The Proof of Claim of CIT dated October 22, 2002 and the documents attached thereto (more particularly described below) indicates a total secured claim of **\$9,889,878.00**.

This breaks down as follows:

Office Equipment

➤ Lease No. 780-277388-001:	Amount \$3,745.85
➤ Lease No. 780-717136-001:	Amount \$16,204.82
➤ Lease No. 780-717138-001:	Amount \$442.42
➤ Lease No. 780-717139-001:	Amount \$3,623.89
➤ Lease No. 780-717140-001:	Amount \$889.32
➤ Lease No. 780-717141-001:	Amount \$2,849.68
➤ Lease No. 780-717142-001:	Amount \$1,478.76
➤ Lease No. 780-717143-001:	Amount \$749.08
➤ Lease No. 780-717144-001:	Amount \$4,374.92
➤ Lease No. 780-717145-001:	Amount \$2,677.99
	Total Outstanding: \$37,036.73

Heavy Equipment

- Specific Security Agreement dated July 2000 (#800-0246838-001), securing a Promissory Note in the amount of \$862,500. Security was taken over 56 assets (#1-56 in the list above).
Total outstanding: \$580,452.51
- Specific Security Agreement dated 7 July 2000 (#800-0246893-001), securing a Promissory Note in the amount of \$3,685,063.30. Security was taken over 16 assets (#57 - 72 in the list above).
Total outstanding: \$1,858,705.00
- Specific Agreement Agreement dated 10 August 2000 (#800-0252504-001), securing a Promissory Note in the amount of \$4,485,070. Security was taken over 17 assets (#73 - 89 in the list above).
Total outstanding: \$2,547,696.65
- General Security Agreement (Wholesale) dated 9 November 2001. This relates to 34 separate Conditional Sales Contracts: one for each of the Terex trucks (# 90- 123 in the list above).
Total outstanding :\$4,865,957.27

CIT has not made a specific claim to proceeds.

8. Documentation

In preparing this final determination, the Trustee has considered and relied upon only the following information provided to it from all sources:

- i. PPR search conducted in the name of the debtor on March 21, 2002.
- ii. Proof of Claim dated October 22, 2002 (and supporting documentation).
- iii. 10 Proofs of Claim dated March 13, 2002 asserting an unsecured claim in the amount of \$44,184.75. These relate to the various pieces of office equipment covered in the 10 lease agreements noted above.
- iv. 10 Lease Agreements and related documents covering various pieces of office equipment as follows:
 - (1) #780-717136-001 covering a 450 Digital Copier, complete with finisher, 3-hole punch, paper deck, document feeder, bridge unit.
 - (a) Copy of an invoice dated September 30, 1998 to Newcourt from Reprographics stamped and authorized for payment;
 - (b) Copies of CIBC "electronic funds system" and bank reconciliation reports for October 5, 1998 confirming payment made to Reprographics.
 - (2) #780-717138-001 covering a M7208 Telephone Set; 2 talkback Horn V048C 1993 and 3 four-pair wiring modules.
 - (a) Copy of a cheque stub from Newcourt payable to Newtel Communication dated March 3, 1999 in the amount of \$952.49.
 - (3) #780-717139-001 covering 3 M7310 sets; 3 M7208 sets; a Comp ICS KSU with LS/DS trk cart, a Comp ICS LS/DS Anal trk cart; a Cics Stand 4 x 16 S/W Feat Cart; and a three zone paging control V2003A.
 - (a) Copy of a cheque stub dated March 19, 1999 from Newcourt payable to Newtel Communication in the amount of \$7,593.13
 - (4) #780-717140-001 covering a H.P. Laserjet; 32 MB Kingston UPG HP 400012; Kingston 32 MB UPG for HP 4000; HP Laserjet 4000 Printer; Kingston 8 MB UPG for HP 4000; HP J311OR and a Laserjet 1100 Printer.
 - (a) Copies of invoices dated June 4 and 16, 1999 to Newcourt from Triware Technologies Inc. stamped and authorized for payment;
 - (b) Copies of CIBC "electronic funds system" and bank reconciliation reports for June 25, 1999 confirming payment made to Triware Technologies Inc.

- (5) #780-71741-001 covering 2 IBM Thinkpads; 3 IBM 56W Ultralim AC Adapter; 3 Numeric Keypads; 2 64MB Ram Upgrade; 1 Xercom Real Port; 1 Real Port Ethernet Cardbio.
- (a) Copy of a cheque stub dated October 20, 1999 from Newcourt payable to Microwave Computer Centres in the amount of \$11,309.10.
- (6) #780-71742-001 covering an IBM Thinkpad; 1 IBM 56W Ultralim AC Adapter; 1 Numeric Keypad; 1 Realport Ethernet Cardbio; and 1 64 MB Ram Upgrade.
- (a) A copy of a cheque stub dated November 2, 1999 from Newcourt payable to Microwave Computer Centres in the amount of \$5,068.45.
- (7) #780-717143-001 covering 1 Kobra 385 Shredder and 1 shelf for Kobra 385.
- (a) A copy of a cheque stub dated November 2, 1999 from Newcourt payable to Reprographics Limited in the amount of \$2,972.75.
- (8) #780-717144-001 covering 1 SM78PL-semi automatic; 1 5 Kg scale; 1 8854 Interfacs and 1 5KG scale stand.
- (a) A copy of a cheque stub dated January 22, 2001 from CIT payable to Pinnacle Office Solutions in the amount of \$5,773.76.
- (b) A copy of a cheque requisition dated December 1, 2000 payable from CIT to Pinnacle Office Solutions in the amount of \$5,773.76.
- (9) #780-717145-001 covering 1 AR-150 Digital Copier; 1 Printer Expansion Kit and 1 Stand.
- (a) Copies of invoice dated January 31, 2001 to CIT Financial from Modern Business Equipment stamped and authorized for payment;
- (b) Copies of CIBC "electronic funds system" and bank reconciliation reports for February 23, 2001 confirming payment made to Modern Business Equipment.
- (10) #7800-0277388-001 covering 1 Sharp Digital Copier; 1 Sharp Digital Fax; 1 Sharp extra cassette; and 1 Sharp Cabinet.
- (a) A copy of a cheque stub dated September 21, 2001 from CIT payable to Modern Business Equipment Limited in the amount of \$4,651.75.
- (b) A copy of a cheque requisition dated September 20, 2001 from CIT payable to Modern Business Equipment Limited in the amount of \$4,651.75.

v. The Heavy Equipment Security Agreements:

a. **Specific Security Agreement (#800-0246838-001)**, (assets # 1-56 above)

- Copy of the Agreement with schedule "A" attached listing the 56 assets.
- Copy of Promissory note in the amount of \$862,500.00 dated July 7, 2000.
- Assignment of Lease Agreement dated July 2, 2000
- Correspondence dated July 10, 2000 between Newcourt and CIBC Equipment Finance Limited addressing priorities.
- Correspondence dated 13 July 2000 between John Deere Construction Equipment Company and CIT addressing priorities. Correspondence dated July 10, 2000 between Newcourt and CIBC setting out relative priorities.
- Correspondence dated July 10, 2000 between Newcourt and John Deere Limited addressing priorities.
- Correspondence dated July 10, 2000 between Newcourt and Mellon Bank of Canada addressing priorities.
- Correspondence dated July 10, 2000 between Newcourt and GMAC addressing priorities.
- Correspondence dated July 10, 2000 between ABN-AMRO Leasing and Newcourt addressing priorities.
- Correspondence dated July 10, 2000 between ABN-AMRO Bank of Canada and Newcourt addressing priorities.
- Correspondence dated July 11, 2000 between John Deere Credit and Newcourt addressing priorities.
- Correspondence dated July 10, 2000 between MTC Leasing Inc. and Newcourt addressing priorities.
- Invoice dated June 13, 2001 to Tornigait Ujaganniavingit Corporation - one Ingersoll-Rand XP825 Compressor (s/n 192568).
- Copy of a funding request dated July 14, 2000 for a cheque payable to HEL in the amount of \$862,500.00.
- Copy of a cheque dated July 14, 2000 (#1031480) from CIT payable to HEL in the amount of \$862,500.00.

b. **Specific Security Agreement (#800-0246893-001)**, (assets # 57-72 above)

- Copy of the Agreement with schedule "A" attached listing the 16 assets.
- Copy of Promissory note in the amount of \$3,685,063.30 dated July 7, 2000.
- Assignment of Lease Agreement dated July 2, 2000
- Copy of a funding request dated July 14, 2000 for a cheque payable to HEL in the amount of \$3,685,063.30.
- Copy of a cheque dated July 14, 2000 (#1031433) from CIT payable to HEL in the amount of \$3,685,063.30.
- Correspondence dated 14 July 2000 between CIT and John Deere Limited addressing priorities.
- Correspondence dated July 13, 2000 between John Deere Construction Equipment Company and CIT addressing priorities.

- Correspondence dated July 10, 2000 between CIBC and Newcourt addressing priorities.
- Correspondence dated July 10, 2000 between Newcourt and CIBC Equipment Finance Limited addressing priorities.
- Correspondence dated July 10, 2000 between Mellon Bank Canada and Newcourt addressing priorities.
- Correspondence dated July 10, 2000 between GMAC and Newcourt addressing priorities.
- Correspondence dated July 10, 2000 between Newcourt and ABN-AMRO Leasing addressing priorities.
- Correspondence dated July 11, 2000 between John Deere Credit and Newcourt addressing priorities.
- Correspondence dated July 10, 2000 between MTC Leasing Inc. and Newcourt addressing priorities.
- Invoice dated November 29, 2000 to B & R Enterprises Ltd. -- one J D 624H Loader (s/n DW624HX577306).
- Invoice dated September 29, 2000 to Enviro-Safe Fuel Systems -- one J D TC44H TC Loader (s/n DWTC44H577307). Trade in was JD 244H Loader (s/n T6244HX000090).
- Invoice dated April 20, 2001 to Concord Paving Ltd. -- one JD 744H Loader (s/n DW744HX576819). Trade ins were one CAT 966 Loader (s/n 94X05335) and one Autocar Truck (s/n 4V25MBCF2LU504777).
- Invoice dated July 27, 2000 to CIBC Equipment Finance -- one JD 544H Wheel Loader (s/n DW544HX577180). Trade in was a Dresser 520C Loader (s/n C008145).
- Invoice dated December 22, 2000 to Marine Contractors Inc. -- one TelSmith Cone Plant (s/n 7608); one JD 330LC Excavator (s/n FF0330X080964); and one JD 744H 4WD Loader (s/n DW744HX577272).
- Invoice dated June 22, 2000 to Royal Bank of Canada -- one JD 200LC Excavator (s/n FF0200X501345).
- Invoice dated July 24, 2000 to Weir's Construction -- one JD 310SE Backhoe (s/n T0310SE89704). Trade ins were one JD 544E Loader (s/n DW544EB517148) and one JD 310D Backhoe (s/n T0310DG789868).
- Invoice dated October 25, 2000 to Budgell's Equip. & Rental -- one JD 200LC Excavator (s/n FF0200X501358).
- Invoice dated July 29, 2000 to Wilco Holdings Ltd. -- one JD 310SE Backhoe (s/n T0310SE889712). Trade in was one JD 310C Backhoe (s/n T0310CF767728).
- Invoice dated September 20, 2000 to Marne Contractors Inc. -- one TelSmith 3042 Crusher (s/n 505M2720); one JD 744H Loader (s/n DW744HX577308) and one Terex TA25 Articulated Truck (s/n A7581103).
- Invoice dated October 27, 2000 to Premier Construction for the following:
JD 450LC Excavator FF0450X090542

JD 450LC Excavator	FF0450X090556
JD 450LC Excavator	FF0450X090545
JD 330LC Excavator	FF0330X080076
Terex 2766C Articulated Truck	A7001320-16
Terex TA25 Articulated Truck	A7581118
JD 892ELC Excavator	F892EX012534
JD 744HMH 4WD Loader	DW744HM572769
JD 200LC Excavator	FF0200X501390
JD 200LC Excavator	FF0200X501393
JD 644H Wheel Loader	DW644HX577276
JD 744H 4WD Loader	DW744HX569129
JD 850C Crawler Dozer	T0850CX850222
JC 50 Ton Trailer	2J9J7A1F6YK001167
Ingersoll-Rand SD110 Roller	160665

c. **Specific Security Agreement (#800-0252504-001)**, (assets # 73-89 above)

- Copy of the Agreement with schedule "A" attached listing the 17 assets.
- Copy of Promissory note in the amount of \$4,485,780.00 dated August, 2000.
- Assignment of Lease Agreement dated August 10, 2000.
- Copy of a funding request dated August 15, 2000 for a cheque payable to HEL in the amount of \$4,485,780.00.
- Copy of a cheque dated August 15, 2000 (#1033597) from CIT payable to HEL in the amount of \$4,485,780.00.
- Correspondence dated August 8/00 between CIT and CIBC addressing priorities.
- Correspondence dated August 10/00 between CIT and MTC Leasing Inc. addressing priorities.
- Correspondence dated August 9/00 between CIT and ABN-AMRO Leasing and ABN-AMRO Bank Canada addressing priorities.
- Correspondence dated August 9/00 between CIT and CIBC Equipment Finance Ltd. addressing priorities.
- Correspondence dated August 29/00 between CIT and Mellon Bank Canada addressing priorities.
- Correspondence dated August 14/00 between CIT and John Deere Ltd. addressing priorities.
- Correspondence dated August 10/00 between CIT and John Deere Credit addressing priorities.
- Correspondence dated August 11/00 between CIT and GMAC Leaseco Ltd. addressing priorities.
- Invoice dated December 22, 2000 to BLC Construction Ltd. – JD 330LC Excavator (s/n FF0330X080881) and Tramac V1600 Hydraulic Breaker (s/n 121541). Trade in was JD 450LC Excavator (s/n FF0450X090408).
- Invoice dated September 6, 2000 to Anderson Logging Ltd. – Timberjack 608B Harvester (s/n 10BA1221); JD 330LC Excavator (s/n FF0330X080883); BWS Pulpwood Trailer (s/n 2B948LF3951002261) and

BWS 42' Pulpwood Trailer (s/n 2B942LD33V1002684). Trade ins were CAT 310L Harvester (s/n 6CR00908) and CAT 320L Excavator (s/n 9KK00385).

- Invoice dated December 9, 2000 to Concord Paving Ltd. – JD 644H Wheel Loader (s/n DW644HX577290). Trade ins were Ingersoll-Rand Roller (s/n 7425) and GMC J75 Dump Truck (1GDT8C477GV530059).
- Invoice dated November 2, 2000 to Penney Paving – JD 310SE Backhoe (s/n T0310SE890935). Trade ins were Ingersoll-Rand DD23 Roller (s/n 5808-8) and Allatt 550P Paver (s/n 8843224).
- Invoice dated July 26, 2000 to Marine Contractors Inc. – JD 544H Wheel Loader (s/n DW544HX577412); JD 160LC Excavator (s/n Order # 048532); JD 270LC Excavator (s/n FF0270X070607) and JD 330LC Excavator (s/n FF0330X080850). Trade ins were JD 590D Excavator (s/n FF590DX002664); JD 792D Excavator (FF792DX010033) and JD 892E Excavator (s/n FF892EX011705).
- Invoice dated September 20, 2000 to Town of Wabush – JD 644H Wheel Loader (s/n DW644HX577435). Trade in was CAT 950B Loader.
- Invoice dated August 18, 2000 to Farrell's Excavating – JD 330LC Excavator (s/n FF0330X080882); JD 200LC Excavator (s/n FF0200X501455); JD 160LC Excavator (s/n P00160X041411) and JD 310SE Backhoe (s/n T0310SE890549). Trade ins were JD 160LC Excavator (s/n P00160X040198); JD 200LC Excavator (s/n FF0200X050548; and JD 310SE Backhoe (s/n T0310SE838500).
- Invoice dated October 19, 2000 to Hickman Leasing Ltd. – JD 450LC Excavator (s/n FF0450X090542); JD 644H Wheel Loader (s/n DW644HX577290) and JD 200LC Excavator (s/n FF0200X501479).
- Invoice dated October 11, 2000 to Southern Ready-Mix – JD 200LC Excavator (s/n FF0200X051249). Trade in was Hitachi EX200LC Excavator (s/n 14C-83138).
- Invoice dated October 27, 2000 to Premier Construction – JD 450LC Excavator (s/n FF0450X090542); JD 450LC Excavator (s/n FF0450X090556); JD 450LC Excavator (s/n FF0450X090545); JD 330LC Excavator (s/n FF0330X080076); Terex 2766C Articulated Dump Truck (s/n A7001320-16); Terex TA25 Articulated Dump Truck (s/n A7581118); JD 892ELC Excavator (s/n FF892EX012534); JD 744HMH 4WD Loader (s/n FF0200X501390); JD 200LC Excavator (s/n FF0200X501393); JD 644H Wheel Loader (s/n DW644HX577276); JD 744H 4WD Loader (s/n DW744HX569129); JD 850C Crawler Dozer (s/n T0850CX850222); JC 50 Ton Trailer (s/n 2J9J7A1F7YK001167) and Ingersoll-Rand SD110 Roller (s/n 160665).

d. General Security Agreement (Wholesale) dated November 9, 2001 (assets # 90-123 above)

- Copy of Agreement
- Assignment of Lease Agreement (All Leases – All Equipment) dated November 9, 2001.

- Conditional Sales Contracts for each of the Terex trucks as follows:
 - Truck # A7581103 – Invoice # A7581103, dated 06/03/99
 - Truck # A7581118 – Invoice # A7581118, dated 06/28/99
 - Truck # A7761284 – Invoice # A7761284, dated 05/03/01
 - Truck # A7761061 – Invoice # A7761061, dated 06/09/99
 - Truck # A7761062 – Invoice # A7761062, dated 06/09/99
 - Truck # A7761064 – Invoice # A7761064, dated 06/09/99
 - Truck # A7761065 – Invoice # A7761065, dated 06/03/99
 - Truck # A7761066 – Invoice # A7761066, dated 06/03/99
 - Truck # A7761082 – Invoice # A7761082, dated 06/25/99
 - Truck # A7761086 – Invoice # A7761086, dated 08/10/99
 - Truck # A7761095 – Invoice # A7761095, dated 07/28/99
 - Truck # A7761096 – Invoice # A7761096, dated 07/28/99
 - Truck # A7761097 – Invoice # A7761097, dated 05/10/99
 - Truck # A7761111 – Invoice # A7761111, dated 09/02/99
 - Truck # A7761112 – Invoice # A7761112, dated 09/02/99
 - Truck # A7761113 – Invoice # A7761113, dated 09/02/99
 - Truck # A7761114 – Invoice # A7761114, dated 09/02/99
 - Truck # A7761119 – Invoice # A7761119, dated 09/02/99
 - Truck # A7761120 – Invoice # A7761120, dated 09/22/99
 - Truck # A7761122 – Invoice # A7761122, dated 09/22/99
 - Truck # A7761144 – Invoice # A7761144, dated 01/13/00
 - Truck # A7761166 – Invoice # A7761166, dated 04/24/00
 - Truck # A7761181 – Invoice # A7761181, dated 04/17/00
 - Truck # A7761182 – Invoice # A7761182, dated 04/17/00
 - Truck # A7761186 – Invoice # A7761186, dated 04/24/00
 - Truck # A7761187 – Invoice # A7761187, dated 04/24/00
 - Truck # A7761188 – Invoice # A7761188, dated 04/24/00
 - Truck # A7761195 – Invoice # A7761195, dated 05/12/00
 - Truck # A7761196 – Invoice # A7761196, dated 05/12/00
 - Truck # A7761280 – Invoice # A7761280, dated 05/03/01
 - Truck # A7761283 – Invoice # A7761283, dated 05/03/01
 - Truck # A7811048 – Invoice # A77811048, dated 05/03/01
 - Truck # A77811050 – Invoice # A77811050, dated 05/03/01
 - Truck # A7911043 – Invoice # A77811043, dated 05/03/01

vi. Evidence of value being given by CIT for the Terex Trucks as follows:

- Trucks # A7761061, A7761062, A7761064:
 - Internal request of Newcourt dated June 9, 1999 for delivery of \$1,004,066.40
 - Correspondence from Newcourt to HEL dated June 9, 1999 advising of the cost for the 3 units being funded.
 - Dealer Credit Requests executed by HEL for each of the 3 units including invoices for each of 3 pieces.
- Truck # A7581118:

- Internal request of Newcourt dated June 28, 1999 for delivery of \$244,567.80
- Dealer Credit Requests executed by HEL for the unit, invoice attached.
- o **Trucks # A7581103, #A7761066, #A7761065:**
 - Internal request of Newcourt dated June 3, 1999 for delivery of \$905,637.60
 - Dealer Credit Requests executed by HEL for the each of the 3 units, invoices attached.
 - Requests from HEL to Newcourt requesting that the Dealer Credit Requests be processed.
- o **Trucks # A7761111, #A7761112, #A7761113, #A7761114, #A7761119:**
 - Internal request of Newcourt dated September 2, 1999 for delivery of \$1,626,062.00
 - Dealer Credit Requests executed by HEL for the each of the 3 units, invoices attached.
 - Request from HEL to Newcourt requesting that the Dealer Credit Requests be processed.
- o **Trucks # A7761120, #A7761122, #A7761097, #A7761086, #A7761095, #A7761096:**
 - Computer screen print out dated October 21, 2002 noting fund transfers for \$446,000.00 on July 28, 1999, August 10, 1999 and September 22, 1999.
 - Internal requests of Newcourt dated September 22, 1999 for delivery of \$655,174.00., August 10, 1999 for delivery of \$670,204.20 and July 28, 1999 for delivery of \$675,288.60 (each of these is a calculation of \$446,000 USD).
 - Dealer Credit Requests executed by HEL for the each of the units, invoices attached.
- o **Truck # A7761144:**
 - Computer screen print out dated October 21, 2002 noting fund transfers for \$223,000.00 on January 13, 2000.
 - Internal request of Newcourt dated January 13, 2000 for delivery of \$323,394.60 (calculation of \$223,000 USD).
 - Dealer Credit Requests executed by HEL for the unit, invoice attached.
 - Request from HEL to Newcourt for the Dealer Credit Requests be processed.
- o **Trucks # A7761181, #A7761182:**
 - Computer screen print out dated October 21, 2002 noting fund transfer of \$442,000.00 on April 17, 2000.
 - Internal request of Newcourt dated April 17, 2000 for delivery of \$655,220.80 (calculation of \$442,000 USD).
 - Dealer Credit Requests executed by HEL for the each of the units, invoices attached.
 - Request from HEL to Newcourt for the Dealer Credit Requests be processed.
- o **Trucks # A7761166, #A7761186, #A7761187, #A7761188:**

- Computer screen print out dated October 21, 2002 noting fund transfer for \$870,000.00 on April 24, 2000.
- Internal request of Newcourt dated April 24, 2000 for delivery of \$1,282,032.00 (a calculation of \$870,000 USD).
- Dealer Credit Requests executed by HEL for the each of the units, invoices attached.
- Request for delivery of funds dated April 24, 2000.
- o **Trucks # A7761195, #A7761196:**
 - Computer screen print out dated October 21, 2002 noting fund transfer for \$447,000.00 on May 12, 2000.
 - Internal request of Newcourt dated May 12, 2000 for delivery of \$665,895.90 (a calculation of \$447,000 USD).
 - Dealer Credit Requests executed by HEL for the each of the units, invoices attached.
 - Request from HEL for the Dealer Credit Requests be processed.
- o **Trucks # A7761280, #A7761283, #A7761284, #T7911043, #T7811048, #T7811050:**
 - Computer screen print out dated October 21, 2002 noting fund transfer for \$1,425,630.00 on May 3, 2001.
 - Internal request of Newcourt dated May 3, 2001 for delivery of \$2,186,631.30 (a calculation of \$1,425,630.00 USD).
 - Dealer Credit Requests executed by HEL for the each of the units except #A7761284 invoices attached for all.
 - Request from HEL for the Dealer Credit Requests be processed.

vii. Invoice from HEL as follows:

- o April 16, 2001 to Marine Contractors Inc. dated for the sale of a Telsmith 44SBS Crusher (s/n C001286). Invoice notes a number of trade ins.
- o May 24, 2001 to McNamara Construction – Terex TA35 Articulated Truck (s/n A7761280); Terex A35 Articulated Truck (s/n A7761283); Terex TA35 Articulated Truck (s/n A7761284); Terex TR45 Rigid Truck (s/n T7811043); Terex TR45 Rigid Truck (s/n T7811048); Terex TR45 Rigid Truck (s/n T7811050).
- o January 15, 2001 to Hickman Leasing Ltd. – Terex TA35 Articulated Truck (s/n A7761195); Terex TA35 Articulated Truck (s/n A7761196); Terex TA35 Articulated Truck (s/n A7761186); Terex TA35 Articulated Truck (s/n A7761187); Terex TA35 Articulated Truck (s/n A7761188); Timberjack 1110B Forwarder (s/n 10DH1023); Timberjack 1410 Forwarder (s/n 17DD0305).
- o October 26, 2000 to Johnson's Construction – JD 450LC Excavator (s/n FF0450X090370); JD 450LC Excavator (s/n FF0450X090412); JD 330LC Excavator (s/n FF0330X080505); JD 744HMH 4WD Loader (s/n DW744HMS572476); JD 772CH Motor Grader (s/n DW772CH575287); Terex TA35 Articulated Truck (s/n A7761113); Terex TA35 Articulated Truck (s/n A7761144); Terex TA35 Articulated Truck (s/n A7761182); Terex TA35

Articulated Truck (s/n A7761181); Terex TA35 Articulated Truck (s/n A7761166).

- o October 11, 1999 to Johnson's Construction – JD 450H Crawler Dozer (s/n T0450HX879838); JD 544H Wheel Loader (s/n DW544HX573462); JD 200LC Excavator (s/n FF0200X500772); JD 370XX Excavator (s/n FF0370X080445); JD 450LC Excavator (s/n FF0450X090428); Terex TA35 Articulated Truck (s/n A7761120); Terex TA35 Articulated Truck (s/n A7761122); Promac Disc Cutter (s/n 52CMP1297); Tramac V55 Breaker (s/n 120504).
- o April 3, 2000 to United Rentals – Terex TA35 Articulated Dump Truck (s/n A7761111).
- o April 3, 2000 to United Rentals – Terex TA35 Articulated Dump Truck (s/n A7761112).
- o September 20, 2000 to Marine Contractors Inc. – New Tel Smith 3042 Crusher (s/n 505M2720); JD 744H Loader (DW744HX577308); Terex TA25 Articulated Truck (s/n A7581103).
- o October 27, 2000 to Premier Construction – JD 450LC Excavator (s/n FF0450X090542); JD 450LC Excavator (s/n FF0450X090556); JD450LC Excavator (s/n FF0450X090545); JD 330LC Excavator (s/n FF0330X00076); Terex 2766C Articulated Dump Truck (s/n A7001320-16); Terex TA35 Articulated Dump Truck (s/n A7581118); JD 892ELC Excavator (s/n FF892EX012534); JD 744HMH 4WD Loader (s/n DW744HM572769); JD 200LC Excavator (s/n FF0200X501390); JD 200LC Excavator (s/n FF0200X501393); JD 644H Wheel Loader (s/n DW644HX577276); JD 744H 4WD Loader (s/n DW744HX569129); JD 850C Crawler Dozer (s/n T0850CX850222); JC 50 Ton Trailer (s/n 2J9J7A1F7YK001167); Ingersoll-Rand SD110 Roller (s/n 160665).

viii. CIBC Wallet Deposit dated November 1, 2000 for the deposit to HEL for \$3,300,866.07. Particulars reference "G.E. Capital".

ix. Affidavit of Jack Pietropaolo, assistant vice president, Portfolio Management with CIT dated 6 November 2002, and attachments thereto, providing evidence of value passing from CIT to HEL with respect to the above-noted Terex trucks.

9. Classification of the Assets

The actual subjective use to which goods are applied by the debtor dictates whether they will be classed as inventory, equipment or consumer goods. In this regard, it is the opinion of the Trustee that the 123 pieces of heavy equipment noted above were held by the debtor for sale or lease and as such, they form part of the inventory (s. 2(x) of the PPSA). The office equipment covered by the 10 lease agreements are equipment (s.2(p) of the PPSA).

10. Application of the PPSA

The above noted documentation provides the necessary evidence to conclude that the transactions between CIT and HEL were secured transactions that are governed by the PPSA (ref: s.4).

11. PRE-PPSA/ Transitioning Issues

Not applicable in this instance as all transactions took place subsequent to the coming into force of the PPSA in the Province.

12. Perfection

Section 20 of the PPSA holds that there are two required elements to a perfected security interest in collateral, regardless of the order of occurrence. There must be:

(i) attachment in accordance with section 13, which requires:

1. Value must be given. Value is defined in s. 2(tt) to include any consideration sufficient to support a simple contract. However, a secured party need not have actually advanced the loan funds or the purchase money credit in order to satisfy the value requirement of section 13. Value is given as soon as a secured party makes a binding commitment to extend the loan or purchase money credited to the debtor¹.
2. The debtor must have rights in the collateral; and
3. There must be a security agreement that meets the requirements of s. 11.

(ii) a perfection step in accordance with section 25 (perfection by possession) or section 26 (perfection by registration of a financing statement in the PPR).

Is there attachment?

(i) Value given?

Office Equipment

YES.

As indicated in the list of documents above, the Trustee has been provided with copies of cheque stubs, cheque requisitions and confirmations of electronic transfers for each of the 10 leases that provide the necessary evidence of value passing from CIT to HEL. It is the

¹ C. Walsh, *An Introduction to the New Brunswick Personal Property Act*, (1995) at p.83.

opinion of the Trustee that this is sufficient evidence of value in accordance with s. 13 of the PPSA and that CIT's security with respect to these leases has attached.

Heavy Equipment

YES.

As concerns the 3 specific security agreements we have been provided with copies of Funding requests and cheques.

As concerns the Terex Trucks, we have been provided with dealer credit requests and funding requests for 33 of the 34 units. In addition to this, the Trustee has been provided with a sworn affidavit from Jack Pietropaolo, assistant vice president, Portfolio Management with CIT dated 6 November 2002, and attachments thereto, providing evidence of value passing from CIT to HEL with respect to the above-noted Terex trucks. It is the opinion of the trustee that this is sufficient evidence of value for purposes of attachment.

(ii) Rights in the collateral?

YES Any real right in the collateral that the debtor may have, including but not limited to, a right of possession is sufficient to meet the requirements of s. 13². HEL held possession of both groups of assets (office equipment and office equipment). Furthermore, as concerns the leases for the office equipment, s.13 (3) of the Act confirms that a lessee under a lease for a term of more than one year has rights in the leased goods when s/he obtains possession under the lease.

Note: For the purposes of expressing a position with respect to HEL's rights in the collateral, the Trustee has not made any determination with respect to HEL's title in the collateral at issue nor with respect to the lawfulness of HEL's possession thereof.

(iii) Have the evidentiary requirements of s. 11 been met?

YES The evidentiary requirements of s. 11, required for attachment, are established by the specific security agreements, the general security agreement (wholesale) and the office equipment leases. Specifically, in accordance with s.11 (1) (b), all of the agreements are in writing, they have been signed by HEL as the debtor and each provides an adequate description of the collateral that is secured.

Is there a perfection step?

a. The 10 leases for Office Equipment

YES. While there has been no specific registration in the PPR with respect to the leases, CIT has made a general registration as follows:

Registration # 1365579 dated November 20, 2001 contains the following description:

All of the debtor's present and after acquired personal property

² Ibid. at 84.

Since s. 44(5) of the PPSA allows a financing statement to be registered before or after a security agreement is made or a security interest attaches, and since s.44(6) allows a single registration to relate to more than one security agreement, this general registration applies to perfect the security interest in the office equipment leases.

b. Specific Security Agreement dated July/00 (assets # 1-56 above)

YES

Registration # 405969 dated July 7/2000 contains the following information:

Eleven ECM350 Track Drills and fifteen XP825 Compressors. Together with all accessions, attachments, accessories and proceeds in any form including goods, documents of title, chattel paper, securities, instruments, money or intangibles.

This was amended by **Registration # 1648729**, dated March 12, 2002 to include a list by serial number of each of the 56 assets.

c. Specific Security Agreement dated July 7/00 (assets # 57-72 above)

YES

Registration #405993 dated July 7, 2000 contains the following information:

Five John Deere 200LC Excavators, three 744H John Deere loaders, one John Deere 450H Crawler Dozer, one John Deere 850c Crawler Dozer, one John Deere TC Loader, one John Deere 644H loader, two John Deere 310SE backhoe loader, one John Deere 624H loader and one John Deere 544H Loader. Together with all accessions, attachments, accessories and proceeds in any form including goods, documents of title, chattel paper, securities, instruments, money or intangibles.

There is also included in this registration a list of all 16 assets by serial number in the "Serial Numbered Collateral" section of the financing statement.

d. Specific Security Agreement dated Aug.10/00 (assets # 73-89 above)

YES

Registration # 461285 dated August 2, 2000 contains the following information:

Five John Deere 200LC Excavators, two John Deere 310SE backhoe loaders, one John Deere 644H 4WD Loader, one 2000 John Deere TC62H TC Loader and one John Deere 544H 4WD loader. Together with all accessions, attachments, accessories and proceeds in any form including goods, documents of title, chattel paper, securities, instruments, money or intangibles.

There is also included in this registration a list of all 17 assets by serial number in the "Serial Numbered Collateral" section of the financing statement.

This was amended by **registration # 485797**, dated August 16, 2000 to include the following statement:

Five 2000 John Deere 330LC Excavators, one 2000 John Deere 450LC excavator and one 2000 John Deere 644H Loader.

e. **General Security Agreement (Wholesale)** dated Nov.9/01(assets #90-123 above)
YES

Registration # 1579465 dated February 1, 2002, contains the following information:

Secured Party: Tyco Capital (Canada) Inc.

General Description of Collateral:

The following collateral and all proceeds therefrom

1. 1999 Terex Truck Model TA 25 (A7581103)
2. 1999 Terex Truck Model TA 25 (A7581118)
3. 2001 Terex Truck Model TA 35 (A7761284)
4. 1999 Terex Truck Model TA 35 (A7761061)
5. 1999 Terex Truck Model TA 35 (A7761062)
6. 1999 Terex Truck Model TA 35 (A7761064)
7. 1999 Terex Truck Model TA 35 (A7761065)
8. 1999 Terex Truck Model TA 35 (A7761066)
9. 1999 Terex Dump (A7761082)
10. 1999 Terex Truck Model TA 35 (A7761086)
11. 1999 Terex Truck Model TA 35 (A7761095)
12. 1999 Terex Truck Model TA 35 (A7761096)
13. 1999 Terex Truck Model TA 35 (A7761097)
14. 1999 Terex Truck Model TA 35 (A7761111)
15. 1999 Terex Truck Model TA 35 (A7761112)
16. 1999 Terex Truck Model TA 35 (A7761113)
17. 1999 Terex Truck Model TA 35 (A7761114)
18. 1999 Terex Truck Model TA 35 (A7761119)
19. 1999 Terex Truck Model TA 35 (A7761120)
20. 1999 Terex Truck Model TA 35 (A7761122)
21. 1999 Terex Truck Model TA 35 (A7761144)
22. 2000 Terex Truck Model TA 35 (A7761166)
23. 2000 Terex Truck Model TA 35 (A7761181)
24. 2000 Terex Truck Model TA 35 (A7761182)
25. 2000 Terex Truck Model TA 35 (A7761186)
26. 2000 Terex Truck Model TA 35 (A7761187)
27. 2000 Terex Truck Model TA 35 (A7761188)
28. 2000 Terex Truck Model TA 35 (A7761195)
29. 2000 Terex Truck Model TA 35 (A7761196)
30. 2001 Terex Truck Model TA 35 (A7761280)
31. 2001 Terex Truck Model TA 35 (A7761283)
32. 2001 Terex Truck Model TA 45 (A7811048)
33. 2001 Terex Truck Model TA 45 (A77811050)
34. 2001 Terex Truck Model TA 45 (A7911043)

There is also included in this registration a list of all of these assets by serial number in the "Serial Numbered Collateral" section of the financing statement.

What constitutes an appropriate description of collateral, comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(e) of the Regulations, items of inventory must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral descriptions in the above-noted financing statements satisfy these requirements.

13. Proceeds

Section 29(1) of the Act provides a secured party with an automatic and statutory interest in the proceeds from the disposition of a secured asset by the debtor. While this right is automatic as against the debtor, the entitlement to proceeds must be perfected, in order to protect the secured party's entitlement as against competing creditors.

The Trustee has not made any determination as to CIT's entitlement to proceeds with respect to other creditors as this is an issue of priority and not within the Trustee's mandate under the Claims Plan. However, the Trustee has outlined below the statutory requirements that must be met by a secured party in order to assert a claim to proceeds from the disposition of collateral as against other secured creditors.

The perfected status of a security interest in proceeds depends firstly on whether the security interest in the original collateral was perfected when the proceeds arose. If not, the secured party will have to perfect its security interest in the proceeds as original collateral either by registration or taking possession. If so, the question of whether the secured party must independently perfect its security interest in the proceeds depends on the method by which the security interest in the original collateral was perfected.³

Section 29(3) provides for 3 instances where perfection in proceeds is automatic and continuous. A security interest in proceeds is a continuously perfected security interest where the interest in the original collateral is perfected by a registration of a financing statement under Section 26 that:

- (a) Includes a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind;
- (b) Includes a description of the original collateral, where the proceeds are of a kind that are within the description of the original collateral; or
- (c) Includes a description of the original collateral, where the proceeds consist of money, cheques or deposit accounts in a bank, credit union, or similar financial institutions.

³ Ibid. at p.140.

If proceeds do not fall into one of these categories, s. 29(4) of the PPSA requires registration with respect to the proceeds collateral within fifteen days after such proceeds arise. Such registration would be in accordance with the same rules as the original collateral (Reference: Catherine Walsh, p.140).

As indicated above, collateral descriptions are governed by ss.23-24 of the Regulations. These rules extend to descriptions of collateral in the form of proceeds as well.

Note as well that the ability to assert a claim to proceeds is contingent upon two conditions. The debtor must have acquired rights in the proceeds and the proceeds themselves must be traceable (ref. s. s.2(ff)).

14. Additional Comments on Priorities

While it is not within the mandate of the Trustee or Trustee's counsel to determine priorities, we nevertheless offer the following comments, in order to provide assistance to any creditors who may also have a valid and perfected security interest in the assets and wish to determine, for their own benefit, their ranking with respect to same:

- There are instances whereby an inventory financier such as CIT may be entitled to claim a super-priority status (ref: s. 35(2)). CIT has not provided evidentiary support for such an entitlement. Counsel for CIT claims that this constitutes an unperfected pmsi in the heavy equipment. The Trustee makes no determination with respect to this issue.
- As established by s. 36 of the PPSA, the relevant date for the determination of the priority of CIT's interest in the assets is the date of registration of its financing statement in the PPR:
 1. Specific Security Agreement dated July/00: **July 7, 2000**
 2. Specific Security Agreement dated July 7/00: **July 7, 2000**
 3. Specific Security Agreement dated Aug. 10/00: **Aug. 2, 2000.**
 4. General Security Agreement dated Nov.9/01: **Nov. 20, 2001.**
 5. Office Equipment Leases: **Nov. 20, 2001.**

15. Auction Results

What follows is a list of the assets secured by CIT that were sold at the Receiver's auction on July 12, 2002, in Halifax, Nova Scotia, and the net amount obtained (bid amount less LVG buyer's premium):

1. ECM350 Air Track Drill (CB7361) - \$8,500.00
2. ECM350 Air Track Drill (BY7085) - \$10,000.00
3. ECM350 Air Track Drill (R10025) - \$4,000.00
4. ECM350 Air Track Drill (CB7385) - \$600.00
5. ECM350 Air Track Drill (4184) - \$600.00

6. ECM350 Air Track Drill (242657) - \$2,500.00
7. ECM350 Air Track Drill (4260) - \$18,000.00
8. ECM350 Air Track Drill (4259) - \$12,070.00
9. ECM350 Air Track Drill (CB7240) - \$13,500.00
10. ECM350 Air Track Drill (R10062) - \$16,000.00
11. ECM350 Air Track Drill (R10063) - \$12,070.00
12. ECM350 Air Track Drill (CB7497) - \$12,070.00
13. ECM350 Air Track Drill (CB7242) - \$15,000.00
14. ECM350 Air Track Drill (4244) - \$2,500.00
15. ECM350 Air Track Drill (242648) - \$600.00
16. ECM350 Air Track Drill (S4257) - \$10,000.00
17. ECM350 Air Track Drill (T38076) - \$14,000.00
18. ECM350 Air Track Drill (CB7238) - \$12,070.00
19. EMC350 Air Track Drill (CB7371) - \$12,070.00
20. ECM350 Air Track Drill (R10064) - \$12,070.00
21. ECM350 Air Track Drill (R10061) - \$14,000.00
22. ECM350 Air Track Drill (BY7073) - \$12,070.00
23. ECM350 Air Track Drill (S4201) - \$14,000.00
24. ECM350 Air Track Drill (CB7369) - \$12,070.00
25. ECM350 Air Track Drill (BY7146) - \$12,070.00
26. XP825WCU Compressor (175545) - \$11,000.00
27. XP825WCU Compressor (184609) - \$15,500.00
28. XP825WCU Compressor (178926) - \$3,000.00
29. XP825WCU Compressor (183168) - \$12,500.00
30. XP825WCU Compressor (186847) - \$14,500.00
31. XP825WCU Compressor (175544) - \$2,500.00
32. XP825WCU Compressor (184608) - \$9,656.00
33. XP825WCU Compressor (186846) - \$5,500.00
34. XP825WCU Compressor (183210) - \$12,070.00
35. XP825WCU Compressor (189179) - \$12,070.00
36. XP825WCU Compressor (193577) - \$11,500.00
37. XP825WCU Compressor (207010) - \$19,000.00
38. XP825WCU Compressor (207880) - \$8,000.00
39. XP825WCU Compressor (173645) - \$16,500.00
40. XP825WCU Compressor (V88497) - \$14,000.00
41. XP825WCU Compressor (152924) - \$5,500.00
42. XP825WCU Compressor (178925) - \$14,000.00
43. XP825WCU Compressor (183169) - \$4,500.00
44. XP825WCU Compressor (186186) - \$15,000.00
45. XP825WCU Compressor (192567) - \$9,656.00
46. XP825WCU Compressor (191994) - \$13,000.00
47. XP825WCU Compressor (189165) - \$2,500.00
48. XP825WCU Compressor (173406) - \$12,070.00
49. XP825WCU Compressor (173408) - \$12,070.00
50. XP825WCU Compressor (173411) - \$12,070.00
51. XP825WCU Compressor (206742) - \$16,500.00

- 52. XP825WCU Compressor (192810) - \$14,000.00
 - 53. XP825WCU Compressor (206642) - \$ 1,500.00
 - 54. XP825WCU Compressor (206842) - \$12,070.00
 - 55. XP825WCU Compressor (209490) - \$8,000.00
 - 56. 2000 JD 850C (T0850CX888907) - \$160,000.00
 - 57. 2000 JD 450H (T0450HX889199) - \$127,500.00
 - 58. 2000 JD 200LC (FF0200X501362) - \$135,000.00
 - 59. 2000 JD 330LC (FF0330X080747) - \$199,500.00
 - 60. 2000 Terex Truck Model TA 35 (A7761186) - \$190,000.00
 - 61. 2000 Terex Truck Model TA 35 (A7761187) - \$190,000.00
 - 62. 2000 Terex Truck Model TA 35 (A7761188) - \$190,000.00
 - 63. 2000 Terex Truck Model TA 35 (A7761195) - \$190,000.00
 - 64. 2000 Terex Truck Model TA 35 (A7761196) - \$190,000.00
- Total \$ 2,144,162.00**