

## GOODLAND O'FLAHERTY

205 Water Street  
2<sup>nd</sup> Floor  
St. John's, NF  
A1C 1B4

FACSIMILE TRANSMISSION

DATE: October 5, 2002

FROM: Philip J. Buckingham

TO:

Patterson Palmer Law	Anna Locke	722-0483
Bombardier Capital Leasing & Culease Financial Services	J. Vernon French, Q.C.	754-2701
PricewaterhouseCoopers	Jim Kirby	722-5874
CIBC	Geoffrey Spencer	579-2647
General Motors Acceptance Corporation of Canada Limited	Thomas Kendell	722-1763

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TOTAL PAGES: 12 (INCLUDING COVER). IF YOU HAVE ANY PROBLEMS RECEIVING THIS FAX OR IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CONTACT TAMMEY AT 722-4700 OR FAX 722-4720.

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**GOODLAND O'FLAHERTY****BARRISTERS & SOLICITORS**

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

October 5, 2006

File No: 453

**Via Facsimile: 754-2701**

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

Dear Sir:

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

With respect to the above matter, please find enclosed an Interlocutory Application, Inter Partes, which is scheduled to be heard on Thursday, October 12, 2006 at 10:00 a.m. We are making the application simply for a return date on filing.

Trusting this is satisfactory, I remain

Yours faithfully,

**GOODLAND O'FLAHERTY**  
Philip J. Buckingham

PJB:tm  
C: Anna Cooke  
C: Thomas Kendall  
C: Geoffrey Spencer  
Encl.

SUMMARY OF CURRENT DOCUMENT									
Name of Issuing Party or Person	DaimlerChrysler Financial Services (debis) Canada Inc. (hereinafter "DCFS")								
Date of Document	October 5, 2006								
Summary of Order/Relief Sought or Statement of Purpose in Filing	Application of DCFS for the payment to DCFS of the Proceeds from the sale by the Receiver of: <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>Stock #</th> <th>Make</th> <th>Serial #</th> <th>Proceeds</th> </tr> </thead> <tbody> <tr> <td>160LC</td> <td>John Deere</td> <td>P00160X041361</td> <td><u>\$110,000</u> <u>\$110,000</u></td> </tr> </tbody> </table>	Stock #	Make	Serial #	Proceeds	160LC	John Deere	P00160X041361	<u>\$110,000</u> <u>\$110,000</u>
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160LC	John Deere	P00160X041361	<u>\$110,000</u> <u>\$110,000</u>						
Court Sub-File Number	7:40								

2002 01 T0352

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN THE MATTER OF a Court ordered Receivership of Hickman Equipment (1985) Limited ("Hickman Equipment") pursuant to Rule 25 of the *Rules of the Supreme Court, 1986* under the *Judicature Act, R.S.N.L. 1990, c. J-4*, as amended

AND IN THE MATTER OF the *Bankruptcy and Insolvency Act*, Chapter B-3 of the Revised Statutes of Canada, 1985, as amended (the "BIA")

INTERLOCUTORY APPLICATION  
(INTER PARTES)

The Application of DaimlerChrysler Financial Services (debis) Canada Inc. (the "Applicant") says as follows:

1. By Order of this Honourable Court granted on the 13<sup>th</sup> day of March, 2002 and filed with the Court on the 14<sup>th</sup> day of March, 2002, it was ordered that Pricewaterhouse Coopers Inc. ("PWC") be appointed Receiver of Hickman Equipment (the "Receivership Order").

2. By a Receiving Order made on the 13<sup>th</sup> 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 14<sup>th</sup> day of March, 2002 Hickman Equipment was adjusted bankrupt and PWC appointed as trustee of the estate of the bankrupt in bankruptcy (the "Trustee").
3. By Order of this Honourable Court made on the 14<sup>th</sup> day of May, 2002 and filed on the 17<sup>th</sup> day of May, 2002, the Claims Plan of the Receiver was approved. Under paragraph 6 and paragraph 7 of the Claims Plan, the determination of the rights and entitlement of creditors and claimants to the assets of Hickman Equipment involved a two stage process, as follows:
  - (a) a determination of whether a claimant had a valid, perfected and enforceable ownership or security interests in the assets of Hickman Equipment or the proceeds arising therefrom; and
  - (b) a determination of the priority of a claimant's interest vis-à-vis other claimants.
4. Under paragraph 20 of the Claims Plan, PWC proposed that the order of priority of claims to an asset of Hickman Equipment or to the proceeds arising therefrom be determined using the priority rules established by the *Personal Property Security Act*, S.N.L. 1990, c. P-7.1 ("PPSA") and other applicable law.
5. Under paragraph 21 of the Claims Plan, issues of priority and entitlement to collateral between secured claimants may, upon application, be brought before this Court for determination, pursuant to the provisions of Section 68 of the PPSA.
6. Pursuant to the Order dated the 14<sup>th</sup> day of May, 2002 PWC commended and thereafter completed the liquidation of substantially all of the assets of Hickman Equipment by auction on the 12<sup>th</sup> day of July, 2002, including the following unit.

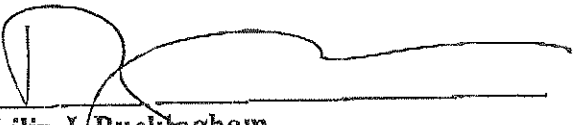
<u>Model No.</u>	<u>Make</u>	<u>Serial No.</u>
160LC	John Deere	P00160X041361

(hereinafter referred to as the "DCFS Unit")

7. That on the 11<sup>th</sup> day of May, 2000, Canadian Imperial Bank of Commerce (CIBC) executed a postponement agreement subordinating the rights of CIBC to those of DCFS in relation to an LC160 Excavator bearing serial number P00160X041361.
8. That on May 12, 2000, the Applicant gave value for, *inter alia*, the DCFS Unit by virtue of payment to Hickman Leasing Limited of the amounts of \$999,739.55 as evidenced by a wire transfer on even date.
9. The Applicant has a first charge security interest in the DCFS Units by virtue of registration no: 284372 on the 16<sup>th</sup> of May, 2000 pursuant to the *Personal Property Security Act* ("PPSA").
10. That on the 31<sup>st</sup> day of December, 2001, DCFS executed a PPSA Waiver Letter in favour of Mercado Capital Corporation postponing any interest of DCFS in favour of Culease Financial Services in relation to, *inter alia*, one (1) 2000 John Deere 160LC Excavator FF0160X041361.
11. That on the 12<sup>th</sup> day of January, 2002, Culease filed with the PPSA Registry a financing statement bearing registry number 1544225 identifying a security interest in one (1) 2000 JD 160LC Excavator (s/n FF0160X041361).
12. That as of March 11, 2002, the Applicant was owed \$2,324,926.76 for, *inter alia*, the DCFS Unit.
13. That in accordance with paragraph 14 of the Claims Plan the Receiver determined on December 11, 2002, that DCFS has a valid secured claim in relation to all assets as asserted and in particular the DCFS Unit.

14. That the Applicant is aware of a potential dispute existing as between DCFS and Culease Financial Services with respect to 2000 JD 160 LC Excavator, serial number: P00160X041361.
15. That the application is aware of Notices of Objection to the DCFS claim filed by the following parties: GMAC on February 7, 2003 and Canadian Imperial Bank of Commerce on February 7, 2003.
16. The Applicant therefore applies pursuant to paragraph 21 of the Claims Plan and Section 68 of the PPSA to this Honourable Court for an Order to determine the priority of the security interest of DCFS vis-à-vis Culease and to thereafter approve the payment to the Applicant by the Receiver of the proceeds from the auction and sale of the DCFS Unit plus any applicable interest thereon.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this 5<sup>th</sup> day of October, 2006.

  
Philip J. Buckingham  
Goodland O'Flaherty  
Solicitors for DaimlerChrysler Financial Services  
Whose address for service is:  
205 Water Street, 2<sup>nd</sup> Floor  
St. John's, NL A1C 1B4

**ISSUED** at St. John's, in the Province of Newfoundland and Labrador, this \_\_\_\_\_ day of October, 2006.

\_\_\_\_\_

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 12<sup>th</sup> day of October, 2006, a.m. or soon thereafter as the application can be heard.

To: See attached distribution list

**SCHEDULE "A"**  
**PARTIES WHO HAVE BEEN SERVED**

CTBC	Geoff Spencer <u>gspencer@hensonmyles.com</u>	579-2647
Daimler Chrysler Financial Services/Daimler Chrysler Capital Services/Mercedes- Benz of Canada Inc.	Philip Buckingham/ Peter O'Flaherty  <u>philip@goodlandoflaherty.com</u>	722-4720
General Motors Acceptance Corporation of Canada, Limited	Thomas Kendell, Q.C.	722-1763
Pricewaterhouse Coopers Trustee in Bankruptcy	Anna Locke James Kirby	722-0483 722-1428

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**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**

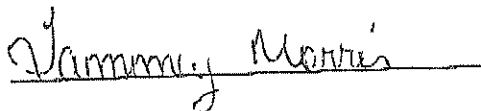
I, Philip J. Buckingham, of the City of St. John's, in the Province of Newfoundland and Labrador, Solicitor, make oath and say as follows:

1. That I have read and understand the following application.
2. That I make the within Affidavit in support of the Application of DCFS and to comply with the *Rules of the Supreme Court, 1986*.

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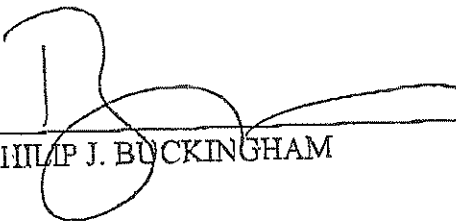
3. That in addition to the within Affidavit the Applicant will be relying, *inter alia*, on the Affidavit of Tim Gilligan filed with this Honourable Court on the 5<sup>th</sup> day of January, 2003 and portions of the Affidavit of Terry Wensley, Operations Manager for Culease Financial Services and filed with this Honourable Court on the 7<sup>th</sup> day of February, 2003.

SWORN TO before me at the  
City of St. John's, in the Province  
of Newfoundland and Labrador,  
this 5<sup>th</sup> day of October, 2006.



**TAMMEY MORRIS**

A Commissioner for Oaths in and for  
the Province of Newfoundland and Labrador.  
My commission expires on December 31, 2009.

  
PHILIP J. BUCKINGHAM

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**AND IN THE MATTER OF** the *Bankruptcy and Insolvency Act*, Chapter B-3 of the Revised Statutes of Canada, 1985, as amended (the "BIA")

**ORDER**

Before the Honourable

Justice

**WHEREAS** this matter having come on for hearing on the day of \_\_\_\_\_, 2006.

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AND WHEREAS the parties listed in Schedule A to this Application having been served with notice of this Application in the manner ordered by this Court AND WHEREAS the parties listed in Schedule B to this Order having appeared and having been heard AND UPON READING the Affidavit of Mr. Tim Gillingan, Commercial Credit Analyst for DaimlerChrysler Services Canada Inc. former DaimlerChrysler Financial Services (debis) Canada Inc.;

AND UPON READING the Affidavit of Terry Wensley, Operations Manager for Culease Financial Services;

**IT IS THIS DAY ORDERED AS FOLLOWS:**

The proceeds from the sale of the following unit be paid by the Receiver to DaimlerChrysler Services Canada Inc.

<u>Stock No.</u>	<u>Make</u>	<u>Serial No.</u>	<u>O/S Balance</u>
160LC	John Deere	P00160X041361	\$110,000
<b>Total to be paid to DaimlerChrysler Financial Services (debis) Canada Inc.</b>			<b>\$110,000</b>

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this \_\_\_\_\_ day of October, 2006.

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