

SUMMARY OF CURRENT DOCUMENT												
Name of Issuing Party or Person	CULEASE Financial Services (“Culease”)											
Date of Document	3 February, 2003											
Summary of Order/Relief Sought or Statement of Purpose in Filing	<p>- Notice of Objection by Culease</p> <p>- Culease objects to the Interlocutory Application (<i>Inter Partes</i>) of Daimler Chrysler Financial Services (debis) Canada Inc. (“DCFS”) for an Order approving the payment to DCFS of the Proceeds from the sale by the Receiver of:</p> <table><tr><th>Stock#</th><th>Model</th><th>Serial #</th><th>Proceeds</th></tr><tr><td>N-C001512</td><td>John Deere 160LC Excavator</td><td>P00160X041361</td><td>\$110,000.00</td></tr></table>				Stock#	Model	Serial #	Proceeds	N-C001512	John Deere 160LC Excavator	P00160X041361	\$110,000.00
Stock#	Model	Serial #	Proceeds									
N-C001512	John Deere 160LC Excavator	P00160X041361	\$110,000.00									
Court Sub-File Number:	7:40											

2002 01 T 0352

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION**

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 OF OBJECTION

1. Culease objects to the Interlocutory Application (*Inter Partes*) of DCFS, Court Sub-File

Number 7:40, for an Order approving the payment to DCFS of the Proceeds from the sale by the Receiver of:

Stock#	Model	Serial #	Proceeds
N-C001512	John Deere 160LC Excavator	P00160X041361	\$110,000.00

2. Culease presented its security interest claim to PWC (the “Culease Claim”).

3. The Culease Claim dealt with the following eighteen (18) units (the “Culease Units”).

	Stock#	Model	Serial #
1.	N-C001454	John Deere 160LC Excavator	P00160X041793
2.	N-C001453	John Deere 160LC Excavator	P00160X041792
3.	N-C001377	John Deere 160LC Excavator	P00160X041741
4.	C001035	John Deere 160LC Excavator	P00160X041555
5.	N-C001512	John Deere 160LC Excavator	P00160X041361
6.	C001381	John Deere 330LC Excavator	FF0330X080964
7.	N-C001379	John Deere 200LC Excavator	FF0200X502017
8.	N-C001479	John Deere 850C Dozer	T0850CX900908
9.	N-C001486	John Deere 1050C Dozer	LU1050C005288
10.	C001105	John Deere 624H 4WD Loader	DW624HX79048
11.	C001229	I/R XP825 Compressor	172821
12.	C001228	I/R EXM350 Air Track	R10031
13.	C001227	Terex Articulated Truck	74TDC7364

14.	C001226	CAT D8N Dozer	5TJ02858
15.	C001339	CAT 320B Excavator	06CR04706
16.	C001340	CAT 320B Excavator	06CR05244
17.	C001341	CAT 320B Excavator	06CR05245
18.	C001295	John Deere 992E Excavator	FF992EX007040

4. PWC sold the Culease Units as part of the realization of the assets of Hickman Equipment.

5. The proceeds arising from the sale of the Culease Units totaled \$2,338,275.00, particulars of which include:

	Stock#	Model	Serial #	Proceeds
1.	N-C001454	John Deere 160LC Excavator	P00160X041793	\$132,500.00
2.	N-C001453	John Deere 160LC Excavator	P00160X041792	\$132,500.00
3.	N-C001377	John Deere 160LC Excavator	P00160X041741	\$120,000.00
4.	C001035	John Deere 160LC Excavator	P00160X041555	\$110,000.00
5.	N-C001512	John Deere 160LC Excavator	P00160X041361	\$110,000.00
6.	C001381	John Deere 330LC Excavator	FF0330X080964	\$199,500.00
7.	N-C001379	John Deere 200LC Excavator	FF0200X502017	\$131,100.00
8.	N-C001479	John Deere 850C Dozer	T0850CX900908	\$222,500.00
9.	N-C001486	John Deere 1050C Dozer	LU1050C005288	\$330,000.00
10.	C001105	John Deere 624H 4WD Loader	DW624HX79048	\$152,500.00
11.	C001229	I/R XP825 Compressor	172821	\$9,656.00
12.	C001228	I/R EXM350 Air Track	R10031	\$12,070.00
13.	C001227	Terex Articulated Truck	74TDC7364	\$800.00
14.	C001226	CAT D8N Dozer	5TJ02858	\$165,149.00

15.	C001339	CAT 320B Excavator	06CR04706	\$135,000.00
16.	C001340	CAT 320B Excavator	06CR05244	\$140,000.00
17.	C001341	CAT 320B Excavator	06CR05245	\$135,000.00
18.	C001295	John Deere 992E Excavator	FF992EX007040	\$100,000.00

6. On or about December 11, 2002, PWC issued its '*Amended*' Final Determination of the Culease Claim and allowed the Culease Claim "as a valid secured claim in all of the Assets".
7. PWC has not made any determination as to Culease's priority or entitlement to the proceeds arising from the sale of the Culease Units.
8. The basis for the objection of Culease to the Interlocutory Application (*Inter Partes*) of DCFS, Court Sub-File Number 7:40, is that Culease has a valid secured claim with respect to the following asset of Hickman Equipment:

Stock#	Model	Serial #	Proceeds
N-C001512	John Deere 160LC Excavator	P00160X041361	\$110,000.00

9. Culease therefore requests, pursuant to paragraph 21 of the Claims Plan and section 68 of the PPSA:
 - (i) a determination of the priority and entitlement of Culease, *vis-à-vis* DCFS, to the proceeds from the sale of the following asset of Hickman Equipment:

Stock#	Model	Serial #	Proceeds
N-C001512	John Deere 160LC Excavator	P00160X041361	\$110,000.00

and

- (ii) an order that PWC pay the proceeds from the sale of the Culease unit referenced herein at subparagraph 9(i) to Culease.

DATED at St. John's, in the Province on Newfoundland and Labrador, this 1 day of February, 2003.



J. VERNON FRENCH, Q.C.
FRENCH, DUNNE & ASSOCIATES
Solicitors for CULEASE Financial Services
whose address for service is:
Suite 122, Elizabeth Towers
100 Elizabeth Avenue
St. John's, NL
A1B 1S1

TO: Patterson Palmer Law
Solicitors for PWC
For Posting on the PWC Website

2002 01 T 0352

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION**

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 OF TERRY WENSELY
[on behalf of Culease]

Court Sub-File Number: 7:40

FRENCH, DUNNE & ASSOCIATES
Solicitors for CULEASE Financial Services
whose address for service is:
Suite 122, Elizabeth Towers
100 Elizabeth Avenue
St. John's, NL
A1B 1S1

Attention: J. Vernon French, Q.C. /
John B. French

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION**

IN THE MATTER OF a Court ordered
Receivership of Hickman Equipment (1985)
Limited ("Hickman Equipment") pursuant to
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and Insolvency Act, Chapter B-3 of the Revised
Statutes of Canada, 1985, as amended (the "BIA")

AFFIDAVIT

I, Terry Wensley, of the City of Regina, in the Province of Saskatchewan, make oath and say as follows:

1. I am the Operations Manager for CULEASE Financial Services ("Culease"), and as such I have knowledge of the matters referred to in the foregoing Notice of Objection and the matters to which I hereinafter depose, except where such knowledge is based on information and belief, in which case I have identified the sources and grounds of my information and belief and verily believe same to be true.
2. By a Receiving Order dated March 13, 2002, and filed March 14, 2002 (the "Receiving Order") Hickman Equipment was adjudged bankrupt and PricewaterhouseCoopers Inc. ("PWC") was appointed Trustee in bankruptcy in accordance with the BIA.

3. By a Receiving 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 undertaking (the "Assets") of Hickman Equipment wheresoever situate including without limitation all property assets and undertakings comprised in the term "Property" as such term is defined in the Initial Order.*"
4. As a result of the above, and by virtue of the Receiving Order, Culease filed a proof of claim in the Bankruptcy of Hickman Equipment dated April 16, 2002, and an amended proof of claim in the Bankruptcy of Hickman Equipment dated October 29, 2002.
5. 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 Hickman Equipment by auction.
6. By '*Amended*' Final Determination dated December 11, 2002 (the "Final Determination"), PWC has allowed, *inter alia*, the claims of Culease "as a valid secured claim in all of the Assets". A true copy of the '*Amended*' Final Determination is attached as Exhibit "TW 1" [Tab 1] to this Affidavit.
7. Between November 2000 and December 2001, Culease entered into four equipment lease agreements with Hickman Equipment (the "Equipment Leases").
8. Hickman Equipment was an authorized distributor of John Deere Limited Industrial

Equipment in Newfoundland and Labrador.

9. By the Equipment Leases, Culease purchased John Deere equipment and leased it to Hickman Equipment, and Hickman Equipment had the option to purchase the leased equipment at the end of the lease period.
10. The Equipment Leases contained, *inter alia*, the following clause with respect to “title” to the leased equipment:

14. TITLE

Customer shall have no right, title or interest in the Equipment other than, conditional upon Customer's compliance with and fulfilment of the terms and conditions of this Agreement, the right to maintain possession and use of the Equipment for the full Term and any Renewal Period. Lessor and Customer hereby confirm their intent that the Equipment shall always remain and be deemed personal or moveable property, even though said Equipment may become attached to other equipment or real property. Customer hereby agrees to provide prior written notice to Lessor of any intention to attach the Equipment to other property.

11. By December 31, 2001, Culease had purchased 19 pieces of John Deere equipment, which it leased to Hickman Equipment, and the total of the outstanding balances owing under the Equipment Leases was \$4,690,163.49 as of March 13, 2002.
12. In March, 2002, it was determined that of the 19 pieces of John Deere equipment which Culease had purchased and leased to Hickman Equipment, Hickman Equipment had sold 18 pieces to third parties, including 7 pieces to Hickman Equipment Leasing and Rentals

Ltd. in or about December 2001, contrary to the terms of the Equipment Leases. As of the date of the Trustee's auction on July 12, 2002, in Halifax, in the Province of Nova Scotia, Hickman Equipment remained in possession of the following 18 pieces with the 11th through 18th pieces being trade ins.

	Stock#	Model	Serial #
1.	N-C001454	John Deere 160LC Excavator	P00160X041793
2.	N-C001453	John Deere 160LC Excavator	P00160X041792
3.	N-C001377	John Deere 160LC Excavator	P00160X041741
4.	C001035	John Deere 160LC Excavator	P00160X041555
5.	N-C001512	John Deere 160LC Excavator	P00160X041361
6.	C001381	John Deere 330LC Excavator	FF0330X080964
7.	N-C001379	John Deere 200LC Excavator	FF0200X502017
8.	N-C001479	John Deere 850C Dozer	T0850CX900908
9.	N-C001486	John Deere 1050C Dozer	LU1050C005288
10.	C001105	John Deere 624H 4WD Loader	DW624HX79048
11.	C001229	I/R XP825 Compressor	172821
12.	C001228	I/R EXM350 Air Track ¹	R10031
13.	C001227	Terex Articulated Truck	74TDC7364
14.	C001226	CAT D8N Dozer	5TJ02858
15.	C001339	CAT 320B Excavator	06CR04706
16.	C001340	CAT 320B Excavator	06CR05244

¹ Described in invoice dated March 1, 2001, from Hickman Equipment to Modern Holdings Ltd. as a used I/R ECM350 Air Track s/n R10031 [Tab 4, Page 24].

17.	C001341	CAT 320B Excavator	06CR05245
18.	C001295	John Deere 992E Excavator	FF992EX007040

13. PWC sold the Culease Units as part of its liquidation of the assets of Hickman Equipment.

14. The proceeds arising from the sale of the 10 Culease Units was \$1,640,600.00, particulars of which include:

	Stock#	Model	Serial #	Proceeds
1.	N-C001454	John Deere 160LC Excavator	P00160X041793	\$132,500.00
2.	N-C001453	John Deere 160LC Excavator	P00160X041792	\$132,500.00
3.	N-C001377	John Deere 160LC Excavator	P00160X041741	\$120,000.00
4.	C001035	John Deere 160LC Excavator	P00160X041555	\$110,000.00
5.	N-C001512	John Deere 160LC Excavator	P00160X041361	\$110,000.00
6.	C001381	John Deere 330LC Excavator	FF0330X080964	\$199,500.00
7.	N-C001379	John Deere 200LC Excavator	FF0200X502017	\$131,100.00
8.	N-C001479	John Deere 850C Dozer	T0850CX900908	\$222,500.00
9.	N-C001486	John Deere 1050C Dozer	LU1050C005288	\$330,000.00
10.	C001105	John Deere 624H 4WD Loader	DW624HX79048	\$152,500.00

15. The proceeds arising from the sale of the 8 trade ins was \$697,675.00, particulars of which include:

	Stock#	Model	Serial #	Proceeds
11.	C001229	I/R XP825 Compressor	172821	\$9,656.00
12.	C001228	I/R EXM350 Air Track	R10031	\$12,070.00
13.	C001227	Terex Articulated Truck	74TDC7364	\$800.00

14.	C001226	CAT D8N Dozer	5TJ02858	\$165,149.00
15.	C001339	CAT 320B Excavator	06CR04706	\$135,000.00
16.	C001340	CAT 320B Excavator	06CR05244	\$140,000.00
17.	C001341	CAT 320B Excavator	06CR05245	\$135,000.00
18.	C001295	John Deere 992E Excavator	FF992EX007040	\$100,000.00

16. The total proceeds arising from the auction sale of the Culease Units was \$2,338,275.00.

17. Culease's priority and entitlement to the proceeds arising from the sale of Culease Unit #5, is based on the following sources and grounds:

Culease Unit #5: John Deere 160LC Excavator s/n P00160X041361:

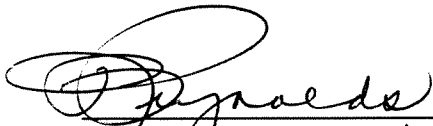
- (a) Sold, among other equipment, to Culease under Bill of Sale dated December 13, 2001 for the total purchase price of \$1,942,400.00 plus HST [Tab 2, Page 1];
- (b) Leased to Hickman Equipment by Culease pursuant to Lease Agreement dated December 13, 2001 [Tab 2, Page 2];
- (c) No interest letters from Daimler Chrysler Capital Services, CIBC and John Deere Limited [Tab 2, Page 6, 7 and 8];
- (d) Equipment Lease registered under the PPSA by registration number 1544225 dated January 12, 2002 [Tab 2, Page 10]; and
- (e) Proof of value (\$1,942,400.00 plus HST) given as per copy of Letter of Direction dated December 13, 2001, from Hickman Equipment to Culease [Tab 2, Page 12], and copy of cheque number 1752 in the amount of

\$2,151,552.63 dated December 31, 2001 [Tab 2, Page 13].

18. Now produced and shown to me and marked as Exhibit "TW #2" to this my Affidavit are copies of the various documents relating to Culease Unit #5 and referred to in paragraph 17 of this Affidavit.
19. That through inadvertence Culease identified the John Deere 160LC Excavator bearing serial number P00160X041361 as a John Deere 160LC Excavator bearing serial number FF0160X041361 in the following documents: Bill of Sale dated December 13, 2001 [Tab 2, Page 1]; Lease Agreement dated December 13, 2001 [Tab 2, Page 2]; No interest letter from Daimler Chrysler Capital Services [Tab 2, Page 6]; and PPSA Financing Statement bearing registration number 1544225 dated January 12, 2002 [Tab 2, Page 10].
20. This Affidavit is sworn and filed in support of Culease's Notice of Objection to the Interlocutory Application (*Inter Partes*) of DCFS, Court Sub-File Number 7:40, for an Order approving the payment to DCFS of the Proceeds from the sale by the Receiver of:

Stock#	Model	Serial #	Proceeds
N-C001512	John Deere 160LC Excavator	P00160X041361	\$110,000.00

SWORN before me at Regina,
in the Province of Saskatchewan,
this 5th day of February, 2003.



A Commissioner, etc. of Oaths

In and For the

Province of Saskatchewan.

My appointment

expires March 31, 2006.


TERRY WENSLEY

SCHEDULE "A"

FINAL DETERMINATION

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

Secured Party: **CULEASE FINANCIAL SERVICES ("Culease")**

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 Culease].

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

Culease's claim is allowed as a valid secured claim in all of the Assets. 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.
"HLRL"	-	Hickman Leasing and Rentals Limited
"JD"	-	John Deere
"PPR"	-	Personal Property Registry
"PPSA" or "Act"	-	<i>Personal Property Security Act</i> , S.N.L. 1998, c.P - 7.1
"PMSI"	-	Purchase Money Security Interest
"Province"	-	Newfoundland and Labrador
"Regulations"	-	Personal Property Security Regulations (103/99)
"s/n"	-	serial number

4. Assets

Culease has made a claim to 19 pieces of heavy equipment. At the time of bankruptcy 10 pieces remained in the inventory of HEL (indicated by "**") and the rest had been sold to third parties.

- | | |
|----------------------------------------------------------------|-------------------------------------------------------------|
| 1) 2001 JD 1050C Dozer*
(LU1050C005288) | 2) 2000 JD 160LC Excavator*
(P00160X041361) ¹ |
| 3) 2001 JD 850C Dozer*
(T0850CX900908) | 4) 2001 JD 200LC Excavator*
(FF0200X502017) |
| 5) 2001 JD 160LC Excavator*
(P00160X041793) | 6) 2001 JD 160LC Excavator*
(P00160X041792) |
| 7) 2001 JD 160LC Excavator*
(P00160X041741) | 8) 2001 JD 450LC Base Excavator
(FF0450X090590) |
| 9) 2001 JD 310SG Backhoe Loader
(T0310SG895252) | 10) 2001 JD 310SG Backhoe Loader
(T0310SG895027) |
| 11) 2000 JD 160LC Excavator*
(P00160X041555) | 12) 2000 JD 200LC Excavator
(FF0200X501636) |
| 13) 2000 JD 670CH Motor Grader
(DW670CH578392) ² | 14) 2000 JD 310SE Backhoe Loader
(T0310SE892994) |
| 15) 2000 JD 544H Loader
(DW544HX578389) | 16) 2000 JD 330LC Excavator*
(FF0330X080964) |
| 17) 2000 JD 330LC Excavator
(FF0300X080941) | 18) TC54H T.C. Loader
(DWTC54H579078) |
| 19) 624H 4WD Loader*
(DW624HX579048) | |

5. Assumptions

¹ This is the correct serial number for this asset; the Financing Statement registered with respect to this item incorrectly listed the serial number as FF0160X041361.

² Though this is the description in the Lease Agreement, the Financing Statement lists this asset as a 670LC Excavator; however the serial number is the same in both documents.

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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

Culease claims that it holds perfected security interest in the 19 Assets arising from four (4) Lease Agreements entered into during the years 2000 and 2001. Culease states that in addition to satisfying all the requirements to attach and perfect a security interest, including registration of the security interests on the PPR, they also hold PMSI's over all of the Assets. Furthermore, Culease has put forward a claim that they are entitled to trace proceeds from the disposition of the Assets prior to the bankruptcy.

There is a further issue with respect to Assets #1-7 listed above because on the date of HEL's bankruptcy, these 7 pieces were in the possession of HLRL rather than HEL who Culease had leased them to in December 2001. Culease states that HEL transferred the Assets to HLRL without their knowledge or consent and contends that the transfer was not an arms-length transaction and therefore the transfer should be invalid. Culease has also presented correspondence in which the original Monitor stated that he had no interest in the 7 Assets since it was not listed as assets of HEL. Culease relies on this opinion and argues that the Assets should not form part of these bankruptcy proceedings and Culease should be permitted to seize the equipment.

The Proof of Claim, dated 16 April 2002, indicates a total claim of \$4,690,163.49 comprised of an Unsecured Claim in the amount of \$3,638,203.49 and a Secured Claim (Property) in the amount of \$1,051,960.00. The Amended Proof of Claim dated October 29, 2002 indicated a total claim of \$4,690,163.49 and states that this is exclusively a secured claim. The total claim results from 4 separate lease agreements:

1. Lease #4234 - 3 (securing Assets #1-7 in the list above). Balance outstanding of: **\$2,347,124.38**
2. Lease #4322 - 3 (securing Assets #8-10 in the list above). Balance outstanding of: **\$666,574.00. This is revised in the Amended Proof of Claim to be \$660,547.00.**
3. Lease #4322 - 4 (securing Assets #11-13 in the list above). Balance outstanding of: **\$553,088.81**
4. Lease #4234 - 2 (securing Assets #14-17 in the list above plus 2 other pieces of equipment not in the list above). Balance outstanding of: **\$1,129,376.30**

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 (Form 33) dated 16 April 2002
- iii. Proof of Claim (Property) dated 16 May 2002.
- iv. Proof of Claim (Form 33) dated 29 October 2002.
- v. Sales Invoice, dated 31 December 2001, evidencing the sale of Assets #1-7 to HLRL by HEL
- vi. Sub-Lease Agreement, undated, evidencing a lease of Assets #1-7 to HLRL by HEL; signed by both HLRL and HEL
- vii. Correspondence from John French dated 26 March 2002 attaching:
 - o DRV Lease Agreement dated 4 December 2000 between HEL and Town of Labrador City
 - o Fixed Rate Retail Installment Contract dated 15 December 2000 between HEL and Abbott Brothers Equipment Inc.

- DRV Lease Agreement dated 21 December 2000 between HEL and Convoy Services Ltd.
- Fixed Rate Retail Installment Contract dated 22 December 2000 between HEL and Glenn Corporation Limited
- Fixed Rate Retail Installment Contract dated 1 March 2001 between HEL and BCL Construction Ltd.
- John Deere Credit Agreement dated 12 April 2001 between HEL and Complete Paving Limited
- John Deere Commercial Lease Agreement (with Purchase Option) dated 15 June 2001 between HEL and Curtis Shane White and James William White
- John Deere Commercial Lease Agreement (with Purchase Option) dated 28 June 2001 between HEL and Penney Construction Ltd.
- DRV Lease Agreement dated 27 December 2001 between HEL and J&N Excavating and Contracting Inc.

viii. Lease #4234- 2 (for Assets #14-17 above)

- Lease Agreement dated 14 November 2000 evidencing the lease of Assets #14-17 plus 2 other pieces of equipment to HEL by Culease. The Lease Agreement is signed by both Culease and HEL
- Lease Agreement dated 10 December 2001 evidencing the lease of Assets #14-17 plus 2 other pieces of equipment to HEL by Culease. The Lease Agreement is signed by both Culease and HEL
- Bill of Sale, stamped "PAID", dated 14 November 2000 evidencing the sale of Assets #14-17 plus 2 other pieces of equipment to Culease by HEL. The Bill is signed by HEL
- Waiver Letters:
 - From CIBC dated 10 November 2000 relating to Assets #14-17 plus 2 other pieces of equipment
 - From John Deere Limited dated 20 November 2000 relating to Assets #14-17 plus 2 other pieces of equipment
- Substitution Agreement dated 13 February 2001 evidencing the substitution of Assets #18 & 19 for the 2 non-listed pieces of equipment referred to in the Bill of Sale and Lease Agreement dated 13 December 2000. This Agreement is signed by HEL but not by Culease
- PPR Verification Statement (Registration No. 661355)
- PPR Amendment Verification Statement (Registration No. 661371)
- PPR Amendment Verification Statement (Registration No. 695239)
- PPR Amendment Verification Statement (Registration No. 840363)
- 7 Requests for Amendment to Existing Lease dated 20, 21 or 22 November 2001
- Letter of Direction dated 8 November 2000 to Culease from HEL directing disbursement of proceeds of Bill of Sale (attached are 2 cheques from Culease to HEL for \$676,797.16)

ix. Lease #4322- 4 (for Assets #11-13 above)

- Lease Agreement dated 14 December 2001 evidencing the lease of equipment #11-13 to HEL by Culease. The Lease Agreement is signed by both Culease and HEL
 - Bill of Sale, stamped "PAID", dated 14 December 2000 evidencing the sale of equipment #11-13 to Culease by HEL. The Bill is signed by HEL
 - Waiver Letters:
 - From John Deere Credit dated 8 December 2000 relating to Assets #11-13
 - From CIBC dated 8 December 2000 relating Assets #11-13
 - From John Deere Limited dated 18 December 2000 relating to Assets #11-13
 - 2 Requests for Amendment to Existing Lease dated 20 November 2001
 - PPR Verification statement (Registration No. 726158)
 - Letter of Direction dated 7 December 2000 to Culease from HEL directing disbursement of proceeds of Bill of Sale (attached is a cheque from Culease to HEL for \$670,959.88 and a payment order showing the cheque was deposited directly into HEL's account with CIBC)
- x. **Lease #4322- 3** (for Assets #8-10, 18 and 19 above)
- Lease Agreement dated 9 December 2001 evidencing the lease of equipment #8-10 to HEL by Culease. The Lease Agreement is signed by both Culease and HEL
 - Bill of Sale, stamped "PAID", dated 9 February 2001 evidencing the sale of equipment #8-10 to Culease by HEL. The Bill is signed by HEL
 - Lease Agreement dated 9 February 2001 evidencing the lease of equipment #11-13 to HEL by Culease. The Lease Agreement is signed by both Culease and HEL
 - Waiver Letters:
 - Priority Agreement from CIBC dated 13 February 2001 relating to Assets #11-13 plus Assets #18 & 19
 - From John Deere Limited dated 15 February 2001 relating to Assets #11-13 plus Assets #18 & 19
 - 2 Requests for Amendment to Existing Lease dated 20 and 21 November 2001
 - PPR Verification Statement (Registration No. 809178)
 - Waiver letters from various credit unions to CIBC Equipment Financing Ltd. relating to various pieces of equipment none of which are the Assets listed above
 - Letter of Direction dated 7 February 2001 to Culease from HEL directing disbursement of proceeds of Bill of Sale (attached is a cheque from Culease to HEL for \$723,386.56 and a payment order showing the cheque was deposited directly into HEL's account with CIBC)
- xi. **Lease #4234- 3** (for Assets #1-7 above)
- Bill of Sale dated 13 December 2001 evidencing the sale of equipment #1-7 to Culease by HEL. The Bill is signed by HEL
 - Lease Agreement dated 13 December 2001 evidencing the lease of equipment #1-7 to HEL by Culease. The Lease Agreement is signed by both Culease and HEL
 - Waiver Letters:

- From Daimler Chrysler Capital Services dated 31 December 2001 only for asset #2
- From CIBC dated 110 January 2002 encompassing Assets #1-7
- From John Deere Limited dated 11 January 2002 encompassing Assets #1-7
- PPR Verification Statement (Registration No. 1544225)
- Letter of Direction dated 13 December 2001 to Culease from HEL directing disbursement of proceeds of Bill of Sale (attached cheque from Culease to HEL for \$2,151,552.63)

9. Classification of the Assets

The actual subjective use to which the assets are put by the debtor dictates whether the assets will be classified as inventory, equipment or consumer goods. In this regard, it is the opinion of the Trustee that all 19 Assets were held by HEL for sale or lease and as such, form part of the inventory of HEL (s. 2(x) of the PPSA).

10. Application of the PPSA

As indicated by the above-noted documentation the secured transactions between Culease and HEL were in the form of inventory 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

Not applicable in this instance as all transactions took place in 2000 and 2001 and therefore were 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 debtor.³

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 Personal Property Registry (the "PPR").

Is there attachment?

- (i) Was value given?

YES Culease did provide the Trustee with copies of Bill of Sales and cheques from Culease to HEL, evidencing the sale of the Assets to Culease by HEL. The Assets were then leased back to HEL who then had possession of goods to which Culease had acquired title. This is sufficient evidence of value being given by Culease to HEL in exchange for the security interest granted by HEL.

- (ii) Rights in the collateral?

YES HEL held possession of the Assets and 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. 13.⁴ Furthermore, s. 13 (3) confirms that a lessee under a 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 an opinion 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?

Lease No. 4234 - 3 (for Assets # 1-7 above)

³ C. Walsh, *An Introduction to the New Brunswick Personal Property Act*, (1995) at p.83.

⁴ Ibid. at p.84.

YES

Registration number 1544225 contains the following information:

- **General Description of Collateral:** "Equipment; Proceeds including but not limited to: goods, chattel paper, securities, documents of title, instruments, money, intangibles, insurance and all other proceeds arising directly or indirectly from the disposition, exchange, loss, replacement, renewal, destruction of or dealing with the collateral."
- **Serial Numbered Collateral:** "2001 JD 1050C Dozer (s/n LU1050C005288), 2000 JD 160LC Excavator (s/n FF0160X041361), 2001 JD 850C Dozer (s/n T0850CX900908), 2001 JD 200LC Excavator (s/n FF0200X502017), 3 - 2001 JD 160LC Excavator (s/n P00160X041793, P00160X041792, P00160X041741)"

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to Culease's security interest in the 7 Assets in lease #4234-3. 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). There is a question as to the adequacy of the description of Asset #2 since it is described by an incorrect serial number. However, as the debtor name is correct in the financing statement and the incorrect serial number would appear as a Close Match when a search was conducted, the Trustee is of the opinion that this error is not a seriously misleading error. It is the opinion of the Trustee that the collateral description in the above-noted financing statement satisfies these requirements.

Lease No. 4322 - 3 (for Assets # 8-10 above)

YES

Registration number 809178 contains the following information:

- **General Description of Collateral:** "Equipment; Proceeds including but not limited to: goods, chattel paper, securities, documents of title, instruments, money, intangibles, insurance and all other proceeds arising directly or indirectly from the disposition, exchange, loss, replacement, renewal, destruction of or dealing with the collateral."
- **Serial Numbered Collateral:** "2001 JD 450LC Base Excavator (s/n FF0450X090590), 2 - 2001 JD 310SG Backhoe Loader (s/n T0310SG895252, T0310SG895027)"

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to Culease's security interest in the 3 Assets in Lease #4322-3. 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 description in the above-noted financing statement satisfies these requirements.

Lease No. 4322 – 4 (for Assets #11-13 above)**YES**

Registration number 726158 contains the following information:

- **General Description of Collateral:** "Equipment; Proceeds including but not limited to: goods, chattel paper, securities, documents of title, instruments, money, intangibles, insurance and all other proceeds arising directly or indirectly from the disposition, exchange, loss, replacement, renewal, destruction of or dealing with the collateral."
- **Serial Numbered Collateral:** "2000 JD 160LC Excavator (s/n DW670CH578392) - deleted, 2000 JD 160LC Excavator (s/n P00160X041555), 2000 JD 200LC Excavator (s/n FF0200X501636), 2000 JD 670LC Excavator (s/n DW670CH578392)"

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to Culease's security interest in the 3 Assets in lease #4322-4. 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 description in the above-noted financing statement satisfies these requirements.

Lease No. 4234-2 (for Assets # 14-19 above)**YES**

Registration number 661355 contains the following information:

- **General Description of Collateral:** "Consumer goods, inventory, equipment, accounts, other proceeds including but not limited to: goods, chattel paper, securities, documents of title, instruments, money, intangibles, insurance and all other proceeds arising directly or indirectly from the disposition, exchange, loss, replacement, renewal, destruction of or dealing with the collateral."
- **Serial Numbered Collateral:** "2 - 2000 JD 310SE Backhoe Loader (s/n T0310SE892994, T0310SE892985 - deleted), 2000 JD 644H Loader (s/n DW644HX578388) - deleted, 2000 JD 544H Loader (s/n DW544HX578389), 2 - 2000 JD 330LC Excavator (s/n FF0300X080964, FF0300X080941), TC54H T.C. Loader (s/n DWTC54H579078), 624H 4WD Loader (s/n DW624HX579048)"

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to Culease's security interest in the 8 Assets in lease #4234-2. 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 description in the above-noted financing statement satisfies 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 Culease'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.⁵

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 s.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.

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.⁶

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.

⁵ Ibid. at p.140.

⁶ Ibid.

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)).

Note: If a secured creditor fails to perfect its interest in collateral prior to disposition of the collateral by the debtor, the secured party must perfect its security interest in the proceeds as original collateral either by registration or taking possession for the secured party to have a security interest in the proceeds.⁷

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 first sold to Culease by HEL and then leased back to HEL. Bills of sale have been provided for all 4 leases. Although such sale and lease-back arrangements appear to entitle Culease 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. Therefore the residual priority rules apply.
- If these leases were not sale/leaseback type transactions, there are instances whereby an inventory financier such as Culease may be entitled to claim a super-priority status (ref: s. 35(2)). As Culease is unable to provide evidentiary support for such an entitlement, its security interest is subject to the residual priority rules of the PPSA.
- As established by s. 36 of the PPSA, the relevant date for the determination of the priority of Culease's interest in the Assets are the dates of registration of the various financing statements on the PPR:
 - ~~Lease #4234- 3~~ – 20 November 2000
 - ~~Lease #4322- 3~~ – 29 December 2000
 - ~~Lease #4322- 4~~ – 20 February 2001
 - ~~Lease #4234- 2~~ – 20 November 2000

Through discussion with Counsel for Daimler Chrysler the Trustee has been advised of a potential dispute between Culease and Daimler Chrysler with respect to asset #2, 2000 JD 160LC Excavator (s/n P00160X041361). The dispute arises with respect to the identification of this unit in Culease's financing statement #1544225 and also with

⁷ Ibid.

respect to a waiver of interest letter dated 31 December 2001 and secured by Daimler Chrysler Capital Services. The Trustee expresses no opinion on this issue.

15. Auction Results

The following original Assets were sold at the Trustee's auction on July 12, 2002, in Halifax, Nova Scotia.

(Asset #5)	2001 JD 160LC Excavator (s/n P00160X041793)	\$132,500
(Asset #6)	2001 JD 160LC Excavator (s/n P00160X041792)	\$132,500
(Asset #7)	2001 JD 160LC Excavator (s/n P00160X041741)	\$120,000
(Asset #11)	2000 JD 160LC Excavator (s/n P00160X041555)	\$110,000
(Asset #2)	2000 JD 160LC Excavator (s/n P00160X041361)	\$110,000
(Asset #16)	2000 JD 330LC Excavator (s/n FF0330X080964)	\$199,500
(Asset #4)	2001 JD 200LC Excavator (s/n FF0200X502017)	\$131,100
(Asset #3)	2001 JD 850C Dozer (s/n T0850CX900908)	\$222,500
(Asset #1)	2001 JD 1050C Dozer (s/n LU1050C005288)	\$330,000
(Asset #19)	624H 4WD Loader (s/n DW624HX579048)	\$152,500

Net amount obtained (bid amount less LVG buyer's premium) **\$1,640,600.00.**

The following trade-ins on original Assets were sold at the Trustee's auction on July 12, 2002, in Halifax, Nova Scotia.

I/R XP825 Compressor (s/n 172821)	\$9,656.00
I/R EXM350 Air Track (s/n R10031)	\$12,070.00
Terex Articulated Truck (s/n 74TDC7364)	\$800.00
CAT D8N Dozer (s/n 5TJ02858)	\$165,149.00
CAT 320B Excavator (s/n 06CR04706)	\$135,000.00
CAT 320B Excavator (s/n 06CR05244)	\$140,000.00
CAT 320B Excavator (s/n 06CR05245)	\$135,000.00
JD 992E Excavator (s/n FF992EX007040)	\$100,000.00

Net amount obtained (bid amount less LVG buyer's premium) **\$697,675.**

0-C
0-C

BILL OF SALE

NET 11342140

1,942,400.00 +
71,484.67 -
1,870,915.33 =
GST - 291,360.00 +
10,722.70 -
280,637.30 *

SALE made this 13th day of December '2001 GST.

Hickman Equipment (1985) Limited
(hereinafter called the 'Grantor')

- and -

CULEASE Financial Services
(hereinafter called the 'Grantee')

1st PMT NET 211511500
1st PMT GST 2101722

Grant, 1942, 1942

IN CONSIDERATION of the sum of
One Million Nine Hundred and Forty Two Thousand Four Hundred —xx/100(\$1,942,400.00) PLUS HS

paid by the Grantee to the Grantor (receipt whereof is hereby acknowledged) the
Grantor absolutely transfers unto the Grantee the following Chattels:

1	(One) 2001 John Deere 180LC Excavator	P00160X041741	Unit # C001377
1	(One) 2001 John Deere 180LC Excavator	P00160X041792	Unit # C001453
1	(One) 2001 John Deere 180L Excavator	P00160X041793	Unit # C001454
1	(One) 2001 John Deere 200LC Excavator	FF0200X502017	Unit # C001379
1	(One) 2001 John Deere 850C Dozer	T0850CX900808	Unit # C001479
1	(One) 2000 John Deere 160LC Excavator	FF0160X041361	Unit # C001512
1	(One) 2001 John Deere 1050C Dozer	LU1050C005288	Unit # C001486

THE GRANTOR COVENANTS:

1. The Grantor is now rightfully and absolutely possessed of the Chattels and has the right to sell them.
2. That the Grantee shall enjoy the quiet possession of the
3. That the Chattels are free from and charge of encumbrance except as hereinafter noted.

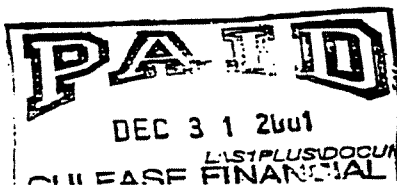
IN WITNESS WHEREOF the Grantor has hereunto set his had and seal.

SIGNED, SEALED AND DELIVERED
in the presence of:

Hickman Equipment (1985) Ltd.

Per:

Name/Title:



This is Exhibit "Tw2" referred to
in the Affidavit hereto

x 3030

bert Street

Saskatchewan S4P 3G8

culeasefs.com / 1-800-409-2029

CUSTOMER NAME		NAME: Hickman Equipment (1985) Limited					
BUSINESS ADDRESS		STREET: 1269 Topsall Road					
Legal Name & Address		CITY: Mount Pearl		PROVINCE: NFLD		POSTAL CODE: A1N 3C8	
CUSTOMER CONTACT		PERSON TO CONTACT:		TELEPHONE NO. 709-368-9680		FAX NO: 709-368-1146	
EXEMPTION REASON		GST:		PST:		SALES REP:	
ENDORSE		NAME: Sale and Leaseback					
EQUIPMENT DESCRIPTION		ADDRESS:					
		QUANTITY:		DESCRIPTION: (Year, Make, Model, Serial Number - include as appropriate)			
		SEE ATTACHED SCHEDULE "A" - Equipment Description					
		END OF TERM MINIMUM RESALE VALUE: \$ 10.00					
FINANCIAL DETAILS		ADVANCE PAYMENT DATE: 12/13/01 (mm/dd/yy)					
Payments will be made in		NEXT PAYMENT DATE: (To be completed by CULEASE Financial Services)					
Advance amounts subject to change		FREQUENCY: <input type="checkbox"/> MONTHLY <input type="checkbox"/> QUARTERLY <input type="checkbox"/> SEMI-ANNUALLY <input type="checkbox"/> ANNUAL <input type="checkbox"/> OTHER <input type="checkbox"/>					
Advance amounts subject to change		INITIAL TERM NO. OF MONTHS		NUMBER OF PAYMENTS		RENTAL AMOUNT EXCLUDING PST & GST	
Advance amounts subject to change		48		SEE ATTACHED SCHEDULE "B" - Rental Payments		PROVINCIAL SALES TAX	
Advance amounts subject to change						GOODS & SERVICES TAX	
Advance amounts subject to change						PROVINCE: NFLD	
Advance amounts subject to change						TOTAL PAYMENT	
INSURANCE REQUIREMENT		INSURANCE AGREEMENT: Customer agrees to obtain the insurance coverage in accordance with the Equipment Risk and Insurance section of this Agreement.					
		ADDITIONAL THIRD PARTY COVERAGE AMOUNT: \$					
		THIRD PARTY COVERAGE WAIVED (Initial if coverage requirement waived)					
FINANCIAL INFORMATION		NAME OF FINANCIAL INSTITUTION:					
		BRANCH LOCATION:					
		ACCOUNT INFORMATION:					
AUTHORIZED PAYMENT PLAN		Lessor is hereby authorized to periodically draw payment under its Pre-Authorized Payment Plan from the account specified in the Financial Information section above and/or as outlined on the attached sample cheque to cover the Rental and other amounts due under this Agreement.					
		Authorized Cheque Signer (s): [Signature] Title(s): C.M. [Signature]					
		(PLEASE ATTACH AN UNSIGNED SAMPLE CHEQUE MARKED VOID)					

CUSTOMER ACKNOWLEDGEMENTS

THIS AGREEMENT THE WORDS CUSTOMER, LESSEE AND YOU ALL REFER TO THE ABOVE NAMED CUSTOMER(S). BY SIGNING THIS AGREEMENT, YOU ACKNOWLEDGE THE LESSOR HAS MADE NO REPRESENTATIONS OR WARRANTIES REGARDING THE EQUIPMENT; YOU KNOWLEDGE AND AGREE YOU HAVE SELECTED THE EQUIPMENT FOR LEASE; YOU ACKNOWLEDGE AND AGREE TO ALL TERMS AND CONDITIONS ON BOTH SIDES OF THIS AGREEMENT; IN THE EVENT THE AGREEMENT IS ASSIGNED TO A CREDIT UNION, TO THE EXTENT THAT IT BE NECESSARY YOU HEREBY APPLY FOR MEMBERSHIP IN THE CREDIT UNION. YOU ACKNOWLEDGE HAVING READ THE ENTIRE LEASE AND ACCEPT THE TERMS AND CONDITIONS THAT ARE PART OF THIS LEASE. WHERE THERE IS MORE THAN ONE CUSTOMER YOU KNOWLEDGE YOUR OBLIGATION AND LIABILITY IS JOINT AND SEVERAL.

CULEASE Financial Services

EXECUTED AS LESSOR

BY: **[Signature]**
Authorized SignatureGST #: **10114 3915 RT0001**

ASSIGNMENT

When this part is completed, LESSOR HEREBY ASSIGNS, CONVEYS AND TRANSFERS all right, title and interest in this Agreement and the Equipment to the named assignee and where completed at the time of signing the assignee acknowledges having read the entire lease and accepts the Terms and Conditions that are part of this lease.

CULEASE Financial Services

BY: **[Signature]**
Authorized SignatureSigned to: **[Signature]**Accepted by: **[Signature]**

To be completed by CULEASE Financial Services

CUSTOMER: (Legal Name)
Hickman Equipment (1985) Limited

The undersigned affirms that he/she is duly authorized to execute this Agreement.

BY: **[Signature]** Title: **General Manager**BY: **[Signature]** Title: **V.P.**DATE OF AGREEMENT: **12/13/01 (mm/dd/yy)**

If Agreement is undated when signed, it shall be deemed to be dated the date of advance payment above.

DELIVERY AND ACCEPTANCE CERTIFICATE

Customer hereby certifies that all equipment referred to above has been delivered, is fully installed and is in good operating condition. Customer unconditionally accepts the equipment and requests that CULEASE Financial Services sign this lease and pay the equipment vendor.

Legal location of Equipment: (If different than billing address) Required for all leases including portable structures, for registration of fixture filing notice.
1269 Topsall Road Mount Pearl, NFLD A1N 3C8

CUSTOMER (Legal Name): **Hickman Equipment (1985) Limited**

The undersigned affirms that he/she is duly authorized to execute this Certificate.

BY: **[Signature]** Title: **General Manager**BY: **[Signature]** Title: **V.P.**DATE OF DELIVERY AND ACCEPTANCE: **12/13/01 (mm/dd/yy)**

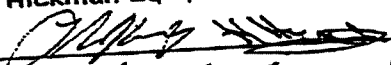
If Agreement is undated when signed, it shall be deemed to be dated the date of advance payment above.

SCHEDULE "A"-Equipment Description

This Schedule "A"-Equipment Description is attached to and forms an integral part of Lease Agreement dated 12/13/01 made between Hickman Equipment (1985) Limited as Lessee and CULEASE Financial Services as Lessor.

1	(One) 2001 John Deere 160LC Excavator	P00160X041741	Unit # C001377
1	(One) 2001 John Deere 160LC Excavator	P00160X041792	Unit # C001453
1	(One) 2001 John Deere 160L Excavator	P00160X041793 -	Unit # C001454
1	(One) 2001 John Deere 200LC Excavator	FF0200X502017 -	Unit # C001379
1	(One) 2001 John Deere 850C Dozer	T0850CX900908 -	Unit # C001479
1	(One) 2001 John Deere 160LC Excavator	FF0160X041361 -	Unit # C001512
1	(One) 2000 John Deere 160LC Excavator	LU1050C005288 -	Unit # C001486
1	(One) 2001 John Deere 1050C Dozer		

Lessee: Hickman Equipment (1985) Limited

By: 

Name/Title: John Kink, V.P.
JOHN KINK HUBERT HUNT

SCHEDULE "B"- Rental Payments

This Schedule "B"- Rental Payments is attached to and forms an integral part of Lease Agreement dated 12/13/2001 (mm/dd/yy) made between Hickman Equipment (1985) Limited as Customer and CULEASE Financial Services as Lessor.

Commencement Date	Rental Payments	HST	PST	Total Rental Pmt
12/13/2001/	1 @ 71,484.67	10,722.70	N/A	82,207.37
01/13/2002	3 @ 0.00	0.00	N/A	0.00
04/13/2002	8 @ 71,484.67	10,722.70	N/A	82,207.37
12/13/2002	4 @ 0.00	0.00	N/A	0.00
04/13/2003	8 @ 71,484.67	10,722.70	N/A	82,207.37
12/13/2003	4 @ 0.00	0.00	N/A	0.00
04/13/2004	8 @ 71,484.67	10,722.70	N/A	82,207.37
12/13/2004	4 @ 0.00	0.00	N/A	0.00
04/13/2005	8 @ 71,484.67	10,722.70	N/A	82,207.37

Lessee: Hickman Equipment (1985) Limited

By: _____

John K. WIL

HURST HURST

Name/Title: _____

V.P.

---CULEASE00011438.RTF



VIA FAX: 905-821-7650

December 31, 2001

Daimler Chrysler Capital Services
 6701 - Financial Drive, Suite 200
 Mississauga, ONT L5N 7J7

Dear Sir/Madam:

re: Hickman Equipment (1985) Limited and/or
 Equipment Description: 1 (One) 2000 John Deere 180LC Excavator
 FFD180X041361 (serial)

CULEASE FINANCIAL SERVICES has or is about to enter into a leasing or financing arrangement with the subject upon the equipment described above.

We note that you have a general security interest registered against the subject and/or a security interest in the equipment noted above.

Please indicate, by signing and returning a copy of this letter to fax number 403-296-0192, that you have no further interest in the equipment or that you postpone your interests in favor of CULEASE FINANCIAL SERVICES.

This letter may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed, shall be deemed to be an original and all of which taken together shall constitute one and the same agreement and the execution and delivery of counterparts of this letter by telecopier by any party shall be binding upon the parties hereto.

Sincerely,
 Mercado Capital Corporation


 Acknowledged and agreed to this date:

By: Name/Title: Customer Service

Tel (403) 296.0191 Fax (403) 296.0192 295 2880 Glenmore Trail S E Calgary Alberta T2C 2E7

0001

NOV 27 2001

MERCADO-CAPITAL SERVICES

MERCADO CAPITAL CORPORATION

DEC 31 2001 9:30AM

WAIVER

Date: January 10, 2002
To: CANADIAN IMPERIAL BANK OF COMMERCE
ATLANTIC PLACE, P.O. 340
MOUNT PEARL, NEWFOUNDLAND
A1C 1J9

ATTENTION: SCOTT FERGUSON

RE: HIGHMAN EQUIPMENT (1985) LIMITED

CULEASE Financial Services ("Cullease") has or will be entering into, or taking assignment of, a lease agreement, a conditional sale contract, a security agreement and/or an hypothec (the "Contract") with the above-mentioned Obligor, to lease to, or finance for the Obligor, the equipment described hereto, together with all attachments, accessories, replacements thereto (the "Equipment").

Under the terms of the Contract, Cullease has or will obtain title to and/or has or will obtain a security interest, charge and/or hypothec in or lien on the Equipment and the proceeds thereof (collectively, the "Collateral").

1	2001 JOHN DEERE 160LC EXCAVATOR	S/N: P00160X041741
1	2001 JOHN DEERE 160LC EXCAVATOR	S/N: P00160X041792
1	2001 JOHN DEERE 160L EXCAVATOR	S/N: P00160X041793
1	2001 JOHN DEERE 200LC EXCAVATOR	S/N: FF0200X302017
1	2001 JOHN DEERE 250C DOZER	S/N: T0550CX300908
1	2000 JOHN DEERE 160LC EXCAVATOR	S/N: P00160X041361
1	2001 JOHN DEERE 1050C DOZER	S/N: L11050C000288

A search of the public records indicates that you may have security interest, charge and/or hypothec in the Collateral.

Please indicate, by signing below, that you acknowledge that you have not assigned your security interest, charge and/or hypothec and that you do not have and will not in the future claim any right, title, interest, hypothec, charge or security in the Collateral which ranks in priority to the right, title, interest, hypothec, charge and security interest now or hereafter held by Cullease in the Collateral. For greater certainty, you are acknowledging and agreeing that, as against you, Cullease shall have a first priority right, title, interest, hypothec, charge and security interest in the Collateral.

Yours truly,

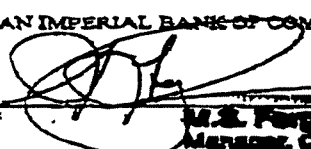
CULEASE FINANCIAL SERVICES

For valuable consideration, and recognizing that Cullease is relying on this acknowledgment in entering the Contract referred to herein, we hereby acknowledge and agree that we do not have and will not in the future claim any right, title, interest, hypothec, charge or security interest in the Collateral which ranks prior to the right, title, interest, hypothec, charge and security interest now or hereafter held by Cullease in the Collateral, and we hereby postpone and subordinate to Cullease for all purposes all rights, title, interests, hypothecs, charges and security interests that we may now have or hereafter acquire in the Collateral to all the rights, title, interests, hypothecs, charges and security interests that Cullease may now have or hereafter acquire in the Collateral.

Dated this 11th day of January, 2002

CANADIAN IMPERIAL BANK OF COMMERCE (Secured Creditor)

Per:


M. S. Ferguson
Manager, Commercial Credit

JAN 10 '02 16:22

6172260001

*** TOTAL PAGE. 02 ***



JOHN DEERE

Worldwide Construction & Forestry Division
a division of JOHN DEERE LIMITED
280 Huron Road, P.O. Box 1000
Grimby ON L3M 4H5
Phone: 805-945-7345 Fax: 805-945-1257
E-mail: Sales@JohnDeere.com

Christie M. Seward
Manager, Dealer Administration (Canada)

P8

11 January 2002

Culcast Financial Services
30 Concourse Gate, Suite 200
Napran, ON
K2E 7V7

At: Alison Mallone

RE: Fickman Equipment (1965) Ltd. (the "Dealer")

We understand that you have or intend to provide financing to the Dealer and as security therefor, you have taken or you will take security (the "Lender's Security") charging the equipment of the Dealer which is described in the following:

refer to schedule "A" attached

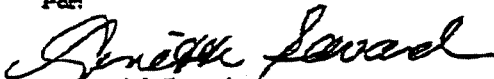
together with the proceeds, if any, arising from the sale, lease, rental or other disposition thereof (collectively referred to as the "Collateral").

We also hold security charging the Collateral, in whole or in part, such security as now held or as may be hereinafter acquired by us being referred to as the "JDL Security".

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, we consent to the Dealer granting to you a security interest in the Collateral and we further agree that the Lender's Security as it relates to the Collateral shall rank in priority to the JDL Security, provided that the Lender's Security is validly perfected and enforceable in priority to all other parties and provided further, that the financing provided by you to the Dealer and the corresponding indebtedness of the Dealer to you is associated for on an asset-specific basis and is attributed to the Collateral on an item by item basis.

Please be advised that this agreement as to priority is not given in perpetuity. Rather, it is given coincidental to the security interest granted to you by the Dealer in the Collateral. In this regard, when the obligations secured by such security interest are satisfied on any one or more item(s) of Collateral, the priority with respect to such item(s) of Collateral granted to you hereunder shall immediately and automatically cease and terminate.

Yours very truly
JOHN DEERE LIMITED
Per:


Christie M. Seward
Manager, Dealer Administration (Canada)

Schedule "A"

JOHN DEERE 160LC EXCAVATOR, S/N P001600D41741
JOHN DEERE 160LC EXCAVATOR, S/N P001600D41751
JOHN DEERE 160LC EXCAVATOR, S/N P001600D41753
JOHN DEERE 200LC EXCAVATOR, S/N P002000D502517
JOHN DEERE 850C DOZER, S/N T00850C00000003
JOHN DEERE 160LC EXCAVATOR, S/N P001600D41361
JOHN DEERE 1050C DOZER, S/N L01050C0005222

TOTAL P.03

2002-01-12
16:47

Atlantic PPRS
Verification Statement
(New)

/s/11110000Px
page 1

Province/Territory : Newfoundland and Labrador
Registration Type : PPSA Financing Statement
Registration Number : 1544225
Registration Date/Time : 2002-01-12 / 16:58
Expiry Date : 2007-01-12
Your File Number :

Registrant Name and Address

Registrant User ID: P174460
Equifax Canada Inc.

National PPSA Services
110 Sheppard Avenue East
Toronto ON Canada M2N6S1

Debtors

Debtor Type : Enterprise
HICKMAN EQUIPMENT (1985) LIMITED
1289 TOPSOIL Road
MOUNT PEARL NF Canada A1N3C8

Secured Parties

CREDIT UNION CENTRAL OF SASKATCHEWAN C/O CULEASE FINANCIAL SERVICES

P.O. BOX 3030
2055 ALBERT Street
REGINA SK Canada S4P3G8

CO-OPERATIVE TRUST COMPANY OF CANADA C/A CULEASE FINANCIAL SERVICES
JOHNSON, BRENT
P.O. BOX 3030
2055 ALBERT Street
REGINA SK Canada S4P3G8
Telephone : 800-409-2029
Fax : 800-852-9097

General Description Collateral

CLASSIFICATION: CONSUMER GOODS, INVENTORY, EQUIPMENT, ACCOUNTS, OTHER
PROCEEDS INCLUDING BUT NOT LIMITED TO: GOODS, CHATTEL PAPER, SECURITIES,
DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, INSURANCE AND ALL OTHER
PROCEEDS ARISING DIRECTLY OR INDIRECTLY FROM THE DISPOSITION, EXCHANGE, LOSS,
REPLACEMENT, RENEWAL, DESTRUCTION OF OR DEALING WITH THE COLLATERAL.

Serial Numbered Collateral

Collateral Type	Serial Number	Description
Motor Vehicle	LH1050C005288	2001 JONV HOFF 1050C 005288

2002-01-12
16:47

Atlantic PPRS
Verification Statement
(New)

/AAAA000P*
page 2

Motor Vehicle FFO160XD41361
Motor Vehicle TUS50CXS00908
Motor Vehicle FFO200XS02017
Motor Vehicle FFO160XD41783
Motor Vehicle FFO160XD41792
Motor Vehicle FFO160XD41741

2000 JOHN DEERE 160LC EXCAVATOR ✓
2001 JOHN DEERE 850C DOZER ✓
2001 JOHN DEERE 200LC EXCAVATOR ✓
2001 JOHN DEERE 160LC EXCAVATOR ✓
2001 JOHN DEERE 160LC EXCAVATOR ✓
2001 JOHN DEERE 160LC EXCAVATOR ✓

Additional Information

AMOUNT SECURED: \$2,151,882.63
NO FIXED DATE OF MATURITY

*** End of Report ***

December 13, 2001

CULEASE Financial Services
2055 Albert Street
Regina, SK S4P 3G8

Subject: Bill of Sale dated December 13, 2001

Gentlemen:

Please accept this letter as your authorization and direction to disburse proceeds of the subject Bill of Sale as follows:

CULEASE Financial Services \$ 82,207.37

Hickman Equipment (1985) Ltd. \$2,151,552.63

1st pm

Payment by this method shall constitute full payment under the subject Bill of Sale.

Yours very truly,

Hickman Equipment (1985) Ltd.

By: *[Signature]*

Name/Title: *[Signature]*



BOX 3030
2055 ALBERT STREET
REGINA, SK S4P 3G8
Tel: 1-800-409-2029

CREDIT UNION CENTRAL - SASK.
P.O. BOX 3030
2055 ALBERT STREET
REGINA, SASKATCHEWAN S4P 3G8

38953

001752

CHEQUE NO. 1752

Two Million One Hundred Fifty One Thousand Five Hundred Fifty Two

63/100

DATE

AMOUNT

12/31/2001

\$*****2,151,552.63

Hickman Equipment (1985) Limited
1259 Topsall Road
Mount Pearl, NPLD
A1N 3C8

Comment: Hickman Equipment

SPECIAL CLEARING

CULEASE FINANCIAL SERVICES

PER

PER

⑈001752⑈ ⑆99788-889⑆ 100101023860

⑈0215155263⑈

1052022

Protection equipment	Chemical protection
Watermarked Paper	Proper Filing
Security Screen	Frame Security
Fluores & Security Ink	Microfilm
Microfilm	Security

DEPOSIT TO THE CREDIT OF
HICKMAN EQUIPMENT
(1985) LIMITED

NOT NEGOTIABLE
AT TIME OF PRESENTATION
PLEASE CALL COLLECT 766-388-8888

PRINTED IN CANADA
BATA CO. LTD.
C10-61210

0403-010