

SUMMARY OF CURRENT DOCUMENT		
Name of Issuing Party or Person	Contract Funding Group Inc. ("Contract")	
Date of Document	15 th January, 2003	
Summary of Order/Relief Sought or Statement of Purpose in Filing	Application of Contract for the payment to Contract of the Proceeds from the sale by the Receiver of:	
	Make	Serial # Proceeds
	JD	FF892EX012643 \$145,000
	JAN 17 '03 DE 2:29	
Court Sub-File Number	17.42.	

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")

INTERLOCUTORY APPLICATION (INTER PARTES)

The Application of Contract Funding Group Inc. (the "Applicant") says as follows:

1. By order of this 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") be appointed Receiver of Hickman Equipment (the "Receivership Order").

Doc #242368.1

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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 in Bankruptcy and Insolvency on the 14th day of March, Hickman Equipment was adjudged bankrupt and PWC appointed as trustee of the estate of the bankrupt in bankruptcy (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 unit

<u>Make</u>	<u>Serial No.</u>	<u>Proceeds</u>
JD	FF892EX012643	\$145,000

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

4. That as of March 11th 2002 the Applicant was owed \$1,619,421.90 by Hickman Equipment (the "Indebtedness").
5. That the Applicant has a valid secured claim against the Contract Unit for the Indebtedness by virtue of a lease (the "Lease") dated June 5th 1998, registered under the **Conditional Sales Act**, June 11th 1998, which registration was continued under the PPSA on January 31st 2000, registration number 80913, and which Lease was assigned to Contract, such assignment being registered under the **Personal Property Security Act** on February 4th 2000, registration number 89898.

- 3 -

6. That the Applicant filed a proof of claim in the bankruptcy of Hickman Equipment dated May 16, 2002. The Trustee wrote to the Applicant's solicitors, Chaiton & Chaiton on December 5, 2002 enclosing the Trustee's Final Determination pursuant to which it determined that the Applicant's claim to 10 pieces of heavy equipment, including the Contract Unit 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 the only prior registered claim against the Contract Unit is that of the Canadian Imperial Bank of Commerce ("CIBC") and that such claim is subordinate to that of the Applicant by virtue of a waiver signed by CIBC dated June 8th 1998.
8. The Applicant also received a waiver of any interest in the Contract Unit from John Deere Credit Inc. dated June 11th 1998.
9. The Applicant therefore applies to this Honourable Court for an Order approving the payment to the Applicant by the Receiver of the proceeds from the sale of the Contract Unit.

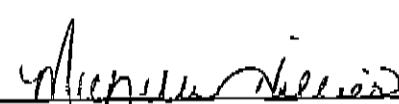
- 4 -

DATED at Toronto, in the Province of Ontario, this 15th day of January, 2003.



Mark G. Klar
Chaiton & Chaiton LLP
Solicitors for Contract Funding Group Inc.
Whose address for service is:
185 Sheppard Avenue West
Toronto, ON M2N 1M9

ISSUED at the City of St. John's, in the Province of Newfoundland and Labrador, this 17th day
of *January*, 2003.



Clerk of the Court
Supreme Court of Newfoundland and Labrador

Doo #242368.1

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SCHEDULE "A"
PARTIES WHO HAVE BEEN SERVED

ABM Amro Bank Canada/ ABN Amro Leasing & Tramac Equipment Ltd.	Aubrey L. Bonnell, Q.C./ Brian Winsor Terence J. Dolan/John Salmas abonnell@curtislawe.nf.ca tdolan@mccarthy.ca	709-722-7521 416-868-0673
Bombardier Capital Leasing & Culease Financing Services	J. Vernon French, Q.C.	709-754-2701
Caterpillar Equipment	Colin D. Grant	709-849-1023
Cedarapids	Les Baumbach fbeizil@sharekreay.com	319-399-4760
CIBC	R. Wayne Myles gspencer@bensonmyles.com wmyles@bensonmyles.com	709-579-2647
CIBC Equipment Finance Ltd./CIT Financial Ltd./ Tyco Capital	Gregory W. Dickie gdickie@wob.nf.ca	709-722-9210
Contact Funding Group Inc.	Mark G. Klar mark-k@chaiton.com	416-218-1831
Daimler Chrysler Financial Services/Daimler Chrysler	Philip Buckingham/ Peter O'Flaherty	709-722-4720

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Capital Services/Mercedes-Benz of Canada Inc.

Elaine Gray
pib@goodlaw.nf.ca
elaine.gray@gowlings.com

416-863-3527

Fabtek Corp.

Linc A. Rodgers
Rhodie E. Mercer, Q.C.
mercerc@mmvf.nf.ca
linc.rodgers@blakes.com

416-863-2653
709-726-5705

GE Capital

Harvey Chaiton
Frederick Scalabrini

416-218-1849
905-319-4855

Group Holdings Ltd./
Hickman Equipment/
Hickman Leasing Ltd.
Hickman Holdings Ltd.

Griffith D. Roberts
rstack@coxhanson.ca
groberts@coxhanson.ca

709-726-2992

Ingersoll-Rand Canada Inc.

R. Barry Learmonth, Q.C.
Jonathan Wigley
ldc@nflid.net
jonathan.h.wigley@bakernet.com

709-739-8151
416-863-6275

John Deere Ltd./
John Deere Credit Inc.

Neil L. Jacobs/Bruce Grant
Maureen Ryan
BugarestiDavidR@JohnDeere.com
Njacobs@smss.com

709-722-4565

MTC Leasing Inc./
National Leasing Group Inc.

R. Paul Burgess
pburgess@mwhslaw.nf.com

709-754-0915

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.

902-463-7500

Dca #242356-1

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tboyne@boyneclarke.ns.ca

TD Asset Finance Corp.

D. Bradford L. Wicks
bwicks@wmm.nf.net

709-753-5221

Wells Fargo Equipment
Finance Co.

Richard Jones
Jrlaw@istar.ca

416-361-6303

Pricewaterhouse Coopers
Trustee in Bankruptcy

Frederick Constantine
James Kirby

709-722-0483
709-722-1428

(=ODMA\PCDOCS\DOCS\242368\1)

Doc #242368.1

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")

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
the 11 day of February, 2003 at 10.00 a.m. or so
soon thereafter as the within application can be heard.

TO: See attached distribution list.

Doc #242368.1

SUMMARY OF CURRENT DOCUMENT								
Name of Issuing Party or Person	Contract Funding Group Inc. ("Contract")							
Date of Document	15 January, 2003							
Summary of Order/Relief Sought or Statement of Purpose in Filing	Application of Contract for the payment to Contract of the Proceeds from the sale by the Receiver of: <table><tr><td>Make</td><td>Serial #</td><td>Proceeds</td></tr><tr><td>JD</td><td>FF892EX012643</td><td>\$146,000</td></tr></table>		Make	Serial #	Proceeds	JD	FF892EX012643	\$146,000
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JD	FF892EX012643	\$146,000						
Court Sub-File Number								

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, Ginter Baca, do hereby say as follows:

1. That I am the President of Contract and as such have personal knowledge of the matters herein deposed to except where otherwise indicated.

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2. That to the best of my knowledge and belief the statements concerning the documents and registrations described and referred to in the written Application are true and correct.
3. Contract filed a proof of claim in the bankruptcy of Hickman Equipment dated May 16, 2002 with PricewaterhouseCoopers Inc., Hickman Equipment's trustee in bankruptcy (the "Trustee"). Attached hereto as Exhibit 1 to this Affidavit is a copy of the proof of claim.
4. Contract has a valid secured claim against a JD Excavator Serial No. FF892EX012643 (the "Contract Unit") pursuant to a lease agreement dated June 5, 1998 (the "Lease") which lease was assigned to Contract and secures Hickman Equipment's entire indebtedness to Contract. Attached hereto as Exhibit 2 to this Affidavit is a copy of the Lease.
5. The Trustee's Final Determination allowed Contract's claim to 10 pieces of heavy equipment, including the Contract Unit as a valid secured claim. The Trustee also confirmed in the Final Determination that it claims no interest in the assets that are the subject of the claim. Attached hereto as Exhibit 3 to this Affidavit is a copy of the Final Determination.
6. Contract received waivers from the Canadian Imperial Bank of Commerce and John Deere Credit Inc. dated May 6, 1998 and June 11, 1998, respectively pursuant to which they confirmed that they have no security interest in the Contract Unit. Attached hereto as Exhibit 4 to this Affidavit are copies of the waivers.
7. PricewaterhouseCoopers Inc. in its capacity as Receiver of Hickman Equipment is holding proceeds from the sale of the Contract Unit in the amount of \$145,000.00.

22-01-2003 07:10pm From:MCINNES COOPER

709 7224117

T-765 P-012/034 F-065

JAN 10 03 17:00 From:CLAYTON & CLAYTON

4102220482

T 530 P.14/06 Jan 075

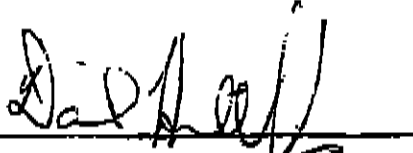
- 3 -

I swear this Affidavit in support of a Order approving the payment to Contract by PricewaterhouseCoopers Inc. of the proceeds from the sale of the Contract Unit.

SWORN TO before me at Toronto

in the Province of Ontario

this 15 day of January, 2003:



A Commissioner for Taking Affidavits

DANIEL MARK HIMELFARB,
a Commissioner, etc., Province of Ontario
while a student-at-law.
Expires August 30, 2006.

(=OPMA\PCDOC5\DOCS\242389\1)


GINTER BACA

22-01-2003 07:11pm From-MCINNES COOPER

708 7224117

T-765 P.013/034 F-065

T-938 P.15/36 Job-U19

JAN-16-03 17:06 From:CHAITON & CHAITON

4162228402

[This is Exhibit "A" referred to in the declaration of Ginter Baca sworn before me this 15 day of January 2003]

Court No. NF9733
Estate No. 100985

FORM 31**Proof of Claim**

(Subsections 50.1(3), 50.1(1) and 55.2(4), paragraphs 51(1)(e) and 56.14(b); subsections 81.2(1), 102(2), 124(2) and 128(1) of the Act)

(All notices or correspondence regarding this claim should be forwarded to the following address:)

TO: Contract Funding Group Inc. 3 Church Street, Suite 305, Toronto, Ontario M5E 1M2, Attention: Ginter Baca (tel) 416-364-0505, extension 233, (fax) 416-364-9063

TO: Chaiton & Chaiton, 185 Sheppard Avenue West, Toronto, Ontario, M2N 1M9, Attention: Mark G. Klar, (tel) 416-222-8888, (fax) 222-8402

In the matter of the Bankruptcy of Hickman Equipment (1985) Limited and the claim of Contract Funding Group Inc., creditor (the "Creditor").

I, MARK KLAR, of the City of Vaughan, in the Province of Ontario, do hereby certify:

1. That I am the agent and counsel of Contract funding Group Inc.
2. That I have knowledge of all the circumstances connected with the claim referred to below.
3. That the debtor was, at the date of the bankruptcy, namely the 11th day of March, 2002 and still is indebted to the Creditor in the sum of \$1,619,421.90, as specified in the statement of account attached and marked as "Schedule A", after deducting any counterclaims to which the debtor is entitled. *(The attached statement of account, or affidavit or solemn declaration must specify the vouchers or other evidence in support of the claim).*
4. *(Check and complete appropriate category.)*

☐ **A. UNSECURED CLAIM of \$**

That in respect of this debt, the Creditor does not hold any assets of the debtor as security and

- 2 -

(Check appropriate description.)

☐ Regarding the amount of \$ _____, the Creditor does not claim a right to a priority.

☐ Regarding the amount of \$ _____, the Creditor does claim a right to a priority under section 136 of the Act.

(Set out on an attached sheet details to support priority claim.)

☐ A.1 CLAIM OF LANDLORD FOR DISCLAIMER OF A LEASE \$ _____
That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based.)

☒ B. SECURED CLAIM OF \$1,619,421.90 that in respect of this debt, the creditor holds assets of the debtor valued at \$ * as security, particulars of which are as follows:

* indeterminate at this time

(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

☐ C. CLAIM BY FARMER, FISHERMAN, OR AQUACULTURIST OF \$ _____
That I hereby make a claim under subsection 81.2(1) of the Act for the unpaid amount of \$ _____ (Attach a copy of sales agreement and delivery documents.)

☐ D. CLAIM AGAINST DIRECTOR \$ _____
(To be filed when a proposal provides for the compromise of claims against directors)
That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claims is based.)

5. That, to the best of my knowledge and belief, the above named Creditor is not related to the debtor within the meaning of section 4 of the Act.

6. That the following are the payments that the Creditor received from, and the credits that it allowed to, the debtor within the three months, (or, if the creditor and the debtor are related within the meaning of section 4 of the Act, within the 12 months) before the date of the filing of the proposal:

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before the date of the initial bankruptcy event within the meaning of Section 2 of the Act:
(Provide details of payments and credits.)

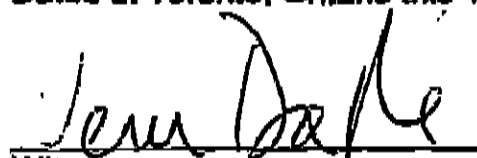
(Applicable only in the case of the bankruptcy of an individual).

(X) I request to be advised of any material change in the financial situation of the bankrupt, pursuant to subparagraph 102(3)(b)(i) of the Act.

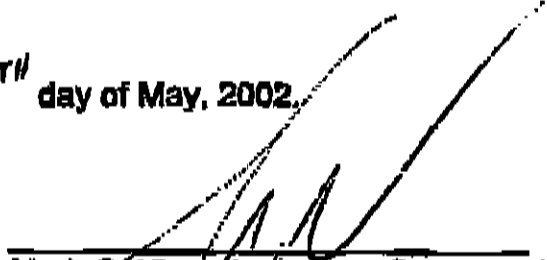
(X) I request to be advised of any amendment made regarding the amount that the bankrupt is required to pay, pursuant to subsection 68(4) of the Act.

(X) I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at Toronto, Ontario this 16TH day of May, 2002.



Witness


Mark G. Klar - Agent and Counsel of
Contract Funding Group Inc.

NOTE: If an affidavit or solemn declaration is attached, it must have been made before a person qualified to take affidavit or solemn declarations.

WARNINGS: A trustee may, pursuant to subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 201(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

SCHEDULE "A"

**In the matter of the Bankruptcy of Hickman Equipment (1985) Inc.
and the claim of Contract Funding Group Inc., creditor (the
"Creditor").**

<u>Description</u>	<u>Amount</u>
Lease No. 11-89-2	\$372,641.29
Lease No. 11-89-3	\$986,286.14
Lease No. 11-89-0	\$ 61,410.37
Lease No. 11-174-0	<u>\$199,084.26</u>
Total	\$1,619,421.90

JAN-16-03 17:07 From:CHAITON & CHAITON
02/29/02 10:00 FAX 4163668017

4162220402

FILE No: 081 01/29 '02 15:37 ID: CYBER LEASE

This is to certify that I, John King,
FAX: 514-222-0402, have read and understand the
declaration of Lease
sworn before me this 15 day of
January, 2003.



CYBER LEASE CORP.

PARTNERS IN EQUIPMENT FINANCE

102 Bank St., Suite 202, Ottawa, Ontario K1P 6N4
Tel: 613-233-2275 Fax: 613-233-8095

LEASE CONTRACT

Full Legal Name of Lessee HICKMAN EQUIPMENT (1985) LIMITED AND LABRADOR EQUIPMENT & MINING SUPPLIES LIMITED		Person in contact JOHN KING
Lessee Address 1269 TOSAIL ROAD		Title of contact ASST. SALES MGR
Telephone No.		Telephone No.
MOUNT PEARL	NEWFOUNDLAND	Postal Code A1N 3C8
Actual location of equipment if different from Lessee's address noted above		Nature of Business
Name and Address of Landlord if equipment is to be placed in rented premises		No. of years in business
Bank Name and Address		Telephone No.
Account Manager		Telephone No.
Supplier Name and Address HICKMAN EQUIPMENT (1985) LIMITED		Supplier's Representative
1269 TOSAIL ROAD, MOUNT PEARL, NEWFOUNDLAND		Telephone No.
Postal Code A1N 3C8		
Quantity	Equipment Description (include make and serial nos.)	
3	892E EXCAVATOR, 32IN (800MM) SHOES, STANDARD BOOM	
	4.00M (13'10") ARM, VANDAL PROTECTION	
	S/N: FF892EX012642 : FF892EX012643 : FF892EX012455	
	DEPRE ENG: RG6076A596348 : RG6076A596350 : RG6076A592086	
LEASING PARTICULARS		
INITIAL TERM NO. OF MONTHS 48	REMARKS ON PAYMENTS 48	MONTHLY PAYMENT 19,295.40
RESIDUAL VALUE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	TERMINATION PAYMENT 24,189.71	TOTAL PAYMENT 72,189.71
OTHER CHARGES 07 MONTH		

TERMS AND CONDITIONS OF LEASE

Has Lessee read and understood the terms and conditions of this lease?

- TITLE GUARANTEE:** The term of the lease shall be the term of the lease as set forth in the lease agreement. The Lessee shall be responsible for the payment of the lease. The Lessee shall be responsible for the payment of the lease. The Lessee shall be responsible for the payment of the lease.
- REPAIRS AND MAINTENANCE:** The Lessee shall be responsible for the payment of the lease. The Lessee shall be responsible for the payment of the lease. The Lessee shall be responsible for the payment of the lease.
- NON-CANCELLABLE LEASE:** This lease cannot be cancelled or terminated except as expressly provided herein and all monies to be paid by the Lessee shall be non-refundable.
- LOCATION AND USE:** The equipment shall be used at the location specified herein and for the purpose specified herein. The Lessee shall be responsible for the payment of the lease. The Lessee shall be responsible for the payment of the lease. The Lessee shall be responsible for the payment of the lease.

DATE OF LESSEE'S ACCEPTANCE: June 5, 1998
This lease shall be deemed binding upon Lessee upon signing and delivery of a duly executed copy of this lease to the Lessor.

CYBER LEASE CORP.

BY: [Signature]

BY: [Signature]

GST REGISTRATION NO: R123116720

**HICKMAN EQUIPMENT (1985) LIMITED AND
LABRADOR EQUIPMENT & MINING SUPPLIES LIMITED**

FULL LEGAL NAME OF LESSEE

BY: [Signature] **John King, Asst. Sales Manager**

BY: [Signature] **Comptroller**

22-01-2003 07:15pm From-MCINNES COOPER

709 7224117

T-765 P.020/034 F-06S

JAN-16-03 17:09 From:CHAITON & CHAITON

4162228402

T-938 P-22/3E Job-U79



Pursuant to Paragraph 16 of the Claims Plan where the Trustee has allowed a claim as a valid secured claim, the Court will be asked to confirm this determination after which the Trustee's final determination will be final and binding on all claimants. Notice of the court hearing for confirmation of the Trustee's final determination will be forwarded to all known secured creditors at least five (5) days prior to the court hearing.

Yours very truly,
PricewaterhouseCoopers Inc.

Per


James A. Kirby, C.A., C.I.R.P.
Senior Vice-President

JAK/STAT

Encl.

Food Determination-Contract Function-Answer-List 4

(2)

SCHEDULE "A" FINAL DETERMINATION

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

Secured Party: **CONTRACT FUNDING GROUP INC. ("CFG")**

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 CFG.

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

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

3. Defined Terms

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

"CSA"	-	<i>Conditional Sales Act, R.S.N.L. 1990, c.C-28 (Rep.)</i>
"HEL"	-	Hickman Equipment (1985) Ltd.
"JD"	-	John Deere
"LEMS"	-	Labrador Equipment and Mining Supplies Limited
"Old Registry"	-	Registry of Conditional Sales, Bills of Sale and Chattel Mortgages
"PMSI"	-	Purchase Money Security Interest
"PPSA" or "Act"	-	<i>Personal Property Security Act, S.N.L. 1998, c.P - 7.1</i>
"PPR"	-	Personal Property Registry
"Provinces"	-	Newfoundland and Labrador
"Regulations"	-	Personal Property Security Regulations (103/99)
"s/n"	-	serial number

4. The Assets

10 pieces of heavy equipment. Only one piece remained in the inventory for HEL and was sold at the Trustee's auction (as described below).

1. 892E Excavator (FF892EX012642)
2. 892E Excavator (FF892EX012643)¹
3. 892E Excavator (FF892EX012455)
4. 310SE Backhoe Loader (T0310SE877721)
5. 301SE Backhoe Loader (T0310SE877726)
6. 160LC Excavator (P00160S041035)
7. 450LC Base Excavator (FF0450X090370)
8. 200LC Excavator (s/n FF0200X501668)
9. 608B Harvester (s/n 10BA1221)
10. 127B Harvester (s/n 01AB2086)

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

¹This piece of equipment was the only one remaining in the HEL inventory.

- 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

CFG claims that it holds a perfected security interest in the 10 assets listed above arising from four (4) Lease Agreements entered into in 1998, 1999, 2000 and 2001. Specifically, in 1998, Cyber Lease leased assets (supplied by HEL) to HEL and LEMS as lessees. Again, in 1999, Cyber Lease leased assets (supplied by HEL) to HEL as lessee. These leases were assigned to CFG. As well, CFG leased assets on 2000 and 2001 (supplied by HEL) to HEL as lessee. CFG takes the position that it has satisfied all the requirements to attach and perfect a security interest, including registration of the security interests in the PPR.

The Proof of Claim dated 16 May 2002, and the documents attached thereto (more particularly described below) indicate a total claim of \$1,619,421.90. This is exclusively a secured claim. This relates to 4 Leases as follows:

- Lease No. 11-889-0 (securing 3 assets, #1 -3 above). Balance outstanding of \$61,410.37.
- Lease No. 11-89-2 (securing 4 assets, #4 - 7 above). Balance outstanding of \$372,641.29.
- Lease No. 11-174-0 (securing 1 asset # 8 above). Balance outstanding of \$199,084.25.
- Lease No. 11-89-3 (securing 2 assets, #9-10 above). Balance outstanding of \$986,286.14.

CFG has not set out any specific claim with respect to proceeds/tracing.

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 16 May 2002.
- iii. Correspondence dated April 5, 2002, August 1, 2002 and October 25, 2002 from Mark Klar of Chaiton & Chaiton setting out the claim of CFG.
- iv. The 4 leases:

a. Lease # 11-888-0 (assets #1-3 above)

- Copy of lease
- Certificate of acceptance dated 9 June/98
- Option to purchase
- Correspondence dated June 11/98 from John Deere Credit to Cyberlease confirming that John Deere Credit Inc. holds no interest in the 3 assets.
- Correspondence dated May 6, 1998 between Cyber Lease and CIBC addressing priorities.
- Invoice from HEL to Cyberlease with respect to the 3 excavators
- CFG's account statement for the period June 1, 1998-June 30, 1998 showing payment of the sum of \$855,021.09 (the amount invoiced)
- Electronic correspondence from TD Bank to CFG dated November 20, 2002 confirming payment to HEL of \$855,021.09 on June 18, 1998.

b. Lease # 11-88-2 (assets #4-7 above)

- Copy of lease
- Certificate of acceptance dated 9 July/99
- Option to purchase
- HEL invoice to Cyberlease dated July 9, 1999 for the sale of the 4 assets
- TD Bank on-line account statement for CFG confirming payment to HEL for the invoiced amount.

c. Lease # 11-174-0 (asset #8 above)

- Copy of lease
- Delivery and Acceptance Certificate dated Feb.16/01
- Pre-Authorized Payment Authorization dated Feb.16/01
- Confirmation of Insurance for the asset.
- Correspondence dated Feb 15/01 from CFG to CIBC setting out the priorities.
- Invoice from HEL dated May 31/01 to Marine Contractors Inc. for 3 Excavators (s/n FF0200X501636, FF0200X501668 and FF0200X501676.) Trade Ins were the following: CAT 320B Excavator, Serial # 06CR04707, CAT 320B Excavator, Serial # 06CR05244, and CAT 320B Excavator, Serial # 06CR05245.
- HEL invoice to Cyberlease dated February 15, 2001 for the sale of the asset
- TD Bank on-line account statement for CFG confirming payment to HEL for the invoiced amount.

d. Lease #11-88-3 (assets # 9-10 above)

- Copy of Lease
- Delivery and Acceptance Certificate dated Sept.14/00
- Pre-Authorized Payment Authorization dated Sept.14/00
- HEL invoice to Cyberlease dated September 14, 2000 for the sale of the 2 assets
- TD Bank on-line account statement for CFG confirming payment to HEL for the invoiced amount.

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 all of the assets in the list above were held by HEL for sale or lease and as such, form part of the inventory (s. 2(x) of the PPSA).

Note: Counsel for CFG maintains that these assets were used by HEL as equipment in accordance with s. 2 (p) of the PPSA. This is not accepted by the Trustee.

10. Application of the PPSA

As indicated by the documentation the secured transactions between CFG and HEL were in the form of equipment leases. These leases, which secured specific pieces of heavy equipment (broken down above), were all for a term of more than one year and were, in essence, financing leases as opposed to true leases. Section 4 of the PPSA confirms that such secured transactions are governed by the PPSA.

11. PRE-PPSA/ Transitioning Issues

The PPSA came into force in the Province on December 13, 1999. The transitioning provisions set out in Part VII of the Act (in particular s.75) create a means by which the new Act could apply to security transactions which pre-date it. In that regard, secured parties whose security pre-dates the PPSA (and the PPR registration system) were given a period of 2 years from the date of the coming into force of the Act (i.e. creditors had until December 13,2001) in which to perfect their pre-ppsa security interest in the PPR. In accordance with s.26 of the Regulations, secured creditors were required to register a financing statement that indicates, *inter alia*, under which prior registration law the security interest relates and also provides the prior registration number. If the provisions of the Act and Regulations were properly followed, the Act enables such secured parties to claim a date of perfection that extends back to the date of the pre-ppsa registration for purposes of priority. There are a number of conditions however. For example, defects in the pre-ppsa security could not be cured by the operation of the PPSA.

Transitioning issues are relevant for 2 of the 4 CFG Leases.

The dates for the 4 CFG leases are: June 1998 (#11-889-0), July 1999 (#11-89-2), September 2000 (#11-89-3) and February 2001 (#11-174-0). Transitioning issues are relevant for lease # 11-889-0 and # 11-89-2.

Lease #11-89-2

This transaction took place on 9 July 1999, prior to the coming into force of the PPSA. The Certificate of Acceptance executed 9 July 1999 indicates acceptance of the goods by HEL. Upon review of the lease, it is the opinion of the Trustee that it complies with the requirements of s. 5 of the CSA.

In accordance with the Regulations, CFG has registered a financing statement in the PPR (#80931) on Jan.31/00 which includes the following description:

General Description of Collateral: (1) 310SE Backhoe Loader S/N T0310SE877721; (1) 310SE Backhoe Loader S/N T0310SE677726; (1) 160LC Excavator S/N F00160X041035; (1) 450LC Base Excavator S/N FF0450X090370.

Pre-PPSA registration information continued by this registration.

733722 1999-07-15 Conditional Sales Act

This registration indicates that prior to the PPR, this transaction was supported by a registration pursuant to the CSA on July 15, 1999, being registration # 733722. The Trustee has confirmed this registration with a search of the Old Registry. It is the opinion of the Trustee that the relevant date for purposes of perfection is the date of registration in the Old Registry.

Lease #11-889-0

This transaction took place on 5 June 1998, prior to the coming into force of the PPSA. The Certificate of Acceptance executed 9 June 1998 confirms acceptance of the goods by HEL. Upon review of the lease, it is the opinion of the Trustee that it complies with the requirements of s. 5 of the CSA.

In accordance with the Regulations, CFG has registered a financing statement in the PPR (#80913) on Jan.31/00 which includes the following description:

General Description of Collateral: (3) 892E Excavators, 32IN (800MM) Shoes, Standard Boom 4.00M (13' 1") ARM, Vandal Protection S/N FF892EX012642, S/N FF092EX012643, S/N FF892EX012455, DEERE ENG: RG6076A596345, RG6076A596350, RG6076A592086.

Pre-PPSA registration information continued by this registration.

697920 1998-06-11 Conditional Sales Act.

(Emphasis Added)

This registration indicates that prior to the PPR, this transaction was supported by a registration pursuant to the Conditional Sales Act on June 11, 1998, being

registration # 697920. The Trustee has confirmed this registration with a search of the Old Registry. It is the opinion of the Trustee that the relevant date for purposes of perfection is the date of registration in the Old Registry.

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 debtor.²
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?

YES. The leases are in the nature of a sale-leaseback transaction whereby the assets were sold by Hickman to the secured party and then leased back to it. While the leases contain confirmation from HEL that the assets were received and accepted by them, and this is evidence of value for the lease portion of the transaction, it is also necessary to provide evidence of value for the sale. As indicated above, the Trustee has been provided with evidence of value with respect to each of the leases. This is in the form of invoices and bank statements confirming payment to HEL of the invoiced amount. It is the opinion of the Trustee that this is sufficient evidence of value for the 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. 13³. HEL held possession of the assets. Furthermore, s. 13 (3) of the Act confirms that a lessee under a

² C. Welsh, *An Introduction to the New Brunswick Personal Property Act*, (1995) at p.83.

³ Ibid. at 84.

lease for a term of more than one year has rights in the goods for purposes of attachment when s/he obtains possession of them 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 4 leases. Specifically, in accordance with s.11(1) (b), the 4 leases 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. Lease No. 11-889-2(assets # 1-3 above)

YES.

Registration # 80913 described above.

Registration #1581181 dated Feb.4/02 contains the following information

Description: All inventory, products or other personal property supplied to or purchased by the Debtors, or either one of them, from the Secured Parties, or either one of them, including three 892E Excavators, 32IN (800MM) Shoes, Standard Boom 4.00M (13' 1")ARM, Vandal Protection, S/N FF892EX012642, S/N FF092EX012643, S/N FF892EX012455, DEERE ENG: RG6076A596348; RG6076A596350; RG6076A592086, and includes all attachments replacements, substitutions, accessories, accessions and additions thereto, together with all personal property received directly or indirectly as proceeds therefrom.

b. Lease No. 11-889-2(assets # 4-7 above)

YES.

Registration #80931 described above

Registration #1581602 dated February 4/02 contains the following information

Description: All inventory, products or other personal property supplied to or purchased by the Debtor from the Secured Parties or either of them including one (1) 310SE Backhoe Loader – S/N T0310SE877721, one (1) 310SE Backhoe Loader – S/N T0310SE677726, one (1) 160LC Excavator – S/N P00160X041035, and one (1) 450LC Base Excavator – S/N FF0450X090370, and includes all attachments, replacements, substitutions, accessories, accessions and additions thereto, together with all personal property received directly or indirectly as proceeds therefrom.

Motor Vehicle	One (1) 450LC Base Excavator	FF0450X090370
Motor Vehicle	One (1) 160LC Excavator	P00160X041035
Motor Vehicle	One (1) 310SE Backhoe Loader	T0310SE677726
Motor Vehicle	One (1) 310SE Backhoe Loader	T0310SE877721

c. Lease No. 11-174-0(asset # 8 above)**YES****Registration #803840 dated February 16/01 contains the following information****Description: "One 200LC Excavator Unit #C001071 s/n FF0200X501668"****d. Lease No. 11-89-3(assets # 9-10 above)****YES****Registration #551721 dated September 20/00 contains the following information****Description: "1 Model 608B Harvester s/n10BA1221 Unit #C000760. 1 Model 1270B Harvester s/n 01AB2086 Unit #C000745"**

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 CFG'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.⁴

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:

⁴ Ibid. at p.140.

- (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.

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.⁵

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(f)).

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:

- The documents indicate that in all 4 leases the assets secured were supplied by HEL and then leased back to HEL by CFG. Although such sale and lease-back arrangements appear to entitle CFG to claim a PMSI, subsection 2(hh) of the PPSA specifically excludes "a transaction of sale by and lease back to the seller" from being a PMSI.
- If these leases were not sale/leaseback type transactions, there are instances whereby an inventory financier such as CFG may be entitled to claim a super-priority status (ref. s. 35(2)). CFG has not provided evidentiary support for such an entitlement.
- As established by s. 36 of the PPSA, the relevant date for the determination of the priority of CFG's interest in the assets are:
 - Lease # 11-889-0: June 11, 1998
 - Lease # 11-89-2: July 15, 1999

⁵ Ibid. at 140.

22-01-2003 07:22pm From:MCINNES COOPER

709 7224117

T-765 P.032/034 F-065

JAN-16-03 17:13 From:CHAITON & CHAITON

4162228402

T-938 P.34/36 Job-U/Y

- ~~Lease # 11-174-0: February 16, 2001~~
- ~~Lease # 11-39-3: September 20, 2000~~

15. Auction Results

One Excavator (FF892EX012643) was sold at the Trustee's auction on July 12, 2002, in Halifax, Nova Scotia. Net amount obtained (bid amount less LVG buyer's premium) was \$145,000.00.

JAN-18-03 17:18 From:CHAITON & CHAITON

4162228402

T-938 P.99/36 Job-079

10/21/02 14:30 FAX 416 293 7874.

CONTRACT FUNDING GRP

21002

FILE No. 174 08/17 '98 12:32 ID: CYBER LEASE CORPORATION FAX: 613 233 6095

PAGE 23



13-89-0

May 6, 1998

CIBC
Atlantic Place
P.O. Box 540
St. John's Newfoundland
A1C 5J9

Attn: Mr. Barry Chaulk

This is Exhibit 4 referred to in the
declaration of Gunter Beese
sworn before me this 15 day of

Barry Chaulk
Commissioner, ETC.

**RE: HICKMAN EQUIPMENT (1995) LIMITED
AND LABRADOR EQUIPMENT & MINING SUPPLIES LTD.**

We are in the process of arranging lease financing for the above company. Our searches indicate that financing statements have been filed by or on behalf of CIBC, indicating that you have a security interest in certain assets or undertakings of the above company.

Please confirm by signing below and return by fax to my attention at 613-233-6095, indicating that you have no security interest, lien or encumbrance of any kind on the Equipment described as follows:

2- 802R Excavators s/n FF882EXD12842, FF882EXD12843, FF882EXD12845

Your prompt reply is greatly appreciated.

Yours truly,

Don Quilley
Susan McAllister

CANADIAN IMPERIAL BANK OF COMMERCE

Signature Barry Chaulk

Title Manager
Commercial Banking

Date

June 8/98

Bank Street Chambers, 103 Bank Street, Suite 802, Ottawa, Ontario K1P 5N4
Tel (613) 596-8875 Fax (613) 233-6095

TOTAL P.04

22-01-2003 07:23pm From:MCINNES COOPER

709 7224117

T-765 P.034/034 F-065

JAN-16-03 17:14 From:CHAITON & CHAITON

4162228402

T-938 P.96/96 Job-078

10/21/02 14:30 FAX 416 243 7074

CONTRACT FUNDING GRP

0003

FILE No.120 08-11 '98 11:46 ID:CYBER LEASE CORPORATION FAX:8132936095

PAGE 2

TE'D TELDL

13-89-0



JOHN DEERE CREDIT INC. 1000 Campbell Avenue, Suite 200, Burlington, Ontario, Canada L7R 3Y4

 Director: 905-319-1000
 Director: 905-319-2147

June 11, 1998

Via Facsimile 613-293-6095

Susan Mcallister
Cyber Lease

Ontario ON K1P 5N4

Dear Susan:

**RE: RELEASE OF INTEREST - Hickman Equipment (1985) Limited and
 Lebrator Equipment & Mining Supplies Ltd.**

 Please accept this letter as confirmation that John Deere Credit Inc. holds no interest in
 the following:

3-892E Excavators s/n FF892EX012642, FF892EX012643, FF892EX012435

 I confirm that John Deere Credit Inc. is the successor by amalgamation of John Deere
 Finance Limited and Canadian Equipment Finance Corporation.

Yours Truly,

 Lynn Aspin
 Wholesale, Customer Service

 This is Exhibit "_____" referred to in the
 declaration of _____
 sworn before me this _____ day

A COMMISSIONER, ETC.