

SUMMARY OF CURRENT DOCUMENT																				
Name of Issuing Party or Person	Bombardier Capital Leasing Ltd. (“Bombardier”)																			
Date of Document	3 February, 2003																			
Summary of Order/Relief Sought or Statement of Purpose in Filing	<p>- Notice of Objection by Bombardier</p> <p>- Bombardier objects to the Interlocutory Application (<i>Inter Partes</i>) of John Deere Credit Inc. (“JDCI”) for an Order approving the payment to JDCI of the proceeds from the sale by the Receiver of the equipment referenced in the JDCI Application as such Application relates to the following assets of Hickman Equipment:</p> <table> <thead> <tr> <th>Stock#</th><th>Model</th><th>Serial #</th><th>Proceeds</th></tr> </thead> <tbody> <tr> <td>C001547</td><td>John Deere 200LC Excavator</td><td>FF0200X050655</td><td>\$110,000.00</td></tr> <tr> <td>C001491</td><td>John Deere 230LC Excavator</td><td>FF0230X060319</td><td>\$104,500.00</td></tr> <tr> <td>N1603</td><td>John Deere 892E Excavator</td><td>FF892EX007239</td><td>\$40,000.00</td></tr> </tbody> </table>				Stock#	Model	Serial #	Proceeds	C001547	John Deere 200LC Excavator	FF0200X050655	\$110,000.00	C001491	John Deere 230LC Excavator	FF0230X060319	\$104,500.00	N1603	John Deere 892E Excavator	FF892EX007239	\$40,000.00
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Court Sub-File Number:	7:37																			

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. Bombardier objects to the Interlocutory Application (*Inter Partes*) of JDCI, Court Sub-File Number 7:37, for an Order approving the payment to JDCI of the proceeds from the sale by the Receiver of the equipment referenced in the JDCI Application as such Application relates to the following assets of Hickman Equipment:

Stock#	Model	Serial #	Proceeds
C001547	John Deere 200LC Excavator	FF0200X050655	\$110,000.00
C001491	John Deere 230LC Excavator	FF0230X060319	\$104,500.00
N1603	John Deere 892E Excavator	FF892EX007239	\$40,000.00

2. Bombardier presented its security interest claim to PricewaterhouseCoopers Inc., the Receiver (“PWC”) (the “Bombardier Claim”).
3. The Bombardier Claim dealt with the following five (5) units (the “Bombardier Units”).

	Stock#	Model	Serial #
1.	N1854	John Deere 330LC Excavator	FF0330X080456
2.	N1858	John Deere 330LC Excavator	FF0330X080518
3.	C001547	John Deere 200LC Excavator	FF0200X050655
4.	C001491	John Deere 230LC Excavator	FF0230X060319
5.	N1603	John Deere 892E Excavator	FF892EX007239

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

5. The proceeds arising from the sale of the Bombardier Units totaled \$594,500.00, particulars of which include:

	Stock#	Model	Serial #	Proceeds
1.	N1854	John Deere 330LC Excavator	FF0330X080456	\$170,000.00
2.	N1858	John Deere 330LC Excavator	FF0330X080518	\$170,000.00
3.	C001547	John Deere 200LC Excavator	FF0200X050655	\$110,000.00
4.	C001491	John Deere 230LC Excavator	FF0230X060319	\$104,500.00
5.	N1603	John Deere 892E Excavator	FF892EX007239	\$40,000.00

6. On or about November 8, 2002, PWC issued its Final Determination of the Bombardier Claim and allowed the Bombardier Claim as a valid secured claim.

7. PWC has not made any determination as to Bombardier's priority or entitlement to the proceeds arising from the sale of the Bombardier Units.

8. The basis for the objection of Bombardier to the Interlocutory Application (*Inter Partes*) of JDCI, Court Sub-File Number 7:37, is that Bombardier has a valid secured claim with respect to the following assets of Hickman Equipment:

	Stock#	Model	Serial #	Proceeds
	C001547	John Deere 200LC Excavator	FF0200X050655	\$110,000.00
	C001491	John Deere 230LC Excavator	FF0230X060319	\$104,500.00
	N1603	John Deere 892E Excavator	FF892EX007239	\$40,000.00

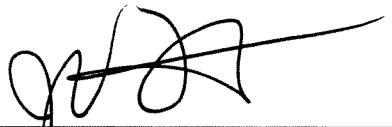
9. Bombardier therefore requests, pursuant to paragraph 21 of the Claims Plan and section 68 of the PPSA:

(i) a determination of the priority and entitlement of Bombardier, *vis-à-vis* JDCI, to the proceeds from the sale of the following assets of Hickman Equipment:

Stock#	Model	Serial #	Proceeds
C001547	John Deere 200LC Excavator	FF0200X050655	\$110,000.00
C001491	John Deere 230LC Excavator	FF0230X060319	\$104,500.00
N1603	John Deere 892E Excavator	FF892EX007239	\$40,000.00; and

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

DATED at St. John's, in the Province on Newfoundland and Labrador, this 25th day of February, 2003.



J. VERNON FRENCH, Q.C.
FRENCH, DUNNE & ASSOCIATES
Solicitors for Bombardier Capital
Leasing Ltd.
whose address for service is:
Suite 122, Elizabeth Towers
100 Elizabeth Avenue

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)
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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 OF NICOLAS POTVIN
[on behalf of Bombardier]

Court Sub-File Number: 7:37

FRENCH, DUNNE & ASSOCIATES
Solicitors for Bombardier Capital Leasing Ltd.
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

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)
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and Insolvency Act, Chapter B-3 of the Revised
Statutes of Canada, 1985, as amended (the “BIA”)

AFFIDAVIT

I, Nicolas Potvin, of Brossard, in the Province of Quebec, make oath and say as follows:

1. I am the Director of Legal Services for Bombardier Capital Leasing Ltd. (“Bombardier”), 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, Bombardier filed a proof of claim in the Bankruptcy of Hickman Equipment dated April 15, 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 Final Determination dated November 14, 2002 (the “Final Determination”), PWC has allowed, *inter alia*, the claims of Bombardier as a valid secured claim. A true copy of the Final Determination is attached as Exhibit “NP #1” [Tab 1] to this Affidavit.
7. Between July 1998 and January 2000, Bombardier 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, Bombardier purchased John Deere equipment and leased it to Hickman Equipment for a period of 48 months, and Hickman Equipment had the option to purchase the leased equipment at the end of the 48 month lease period.

10. The Equipment Leases contained, *inter alia*, the following clause with respect to “title” to the leased equipment:

9. Title

The Equipment is and shall at all times be and remain the sole property of [Bombardier]. Lessee shall have no right, title or interest in the Equipment except as set forth in the Lease.

11. By December 31, 2001, Bombardier had purchased 15 pieces of John Deere equipment, which it leased to Hickman Equipment, and the total of the outstanding balances owing under the Equipment Leases was \$1,589,597.00 as of March 13, 2002.

12. In March, 2002, it was determined that of the 15 pieces of John Deere equipment which Bombardier had purchased and leased to Hickman Equipment, Hickman Equipment had sold 11 pieces to third parties, contrary to the terms of the Equipment Leases, and Hickman Equipment remained in possession of the following 5 pieces with the 5th being a trade in.

	Stock#	Model	Serial #
1.	N1854	John Deere 330LC Excavator	FF0330X080456
2.	N1858	John Deere 330LC Excavator	FF0330X080518
3.	C001547	John Deere 200LC Excavator	FF0200X050655

4.	C001491	John Deere 230LC Excavator	FF0230X060319
5.	N1603	John Deere 892E Excavator	FF892EX007239

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

14. The proceeds arising from the sale of the 4 Bombardier Units was \$554,500.00, particulars of which include:

	Stock#	Model	Serial #	Proceeds
1.	N1854	John Deere 330LC Excavator	FF0330X080456	\$170,000.00
2.	N1858	John Deere 330LC Excavator	FF0330X080518	\$170,000.00
3.	C001547	John Deere 200LC Excavator	FF0200X050655	\$110,000.00
4.	C001491	John Deere 230LC Excavator	FF0230X060319	\$104,500.00

15. The proceeds arising from the sale of the trade in was \$40,000.00, particulars of which include:

	Stock#	Model	Serial #	Proceeds
5.	N1603	John Deere 892E Excavator	FF892EX007239	\$40,000.00

16. The total proceeds arising from the auction sale of the Bombardier Units was \$594,500.00.

17. Bombardier's priority and entitlement to the proceeds arising from the sale of Bombardier

Unit #3 is based on the following sources and grounds:

Bombardier Unit #3: John Deere 200LC Excavator s/n FF0200X050655:

- (a) Sold, among other equipment, to Bombardier under Equipment Purchase and Sale Agreement dated July 2, 1998 for the total purchase price of \$1,928,155.57 plus HST, and registered in the Registry of Conditional Sales on April 13, 1999 (#276476) [Tab 2, Page 1];
- (b) Leased to Hickman by Bombardier pursuant to Master Lease Agreement No. 1998062601 dated July 2, 1998 and registered in the Registry of Conditional Sales on August 12, 1998 (#704250) [Tab 2, Page 5], and pursuant to Lease Equipment Schedule No. 1 registered in the Registry of Conditional Sales with the Master Lease Agreement No. 1998062601 [Tab 2, Page 8];
- (c) An Assignment Agreement dated July 2, 1998, and registered in the Registry of Conditional Sales on September 1, 1998 (#705859) [Tab 2, Page 12];
- (d) No interest letters from John Deere Credit Inc. and CIBC [Tab 2, Page 17 and 19];
- (e) Equipment Lease registered under the PPSA by registration number 112581 dated February 18, 2000 [Tab 2, Page 20]; and
- (f) Proof of value (\$1,928,155.57 plus HST) given as per manual payment request form [Tab 2, Page 23], and copy of confirmation of wire transfer from Bombardier to Hickman Equipment made on July 21, 1998 [Tab 2, Page 24].

20. Now produced and shown to me and marked as Exhibit "NP #2" to this my Affidavit are copies of the various documents relating to Bombardier Unit #3 and referred to in paragraph 19 of this Affidavit.

21. Bombardier's priority and entitlement to the proceeds arising from the sale of Bombardier Unit #4 and Unit #5 is based on the following sources and grounds:

Bombardier Unit #4: John Deere 230LC Excavator s/n FF0230X060319;

Bombardier Unit #5: John Deere 892E Excavator s/n FF892EX007239:

- (a) Sold, among other equipment, to Bombardier under Equipment Purchase and Sale Agreement dated August 28, 1998 for the total purchase price of \$1,566,430.99 plus HST, and registered in the Registry of Conditional Sales on February 5, 1999 (#270485) [Tab 3, Page 1];
- (b) Leased to Hickman by Bombardier pursuant to Master Lease Agreement No. 1998062601 dated July 2, 1998 and registered in the Registry of Conditional Sales on August 12, 1998 (#704250) [Tab 2, Page 5], and pursuant to Lease Equipment Schedule No. 2 registered in the Registry of Conditional Sales on December 11, 1998 (#713825) (#733018) [Tab 3, Page 5];
- (c) An Assignment Agreement dated August 28, 1998, and registered in the Registry of Conditional Sales on February 5, 1999 (#717641) [Tab 3, Page 9];
- (d) No interest letters from John Deere Credit Inc. and CIBC [Tab 3, Page 14 and 16];

(e) Equipment Lease registered under the PPSA by registration number 112359 dated February 18, 2000 [Tab 3, Page 17];

(f) Proof of value (\$1,566,430.99 plus HST) given as per manual payment request form [Tab 3, Page 21], and copy of confirmation of wire transfer from Bombardier to Hickman Equipment made on September 9, 1998 [Tab 3, Page 22]; and

(g) John Deere 370 Excavator s/n FF0370X080106 sold to Marine Contractors under invoice dated June 7, 1999, and as part of transaction Marine Contractors traded in a used John Deere 892E Excavator s/n FF892EX007239 [Tab 3, Page 23].

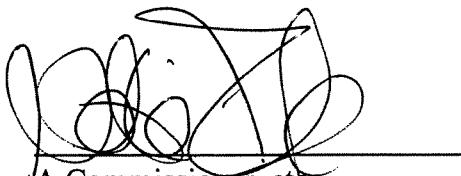
22. Now produced and shown to me and marked as Exhibit "NP #3" to this my Affidavit are copies of the various documents relating to Bombardier Unit #4 and Unit #5 and referred to in paragraph 21 of this Affidavit.

23. This Affidavit is sworn and filed in support of Bombardier's Notice of Objection to the Interlocutory Application (*Inter Partes*) of JDCI, Court Sub-File Number 7:37, for an Order approving the payment to JDCI of the proceeds from the sale by the Receiver of the equipment referenced in the JDCI Application as such Application relates to the following assets of Hickman Equipment:

Stock#	Model	Serial #	Proceeds
C001547	John Deere 200LC Excavator	FF0200X050655	\$110,000.00

C001491	John Deere 230LC Excavator	FF0230X060319	\$104,500.00
N1603	John Deere 892E Excavator	FF892EX007239	\$40,000.00

SWORN before me at Brossard,
in the Province of Quebec, this
day of Feb 4th, 2003.



A Commissioner, etc.
a lawyer in the Province of Quebec
19089-3



NICOLAS POTVIN

REGISTERED MAIL

Mr. John French
French Dunne & Associates
331 Duckworth Street
P.O. Box 1733
St. John's, NL
A1C 5P5

PricewaterhouseCoopers Inc.
Atlantic Place, Box 75,
215 Water Street, Suite 802
St. John's, NL
Canada A1C 6C9
Telephone: +1 (709) 722 3883
Facsimile +1 (709) 722 1428

November 14, 2002

Dear Sir:

Re: Hickman Equipment (1985) Ltd. – In Receivership

We acknowledge receipt of your correspondence of November 13, 2002.

Please be advised we have made appropriate changes.

Yours very truly,
PricewaterhouseCoopers Inc.

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

JAK/cmc

Encl.

FinDet-Bombardier-FrenchDunne(Rev-Nov14).doc

SCHEDULE "A"

FINAL DETERMINATION

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

Secured Party: **BOMBARDIER CAPITAL LEASING LTD. ("BCL")**

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 Bombardier

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

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

3. Defined Terms

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

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

4. The Assets

15 pieces of heavy equipment. 4 of these were sold at the auction (indicated by **). The remaining 11 were sold out of trust.

1. 744H Loader	DW744HM567458
2. 644G Loader	DW644GB566323
3. 200LC Excavator	FF0200X050658
4. 200LC Excavator	FF0200X050655*
5. 310E Excavator	T0310EX850513
6. 230LC Excavator	FF0230X060319*
7. 370XX Excavator	FF0370X080106
8. 450LC Excavator	FF0450X090093
9. 330LC Excavator	FF0330X080518*
10. 330LC Excavator	FF0330X080505
11. 330LC Excavator	FF0330X080503
12. 330LC Excavator	FF0330X080456*
13. 310SE Loader	T0310SE881906
14. 450LC Excavator	FF0450X090444
15. Excavator	FF0450X090460

5. Assumptions

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

- i) the genuineness of all signatures, the authenticity of all original Documents and the conformity to authentic originals of all Documents that are copies, whether facsimile, photostatic, certified or otherwise;
- ii) that each party to any of the Documents that create obligations for that party, has duly authorized, executed and delivered such Documents to which it is a party;
- iii) with the exception of security interests created by the Documents, the Documents that create obligations for parties, constitute legal, valid and binding obligations of each party thereto, enforceable against each of them in accordance with their terms;
- iv) that insofar as any obligation under any of the Documents is to be performed in any jurisdiction outside the Province, its performance will not

be illegal or unenforceable by virtue of the laws of that other jurisdiction;
and

- v) the accuracy and currency of the indices and filing systems maintained in relation to the public registries where we have searched or inquired or have caused searches or inquiries to be conducted.

6. Qualifications

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

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

Both the PPSA, and the CSA (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

BCL claims that it holds a perfected security interest in 15 pieces of heavy equipment. This arises from 2 master leases (one from 1998 and one from 2000) covering a total of 4 separate equipment schedules. BCL claims to have 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 15 April 2002, and the documents attached thereto (more particularly described below) indicate a total claim of **\$1,589,597.00**. This is comprised of an unsecured claim in the amount of **\$1,226,098.46** and a secured claim in the amount of **\$363,498.54**, broken down as follows:

- Master Lease #1998062601 dated July 2, 1998 and the accompanying equipment schedule dated 2 July 1998 (together referred to herein as "Lease #1"), securing 4 assets (assets # 1-4 above). Balance outstanding of **\$123,796.64**.
- Master Lease #1998062601 dated July 2, 1998 and the accompanying equipment schedule dated 2 July 1998 (together referred to herein as "Lease #2"), securing 4 assets (assets # 5-8 above). Balance outstanding of **\$225,459.36**.
- Master Lease #1998062601 dated July 2, 1998 and the accompanying lease equipment schedule dated 2 July 1998 (together referred to herein as "Lease #3"), securing 4 assets (assets # 9-12 above). Balance outstanding of **\$598,959.97**.
- Master Lease # 2000011104 dated January 11, 2000 and the accompanying equipment schedule dated 11 January 2000 (together referred to herein as "Lease #4"), securing 3 assets (assets #13-15 above). Balance outstanding of **\$635,282.90**.

BCL also filed an Amended Proof of Claim dated October 29, 2002. In the Amended Proof of Claim BCL asserts a secured claim in the amount of **\$1,589,597.00**. This

breaks down as follows:

▪ Lease #1 total balance outstanding	\$123,796.64
▪ Lease #2 total balance outstanding	\$225,459.36
▪ Lease #3 total balance outstanding	\$598,959.97
▪ Lease #4 total balance outstanding	\$635,282.92

BCL claims the total due pursuant to the Leases as \$1,582,498.87. Added to this is legal and extra judicial fees in the amount of \$6,098.13 for a total amount claimed of \$1,589,597.00.

Schedule "B" to the Amended Proof of Claim identifies the fifteen (15) pieces of equipment noted above. It also references the following trade-ins as connected to pieces of equipment financed by BCL:

- 450 LC Excavator FF0370S080106 gave rise to trade-in FF892EX007239;
- 450 LC Excavator FF0450X090093 gave rise to trade-in EX400 Excavator 1642913;
- 330 LC Excavator FF0330XO80503 gave rise to trade-in 892E Excavator FF892EX012437, 728 Grader 24744 and a 540B Roller;
- 310 SE Loader T0310SE881906 gave rise to trade-in 645B Loader 11Y06221.

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 April 15, 2002.
- iii. Amended Proof of Claim dated October 29, 2002.
- iv. Document packages provided by BCL for each lease as follows:
 - a. Lease #1 (assets # 1-4 above)
 - The 1998 Lease (registered in the Old Registry on August 12/98 (# 704250))
 - Equipment Schedule 1 (registered in the Old Registry with the 1998 Lease)
 - Correspondence dated February 7, 2002 to HEL setting out the balance outstanding
 - A series of computer print-outs dated February 11, 2002 titled as follows:
 - Contract detailed information asset list inquiry lease contract inquiry-variable payments
 - Document dated February 11, 2002 entitled *Commercial and Industrial Finance Division-BCLL-Buyout Quote*
 - Document dated February 11, 2002 entitled *Commercial and Industrial Finance Division-BCLL-Amortization Schedule*
 - Document dated February 18, 2002 setting out payment schedule for HEL

- An Assignment Agreement dated 2 July 1998 (registered in the Old Registry on September 1, 1998 (# 705859)).
- Manual Payment Request Form indicating instructions from BCL to wire money to HEL in the amount of \$2,217,378.90 dated July 21, 1998.
- Copy of the confirmation of wire transfer from CIBC from BCL's account to HEL's account for the amount of \$2,217,878.90, made on July 21, 1998.
- A *Purchase and Sale agreement* dated 2 July 1998 whereby HEL sold the 12 pieces to BCL for \$1,928,155.57. This was registered in the Old Registry on April 13, 1998 (reg # 276476)
- Invoice dated June 25, 1998 from HEL to BCL
- Lease to Labrador Forest Products Limited dated August 27, 1998 for, inter alia, JD200LC Excavator, s/n FF0200X050658
- Invoice The Town of Conception Bay South dated September 4, 1998 for a lease of a JD 310 Backhoe, s/n T0310EX846764
- Lease to H. Wareham & Sons dated August 17, 1998 for a JD 690EL Excavator s/N DW690EL565815
- Invoice to Fairview Investments Limited dated October 7, 1998 for an Excavator s/n FFO200X50655
- Invoice to Provincial Paving Limited dated July 13, 1998 for a JD Wheel Loader s/n DW644GB566323
- Invoice dated September 7, 1998 to Labrador Construction for a JD Loader, s/n DWTGBT4567754
- Invoice to Melville Forest Products Limited dated October 5, 1998 for a JD Excavator, s/n illegible
- Invoice dated September 14, 1998 to Melville Forest Products Limited for a JD Excavator, s/n FF0270X070316
- Invoice dated August 3, 1998 to Melville Forest Products Limited for a JD Backhoe, s/n illegible
- Invoice to Island Construction Limited dated August 25, 1998 for a JD Loader, s/n DW744HX567458
- Correspondence dated February 15, 1999 to RBC from BCL addressing Priorities
- Correspondence dated February 2, 1999 to Bank of Nova Scotia from BCL addressing Priorities
- Assignment of Receivables dated May 25, 1998 between Hickman Leasing Limited and CIBC Equipment Finance Limited
- Correspondence dated February 15, 1999 from BCL to Royal Bank of Canada addressing Priorities
- Correspondence dated February 2, 1999 from BCL to Bank of Nova Scotia addressing Priorities
- Lease Agreement between HEL and RDN Construction Limited dated June 11, 1998 for a JD 744H Wheel Loader, s/n DW744HM567458

- Invoice dated May 1, 1999 from HEL to Newfoundland Aggregates for the sale of Wheel Loader s/n DW644GB566323 and a Loader s/n DW624HX565405
- Computer print-out dated August 10, 1998 for a sale of the Excavator s/n FF0200x050658 to J. Eales Equipment Rentals
- Purchase Order between HEL and Eales Equipment Rentals for a JD 200LC Excavator, s/n SFO200X050658 dated February 1, 1999
- Invoice dated March 3, 2000 to BCL Construction Limited for the sale of a JD 230LC Excavator, s/n FFO230X060319 and a JD 544G Loader, s/n DW544GD560550
- Instalment Contract between HEL and BCL Construction Limited for the 200 LC Excavator, s/n FF0230X060319 and a Wheel Loader, s/n DW544GD560550
- Purchase Order between HEL and Marine Contractor Inc. dated October 27, 1999 for the sale of a JD 370 Excavator, s/n FF0370X080106
- Invoice to Diamond Equipment Limited dated July 10, 1998 for the sale of a JD 450LC Excavator, s/n SF0450X090093
- Invoice to Glenn Corp. Limited dated November 30, 1999 for the sale of a JD 644H Wheel Loader, s/n DW644HX569536 and for the sale of a JD 330LC Excavator, s/n FF0330X080503
- Invoice to Johnson Construction dated October 26, 2000 for the sale of ten pieces of equipment
- Copy of a cheque dated October 31, 2000 to HEL from GE Capitals in the amount of \$3,300,866.02
- Invoice to Municipal Construction dated April 25, 2000 for the sale of a JD Excavator, s/n FF0450X090460, a JD Excavator, s/n FF0450X090461 and a JD 850C Crawler Dozer, s/n T0850CX879791
- Invoice dated February 12, 2001 to Russell's Excavating Limited for the sale of a JD 310SE Backhoe, s/n T0310SE881906
- Correspondence dated July 20, 1998 from Neil Jacobs of Stewart McKelvey to Mark Drouin of BCL re priorities
- Correspondence dated July 17, 1998 to BCL from JD Credit Inc. re its interest in certain pieces of property
- Correspondence dated July 10, 1998 signed by CIBC to BCL addressing its interest in certain pieces of equipment

b. Lease #2

- The 1998 Lease
- Equipment Schedule # 2 (registered at the Old Registry on December 11, 1998 #713825)
- *Assignment Agreement* dated 28 August 1998, registered in Old Registry on February 5, 1999 (# 717641)
- *Purchase and Sale agreement* dated 28 August 1998 whereby HEL sold the 1pieces to BCL for \$1,566,430.99 registered in the Old Registry on February 5, 1999 (reg # 270485)

- 4 Invoices from JD (Complete Goods) to HEL for the purchase of the 4 assets as follows:
 - 24 July 1998 – 1- Backhoe (T0310EX850513)
 - 28 July 1998 – 1- Excavator (FF0370X080106)
 - 31 July 1998 – 1- Excavator (FF0230X060319)
 - 25 September 1997 – 1- Excavator (FF0450X090093)
- Lease to Labrador Forest Products Limited dated August 25, 1998 for a JD Excavator, s/n illegible
- Invoice dated September 14, 1998 to Labrador Forest Products Limited for a JD 450LC Excavator, s/n FF0450X090093
- Supplemental Rental Agreement between Marine Contractors and HEL for the 370 Excavator, s/n FF0370X080106
- Invoice dated August 27, 1998 to Island Aggregates and Readi-Mix for a JD Backhoe Loader, s/n T0310EX850513
- Invoice dated July 13, 1998 to Pyramid Construction Limited for a JD Excavator, s/n illegible
- Correspondence dated September 4, 1998 from JD Credit Inc. re: its interest in certain pieces of equipment
- Correspondence dated September 3, 1998 from CIBC re its interest in certain pieces of equipment
- Correspondence dated February 7, 2002 from BCL to ATL setting out the balances outstanding
- A series of computer print-outs dated February 11, 2000 entitled "Commercial and Industrial Finance Division-BCLL Buyout" and Amortization Schedule
- Computer print-out dated February 18, 2002 setting out the payment schedule for HEL
- Copy of a CIBC Confirmation of wire transfer dated September 9, 1998 in the amount of \$1,801,395.64
- Manual Payment Request Form indicating instructions from BCL to wire money to HEL in the amount of \$1,801,395.64 on September 9, 1998
- Copy of Confirmation of Wire Transfer from BCL's account to HEL's account in the amount of \$1,801,395.64 made on September 9, 1998

c. Lease #3

- The 1998 Lease
- 2 different versions of a document entitled *Lease Equipment Schedule No. 3* dated 2 July 1998. One has been executed by both parties (BCL as Lessor and HEL as Lessee) but has not been registered at the Old Registry. The other has been executed by HEL only, but has been registered at the Old Registry on July 13, 1999 (Reg # 733018)
- *Assignment Agreement* dated 12 July 1999, registered in the Old Registry on July 28, 1999 (reg # 31708)

- *Purchase and Sale agreement* dated 12 July 1999 whereby HEL sold the pieces to BCL for \$1,200,763.36). This was not registered in the Old Registry
- 4 Invoices from JD (Complete Goods) to HEL for the purchase of the 4 assets as follows
 - 21 June 1999 – 1- Excavator (FF0330X080518)
 - 16 June 1999 – 1- Excavator (FF0330X080456)
 - 16 June 1999—1- Excavator (FF0330X080505)
 - 7 June 1999 – 1- Excavator (FF0330X080503)
- Correspondence dated July 23, 1999 from Neil Jacobs to BCL enclosing the lease of July 14, 1998 (registration no. 733018) and copies of letters from CIBC, GMAC and JD Credit (enclosures not provided)
- Correspondence dated July 9, 1999 from JD Credit to BCL addressing priorities
- Correspondence dated July 9, 1999 signed by CIBC to BCL addressing priorities
- Correspondence dated July 9, 1999 from GMAC to BCL addressing priorities
- Correspondence dated February 7, 2002 from BCL to HEL confirming outstanding balances, a series of computer print-outs dated February 11, 2002 entitled "Commercial and Industrial Finance Division-BCLL, Buyout Quote and Amortization Schedule"
- Computer Print-out dated February 18, 2002 identifying the payment schedule for HEL
- Manual Request Form indicating instructions from BCL to wire money to HEL in the amount of \$1,192,391.30.
- Copy of BCL Statement of Account showing the debit of the amount of \$1,192,391.30 on January 17, 2000.
- Copy of a Print-out confirmation from CIBC that the amount of \$1,192,391.30 has been wired to HEL's bank account on that same day.

d. Lease #4

- The 2000 Lease
- Equipment Schedule 4
- A Purchase and Sale agreement dated 11 January 2000 whereby HEL sold the 3 pieces to BCL for \$1,036,862.00
- Assignment Agreement dated 11 January 2000
- Equipment Acceptance Certificate dated 11 January 2000
- Authorization Agreement for Direct Payment Option
- An Equipment Inspection and Appraisal dated 17 January 2000
- 3 Invoices from JD (Complete Goods) to HEL for the purchase of the 3 assets as follows:
 - 22 Dec. 1999 – 450 LC Hydraulic Excavator (FF0450X090460)
 - 14 Dec. 1999 – 450 LC Hydraulic Excavator (FF0450X090444)
 - 07 Dec. 1999 – 310 SE Loader Backhoe (T0310SE881906)
- Invoice from HEL to BCL dated 12 January, 2000 for the 3 pieces.
- Correspondence dated 13 January 2000 from JD Credit addressing priorities
- Correspondence dated 13 January 2000 from CIBC addressing priorities

- Correspondence dated January 2000 from GMAC addressing priorities
- Correspondence dated February 7, 2002 from BCL to HEL setting out the balances outstanding
- Various computer print-outs dated February 11, 2002 entitled "Commercial and Industrial Finance Division-BCLL-Buyout Quote and Amortization Schedule"
- Computer print-out dated February 18, 2002 outlining the payment schedules for HEL
- Copy of BCL Statement of Account showing a debit in the amount of \$1,380,877.86 on July 12, 1999
- Copy of a Print-out confirmation from CIBC that the amount of \$1,380,877.86 has been wired to the bank account of HEL on that same day.

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).

10. Application of the PPSA

The documents indicate that in each case, the assets were purchased by BCL from HEL and then leased back to HEL. By operation of s.4 of the PPSA, such sale – leaseback type transactions are governed by the PPSA. The documents indicate that these were conditional sales, financed through BCL.

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 a 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 set out in the Act. For example, defects in the pre-ppsa security could not be cured by the operation of the PPSA.

Transitioning issues are relevant for the 1998 Lease and the 3 Equipment schedules associated with it, since this lease and the Equipment Schedules are all dated in 1998.

As part of the transitioning process, BCL has registered the following financing statements in the PPR:

- **Registration # 112581** dated February 18, 2000 contains the following description:

1 Wheel Loader, model TC62H, s/n: DWTC62H567754
1 Wheel Loader, model 244H, s/n: T6244HX000131
1 Backhoe, Model 310E, s/n T0310EX846764
1 Backhoe, model 310SF, s/n: T0310SE847170
1 Wheel Loader, model 744H, s/n: DW744HM567458
1 Wheel Loader, model 644G, s/n: DW644GB566323
1 Excavator, model 690E, s/n: DW690EL565815
2 Excavators, model 200LC, s/hs: FF0200X050658, FF0200X050655
excluded the collateral subject to the discharge:
1 Backhoe, model 310SF, s/n: T0310SE847170
1 Excavator, model 690E, s/n: DW690EL565815

Serial numbered Collateral

Excavator, model 200LC, s/n FF0200X050655
Excavator, model 200LC, s/n FF0200X050658
Excavator, model 690E, s/n DW690EL565815
Wheel Loader, model 644G, s/n DW644GB566323
Wheel Loader, model 744H, s/n DW744HM567458
Backhoe, model 310SF, s/n T0310SE847170
Backhoe, model 310E, s/n T0310EX846764
Wheel Loader, model 244H, s/n T6244HX000131
Wheel Loader, model TC62H, s/n DWTC62H567754

Pre-PPSA registration information continued by this registration: Conditional Sales Act dated August 12, 1998, Number 704250

- **Registration # 112359** dated February 18, 2000 contains the following description:

1 Excavator, model 450LC, s/n: FF0450X090093
1 Excavator, model 370XX, s/n: FF0370X0801061
1 Excavator, model 230LC, s/n: FF0230X060319
1 Backhoe, model 310E, s/n: T0310EX850513

Serial numbered collateral:

Backhoe, Model 310E, s/n T0310EX850513
Excavator, model 230LC, s/n FF0230X060319
Excavator, model 370XX, s/n FF0370X080106

Excavator, model 450LC, s/n FF0450X090093

*Pre-PPSA registration information continued by this registration:
Conditional Sales Act Number 713825 dated December 11, 1998*

- **Registration # 112300 dated February 18, 2000 contains the following description:**

General Description Collateral:

*4 Excavators, models 330LC, s/ns: FF0330X080456, FF0330X080503,
FF0330X080505, FF0330X080518.*

Serial numbered collateral:

Excavator, Model 330LC, s/n FF0330X80518

Excavator, model 330LC, s/n FF0330X080505

Excavator, model 330LC, s/n FF0330X080503

Excavator, model 330LC, s/n FF0330X080456

Pre-PPSA registration information continued by this registration:

Conditional Sales Act number 733018, dated July 13, 1999.

As indicated above, the documents provided indicate that the 1998 Lease and the 3 Lease schedules were registered in the Old Registry. Specifically:

- The 1998 Lease, accompanied by Equipment Schedule #1 was registered on August 12, 1998, (#704250);
- Lease Equipment Schedule #2 was registered on December 11, 1998 (#713825)
- Lease Equipment Schedule #3 was registered on July 13, 1999, (# 733018).

While it appears from the foregoing that BCL has properly transitioned its security interest so as to enable it to consider the date of pre-ppsa registration as its date of PPSA perfection, there is another consideration. As indicated by the documents and the registrations, Lease Equipment Schedules #2 and #3 which reference back to the 1998 Lease were registered in the Old Registry, *subsequent* to the actual lease to which they are associated. Section 5 of the CSA states:

- (1) a conditional sale of goods shall be evident by a writing, executed prior to or at the time of or within 10 days after delivery of the goods of the buyer or his or her agent, giving a description of the goods by which they may be readily and easily known and distinguished and stating the amount of the purchase price remaining unpaid or the terms and conditions of the hiring.
- (2) the writing, or a copy of it, shall be filed in the Registry.

Given the timing of the registration of the separate Lease schedules 2 and 3, being subsequent to the registration of the 1998 Lease, it does not appear that section 5(1) of the CSA was complied with. Section 21 of the CSA states that a defect, irregularity, omission or error in the execution or certification of a document will not invalidate it or destroy its effect

unless, in the opinion of the Judge before whom a question related to it is tried, the defect, irregularity, omission or error has actually mislead some person whose interests are affected by the document.

This demands a determination by the Court. If this is not a serious defect, the relevant date applying to BCL, for purposes of priority, will be the date of registration of the Master Lease in the Old Registry, August 12, 1998. If not, and this is indeed a serious and fatal defect, the relevant date, for purposes of priority of BCL's claim, will be the date of registration in the PPR.

12. Perfection

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

- (i) **attachment** in accordance with section 13, which requires:
 - 1. Value must be given. Value is defined in s. 2(tt) to include any consideration sufficient to support a simple contract. However, a secured party need not have actually advanced the loan funds or the purchase money credit in order to satisfy the value requirement of section 13. Value is given as soon as a secured party makes a binding commitment to extend the loan or purchase money credited to the debtor¹
 - 2. The debtor must have rights in the collateral; and
 - 3. There must be a security agreement that meets the requirements of s. 11.
- (ii) a **perfection step** in accordance with section 25 (perfection by possession) or section 26 (perfection by registration of a financing statement in the PPR).

Is there attachment?

- (i) Value given?

As indicated in the List of Documents above, BCL has provided copies of payment requests, confirmations of wire transfers and confirmations of payment from CIBC. It is the opinion of the Trustee that this is sufficient evidence of value in accordance with s. 13 of the PPSA and that BCL's security interest has attached.

- (ii) Rights in the collateral?

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

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. 13.² HEL held possession of the assets. Furthermore, s.13 (3) of the Act confirms that a lessee under a lease for a term of more than one year has rights in the leased goods when s/he obtains possession under the lease.

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

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

YES The evidentiary requirements of s. 11, required for attachment, are established by the 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 .

Note: According to documents provided by Counsel for BCL, the Excavator (FF0200X050655) was sold to Fairview Investments and the Excavator (FF0230X060319) was sold to BCL Construction Ltd. Somehow (possibly by way of a trade in) these two excavators ended up back in HEL's inventory. The Trustee has no information as to how this was effected and therefore expresses no opinion as to whether or not the BCL security reattaches to them in accordance with s.30 of the PPSA. For the information of secured parties, the Trustee notes that if these 2 excavators were returned, seized or repossessed, by operation of S.30 of the PPSA, BCL's security interest would re-attach if the debt was still outstanding. However, a disposition of goods in the ordinary course of business of a commercial seller such as HEL will generally cut off the security interest in the goods of the inventory financier (ref.: SS.29(1)(a) & 31(2) of the PPSA). Nevertheless, where the buyer trades-in the goods it is possible for the security interest to re-attach.³

Is there a perfection step?

Lease #1

Yes. – Refer to Registration # 112581 (above)

Lease #2

Yes. – Refer to Registration # 112359 (above)

Lease #3

Yes. – Refer to Registration # 112300 (above)

Lease #4

Yes –

Registration # 62372 dated January 20, 2000 contains the following description:

² Ibid. at 84.

³ R. Cuming, R. Wood, Alberta Personal Property Security Handbook, 4th ed. (Toronto: Carswell, 1998) at 266.

*2000 JD Loader Backhoe, model 310SE, s/n T0310SE881906
2000 JD Excavator, model 450LC, s/n FF0450X090444
2000 JD Hydraulic Excavator, s/n FF0450X090460.*

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 BCL'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:

- (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

⁴ Ibid. at p.140.

(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(ff)).

The Amended Proof of Claim of BCL identifies certain pieces of equipment that were secured by them and gave rise to proceeds in the nature of trade-ins (as is more particularly set out above). The Trustee has not been provided with any evidence or documentation in respect of such trade-ins. Nevertheless, as indicated above, BCL's interest in these assets, as against the Trustee is automatic by operation of S.29 (1) of the Act.

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:

- As indicated above, this is a sale-leaseback transaction between BCL and HEL whereby the 3 pieces were sold to BCL but remained at HEL's premises. BCL immediately leased them back to HEL in a conditional sale arrangement. Section 2(hh) of the PPSA specifically excludes "a transaction of sale by and lease back to the seller" from being a PMSI.
- As established by s. 36 of the PPSA, the relevant date for the determination of the priority of BCL's interest in the assets are:
 - Lease #1 – August 12, 1998
 - Lease #2 – We refer you back to the discussion of transitioning and compliance with Section 5 of the CSA under heading number 10 of this Final Determination. With this in mind, the Trustee notes that lease number 2 was registered in the Old Registry on December 11, 1998. This was possibly transitioned on February 18, 2000 (registration number 112359).

⁵ Ibid. at 140

- Lease #3 - We refer you back to the discussion of transitioning and compliance with Section 5 of the CSA under heading number 10 of this Final Determination. With this in mind, the Trustee notes that lease number 3 was registered in the Old Registry on July 28, 1999. This was possibly transitioned on February 18, 2000 (registration number 112300).
- Lease #4 – January 20, 2000.

15. Auction Results

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

1. Excavator (FF0330X080456)	\$170,000.00
2. Excavator (FF0330X080518)	\$170,000.00
3. Excavator (FF0200X050655)	\$110,000.00
4. Excavator (FF0230X060319)	\$104,500.00

Total: \$554,500.00

REGISTRY OF CORPORATE BODIES, BILLS OF SALE
AND CHATTEL MORTGAGES
ST. JOHN'S, NEWFOUNDLAND

BY AND BETWEEN WICKMAN EQUIPMENT (1995) LIMITED
a corporation duly incorporated with its principal place of business at:
1209 Terrell Road, Mount Pearl, Newfoundland A1N 3C8

hereby certify this to be a true copy of a document
Received by the Registry on the 15 day of
April, 1999 and recorded
(hereinafter referred to as the "Seller")
Serial No. 276476

P. Sonjae Wilson
AND
April 14, 1999

BOMBARDIER CAPITAL LEASING LTD., a corporation duly incorporated with its principal place
of business at 8400 Avenue, 2nd Floor, Brossard, Quebec J4Z 3P5
(hereinafter referred to as "Bombardier Capital Leasing Ltd.")

G.S.T. Registration #: 101198620

FOR GOOD AND VALUABLE CONSIDERATION SELLER AND BOMBARDIER CAPITAL LEASING LTD. HAVE AGREED AS FOLLOWS:

SECTION 1- PREAMBLE

1.1 WHEREAS Seller owns by good and marketable title all of the equipment and machinery, (herein, collectively the "Equipment") described in Schedule "A" annexed hereto.

1.1 WHEREAS Seller desires to sell the Equipment to Bombardier Capital Leasing Ltd. who is prepared to purchase same in consideration of the undertaking of Seller to execute forthwith with Bombardier Capital Leasing Ltd. a Leasing Agreement for the Equipment in Bombardier Capital Leasing Ltd.'s standard form and to pay the rental therein provided.

SECTION 2- SALE

2.1 Seller hereby sells the Equipment to Bombardier Capital Leasing Ltd. and all warranties related thereto to Bombardier Capital Leasing Ltd. hereby accepting, in consideration of the payment by Bombardier Capital Leasing Ltd. to Seller of the sum of ONE MILLION NINE HUNDRED TWENTY EIGHT THOUSAND AND ONE HUNDRED FIFTY FIVE dollars (\$ 1,928,155.57), (Purchase Price), being the aggregate of the amounts indicated on Schedule "A" with respect to each part of Equipment.

2.2 Seller acknowledges receipt of the Purchase Price and hereby gives a full and final release to Bombardier Capital Leasing Ltd. with respect to the payment thereof.

SECTION 3- REPRESENTATIONS AND WARRANTIES BY SELLER

3.1 Seller hereby covenants, represents and warrants to Bombardier Capital Leasing Ltd. as follows:

- 3.1.1 Seller owns the Equipment by good and marketable title, free and clear of all liens, privileges, hypothecs, legal hypothecs, prior claims, security interests, mortgages, encumbrances and charges of any nature;
- 3.1.2 The purchase price and all taxes, exercise and other taxes and duties payable in respect of the original purchase of the Equipment by the Seller have been fully paid;
- 3.1.3 The sale of the Equipment hereunder does not constitute a sale of the seller's enterprise, does not require the consent of any third party, shareholder, creditor or holder of any security of Seller or of any governmental authority or agency and the execution of this Agreement and the transfer of title to the Equipment from Seller to Bombardier Capital Leasing Ltd. hereunder shall not constitute a breach of, or default under, the terms of the constituting documents of Seller or of any order, decree or regulation or agreement by which Seller or the Equipment is or may be bound or affected;
- 3.1.4 All corporate proceedings and actions necessary to authorize the execution and delivery of this Agreement and the accomplishment of the transaction envisaged herein have been duly passed and adopted by Seller;
- 3.1.5 The Equipment is in good operating condition, has been properly maintained and serviced, complies with all applicable laws, regulations and orders governing its possession, use and the safety and the protection of the environment, has all safety, health and hazard warning labels and decals affixed thereto as required by law or as affixed by the manufacturer thereof, is free from defects, malfunctions or premature or other deteriorations, whether hidden or apparent, and is of the quality and durability expected and performs adequately for the use for which it was originally purchased by Seller, and shall remain in such condition throughout the term of the Leasing Agreement mentioned in the preamble hereto, save for normal wear and tear;
- 3.1.6 Seller has abided by and fully complied with all recommendations or requirements of all warranties, specifications, operating manuals, procedures, directives, recall notices and the like of the original manufacturer, supplier or parts supplier;
- 3.1.7 The Equipment has not been attached or joined to any immovable property so as to have caused it to lose its individuality; and
- 3.1.8 The Seller acknowledges, agrees and confirms that the Seller originally selected and purchased the Equipment from the supplier or suppliers chosen by it, that at all times it has been in possession of, used, operated and maintained the Equipment and that the Equipment is being sold to and purchased by the Bombardier Capital Leasing Ltd., a financial institution, solely for the purposes of leasing the same back to the Seller on a financing basis under the terms of the above-referenced Leasing Agreement. As a result and, in those circumstances and as part of the consideration inducing the Seller to enter into this Agreement, the Seller hereby renounces to and agrees not to assert against the Bombardier Capital Leasing Ltd., as lessor,

This is Exhibit "N02" referred to
in the Affidavit hereto

3.1.9

The Equipment is presently and will remain located at Seller's place of business situated in

Newfoundland

SECTION 4- FINAL PROVISIONS

4.1 Seller shall execute and deliver all other documents and shall do all other acts which may be reasonably required by Bombardier Capital Leasing Ltd. for the purpose of conferring upon Bombardier Capital Leasing Ltd. a clear and absolute title to the Equipment and for the purpose of giving full effect to the provisions of this Agreement.

4.2 This Agreement shall be governed and interpreted in accordance with the laws of the Province of Newfoundland.

4.3 This Agreement together with the documents referred to herein constitute the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be modified unless by writing and signed by an authorized officer of the party against whom such modification is claimed to be enforceable.

4.4 This Agreement shall enure to the benefit of, and be binding upon, the parties hereto, their respective heirs, executors, administrators, successors and assigns.

4.5 The present document has been drawn up in English language at the express request of the parties. Le présent document a été rédigé en langue anglaise à la demande expresse des parties.

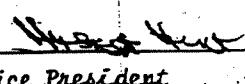
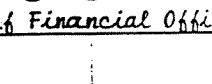
4.6 Seller acknowledges that, before signing, Seller was given sufficient time to read, to ask for explanations and clarifications as to the terms and conditions of this Agreement, and to consult its advisors and as a result Seller declares that it understands and is satisfied with all of the provisions of this Agreement.

DATED AT Mount Pearl, this 2nd day of July, 1988

BOMBARDIER CAPITAL LEASING LTD.

per : 
 title : 

HICKMAN EQUIPMENT (1985) LIMITED

("Seller")
 per : 
 title : 
 per : 
 title : 
 per : 
 title : 

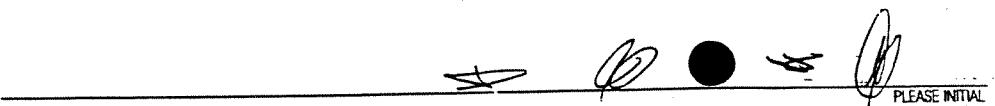
Schedule A
TO EQUIPMENT PURCHASE AND SALE AGREEMENT

This schedule A is part of the Equipment Purchase and Sale Agreement dated July 2, 1998 between Hickman Equipment (1985) Limited and Bombardier Capital Leasing Ltd.

EQUIPMENT DESCRIPTION

MODEL	DESCRIPTION	SERIAL NUMBER
TC62H	WHEEL LOADER	DWTC62H567754
160LC	EXCAVATOR	P00160X040322
244H	WHEEL LOADER	T6244HX000131
270LC	EXCAVATOR	FF0270X070316
310E	BACKHOE	T0310EX846764
310SE	BACKHOE	T0310SE846871
310SE	BACKHOE	T0310SE847170
744H	WHEEL LOADER	DW744HM567458
644G	WHEEL LOADER	DW644GB566323
690E	EXCAVATOR	DW690EL565815
200LC	EXCAVATOR	FF0200X050658
200LC	EXCAVATOR	FF0200X050655

Total Purchase Price : \$1,928,155.57 plus HST


PLEASE INITIAL

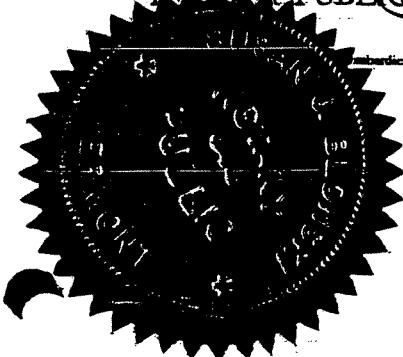
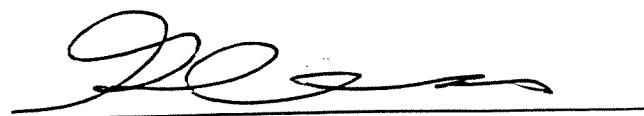
AFFIDAVIT OF BONA FIDES

I, Georges Calver, a duly authorized representative and agent of Bombardier Capital Leasing Ltd., the Purchaser in the attached Equipment Purchase and Sale Agreement, make oath and say:

1. **THAT** I am an agent of Bombardier Capital Leasing Ltd. and am duly authorized to swear the within Affidavit;
2. **THAT** the above noted Equipment Purchase and Sale Agreement was executed in good faith and for good consideration, as set forth therein and not for the purpose of protecting the chattels therein mentioned against the creditors of the Vendor, or for the purpose of preventing them from recovering any claims that they may have against the Vendor.

SWORN TO (OR AFFIRMED) at
Colchester, in the
Province of Vermont
this 26th day of January
1998:

Susan Blonski
NOTARY PUBLIC





MASTER LEASE AGREEMENT

REGISTRY OF
CONDITIONAL SALES
BILLS OF SALE
CHATEL MORTGAGES

NO. 1998062601

'98 AUG 12 P2:30

**BOMBARDIER
CAPITAL**

6400 Avenue, Suite 200
Brossard, Quebec J4Z 3P5

LESSEE:	HICKMAN EQUIPMENT (1985) LIMITED	
ADDRESS:	1260 Topsail Road	
	Mount Pearl, Newfoundland A1N 3C8	
CONTACT:	Mr. John King, Controller	
TELEPHONE:	(709) 748-2003	FACSIMILE: (709) 368-1146
H.S.T.:	H10234573H	

This Agreement made by and between Bombardier Capital Leasing Ltd. (BCL) and Lessee

- Lease:** BCL hereby leases to Lessee and Lessee hereby hires and leases from BCL the equipment described in a Lease Schedule, Lease Equipment Schedule, or Lease Schedules (the "Schedule") and/or in an Interim Lease Funding Agreement executed and to be executed by the parties hereto (the "Equipment"). This Master Lease Agreement, any Schedule and any Interim Lease Funding Agreement shall constitute the Lease Agreement between BCL and Lessee (the "Lease" or "Lease Agreement").
- Term and Rental:** The term of the Lease ("Lease Term") of any Equipment leased pursuant hereto and pursuant to any Schedule hereto, the commencement date of such Lease Term and the amount of the rental ("Rent") in lawful money of Canada together with any Provincial Sales Tax and Goods and Service Tax, if applicable, will be as provided in the Schedule relating to such Equipment. The Rent will be payable unconditionally, without set-off, to Lessor under a pre-authorized payment plan. The Rent is due on the first day of the first month in the Rent Payment Period referred to in the Lease Schedule.
- Additional Rent:** If Lessor fails to: (1) repair the Equipment or: (2) to maintain insurance or: (3) to pay any costs, fees or taxes relating to the Equipment, BCL may do so and any amount spent shall become Rent immediately due and payable. BCL will be entitled to immediate reimbursement from Lessee without prejudice to any of BCL's rights or remedies. All interest payable by the Lessee under this Lease and all costs incurred by BCL in collecting Rent including charges for returned cheques, shall become Rent immediately due and payable.
- Maintenance, Replacements and Alterations:** Lessee assumes all risk of loss or damage to the Equipment until its return to BCL and the Schedule with respect to it is terminated and Lessor agrees that the Equipment will be installed and maintained in good operating condition at Lessee's expense in the location stated in the Schedule ("Equipment Location"), operated in compliance with local by competent personnel, and returned to BCL promptly at the end of the Lease Term in good operating condition (ordinary wear and tear excepted). Lessee acknowledges that any replacements, alterations, or improvements to the Equipment shall immediately vest in BCL and shall constitute Equipment.
- Insurance:** Lessee shall obtain and maintain for the entire Lease Term, at its own expense property damage and legal liability insurance and insurance against loss or damage to the Equipment including without limitation, loss by fire (including extended coverage), theft, collision, injury or damage to property of others and such other risks as BCL may specify, and such other risks as are customarily covered by insurance on the types of equipment leased by BCL, by prudent operators of business similar to that in which Lessee is engaged, such amounts, in such form, and with such insurers as shall be satisfactory. All such insurance shall name BCL and Lessee as insured and shall be carried in one or more insurance companies approved by BCL. All policies of insurance shall contain an endorsement that the policy may not be cancelled without thirty (30) days written notice of intended cancellation being given to BCL. Within 30 days from Lessee's signing the Lease or any Schedule, Lessee will provide BCL certificates or other evidence of insurance.

PRE-AUTHORIZED PAYMENT PLAN

BCL is hereby authorized to periodically draw payment under its Pre-authorized Payment Plan from the bank account as outlined on the attached sample cheque. Rental and other amounts due under this Lease Agreement.

Per

H. King, Jr. M.

AUTHORIZED SIGNATURE

TITLE

PLEASE ATTACH AN UNSIGNED SAMPLE CHEQUE

Per

G.W. Calver, Jr. M.

AUTHORIZED SIGNATURE

TITLE

IN WITNESS WHEREOF the

have caused this Agreement to be duly executed at in the province of

Newfoundland as of the

2nd

day of

July 1998

HICKMAN EQUIPMENT (1985) LIMITED

By Lessee

H. King, Jr. M.

TITLE

BY

G.W. Calver, Jr. M.

TITLE

SIGNATURE OF AUTHORIZED OFFICERS

BOMBARDIER CAPITAL LEASING LTD.

By Lessee

G.W. Calver

Group Vice President & General Manager

BY

B. Calver

TITLE

Vice President

TITLE

LEASE AGREEMENT

returning BCL as lessor and providing that BCL shall be given 30 days' prior written notice of any material alteration or cancellation of insurance. If Lessee does not provide evidence of insurance acceptable to BCL, BCL may, but will not be required to, obtain such insurance and add the cost including any customary charges or fees associated with the placement, maintenance or service of such insurance ("Insurance Service Amount") to the Rent immediately due from Lessee. Lessee agrees to pay the Insurance Service Amount on demand or at the option of BCL in equal installments in the same manner as Rent (with interest on such installments up to the maximum rate permitted by applicable law). Nothing in this lease creates any insurance relationship between BCL and any other person or party. BCL is not required to effect any insurance coverage and it may terminate or allow to lapse any coverage without having any liability to Lessee.

5. Loss and Damage: If any item of Equipment shall become lost, stolen, destroyed or damaged beyond repair for any reason, or in the event of any condemnation, confiscation, theft or seizure of Equipment, Lessee shall immediately pay to BCL the present value of the aggregate of all unpaid amounts due under the related Schedule and hereunder as Rent or otherwise to the expiration of the Lease Term of such equipment (calculated by discounting such amount at six percent (6%) per annum), upon receipt of such amount BCL will transfer to Lessee, without recourse or warranty, all of BCL's right, title and interest, if any, in such item of Equipment and proceeds of insurance.

6. Warranties and Exclusion of Warranties: BCL assigns to Lessee the benefit of any manufacturers' warranties or guarantees. Lessee acknowledges that Lessee alone will select the Equipment, that BCL does not deal in the Equipment and has not, does not and will not make or give any representation, warranty or condition, whatsoever, express or implied, with respect to the Equipment or its adequacy for Lessee's purpose, or otherwise and shall have no responsibility for any latent or other defect in the Equipment including any fundamental or other failure of performance, capacity or operation. Lessee hereby releases and forever discharges BCL from any and all actions, claims, demands, costs, expenses, set offs, abatements and compensation whatsoever, in connection with the foregoing. Upon Lessee's execution of a Schedule, BCL shall be deemed to have fully performed and discharged all its obligations hereunder with respect to the related Equipment by providing Lessee with a possessory interest therein.

7. Use: Lessee shall use the Equipment in a careful and prudent manner and not for any unlawful purpose. Lessee shall, at its own expense, comply with all federal, provincial, municipal and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Equipment. The lessor represents and acknowledges that the Equipment is intended to be used and shall be used by the lessor for the primary purpose of carrying on business. The Lessee, if the equipment described in the attached Lease Equipment Schedule is a road vehicle, certifies that any driver(s) he designates to operate the Equipment holds a valid driving license with the appropriate class for driving of these vehicles and will undertake to assure that everyone who will be designated to drive this or these vehicles holds a valid driving license with the appropriate class.

8. Default: BCL has purchased the Equipment at the specified request of Lessor for the purpose of this Lease. The Rent and loss to BCL in the event of default are dependent upon its cost of the Equipment, the Lease Term and the minimum return expected by BCL from the sale of the Equipment at the end of Lease Term. If (1) Lessor fails to pay any Rent or pay any other sum within 10 days of being due and payable; or (2) Lessee fails to comply with any other obligation, term or condition; or (3) Lessee defaults under any other lease or other contract between BCL and Lessee or under any instrument evidencing any long term indebtedness; or (4) BCL discovers that a representation or warranty made by Lessee in connection with obtaining this Lease is incorrect; or (5) Any of the Equipment is subjected to any lien, charge, encumbrance, levy, seizure attachment or other judicial process; or (6) Lessee sells, mortgages, pledges or attempts to sell, mortgage or pledge any of the Equipment; or (7) Lessee makes any assignment for the benefit of its creditors, becomes insolvent, commits any act of bankruptcy, ceases or threatens to cease to do business as a going concern or seeks any arrangement or composition with its creditors; or (8) Any proceeding in bankruptcy, receivership, liquidation, or insolvency is commenced against Lessor or its property; then all Rent and any other payment to the end of the Lease Term shall become due and payable on demand. Lessee at its own expense on BCL's demand shall immediately deliver the Equipment to BCL's nearest office. BCL may, without notice and without resort to legal process, take immediate possession of the Equipment. BCL may enter the premises where the Equipment is located without incurring any liability to Lessee. Lessee's rights hereunder shall then cease and terminate absolutely. Upon termination, Lessee shall pay the total of all amounts due as Rent or otherwise to the end of the Lease Term. Lessor shall pay BCL's cost of collection or possession of Equipment or for enforcement of all of BCL's rights, including without limitation legal costs on a solicitor-client basis. BCL's remedies shall be cumulative and not exclusive.

9. Title: The Equipment is and shall at all times be and remain the sole property of BCL. Lessee shall have no right, title or interest in the Equipment except as set forth in the Lease.

10. Identification: Lessee shall at its own expense affix and maintain on the Equipment, labels or other marks supplied by BCL to identify the Equipment as BCL's property.

11. Personal Property: The equipment shall at all times be and remain personal property and shall not in any manner be affixed or attached to any lands or buildings without BCL's prior written consent.

12. Location: Lessee shall maintain stationary Equipment at the Equipment Location. Lessee shall not operate mobile Equipment outside the Province of Equipment Location without BCL prior written consent. Lessee shall advise BCL of the Equipment Location immediately on request.

13. Repairs: Lessee shall at its own expense repair and maintain the equipment in good condition and working order. Lessee assumes all risk of and shall pay for any loss or damage to the Equipment. Lessee shall not make any alterations to the Equipment without BCL prior written consent.

14. Surrender: At the end of the Lease Term, Lessee shall at its own expense return the Equipment to BCL nearest office in good condition and working order. BCL may direct Lessee to deliver the Equipment elsewhere or to dispose of the Equipment. If so, any increased costs shall be at BCL's expense.

15. Indemnification: Lessee shall be responsible for, and shall indemnify and save BCL harmless from and against all losses, claims, costs, expenses, damages, actions, liabilities, personal injuries, including without limitation solicitor's fees on a solicitor and client basis, in connection with, and arising from, this Lease Agreement and/or any Schedule, and the acquisition, ownership, use, operation and removal of the Equipment provided that this indemnity shall not extend to any loss caused solely by the negligence of BCL. The indemnity herein shall survive termination of this lease Agreement.

16. Taxes, Liens, Encumbrances: Lessee shall: (a) punctually pay all taxes, license fees, levies and assessments which may become payable at any time upon or in respect of, the Equipment and the Rent, this Lease Agreement and/or any Schedule; and (b) keep the Equipment free and clear of liens, pledges, attachments, seizures and encumbrances of any kind.

17. Collection Charges: Should Lessee fail to pay when due any part of the Rent, or renewal Rent herein reserved or any sum required to be paid to BCL hereunder, Lessee shall pay to BCL, in addition thereto, a late charge of ten dollars (\$10.00) for each month or part thereof for which said Rent or other sum shall be delinquent together with interest on any and all delinquent payments and amounts in default from the date thereof until paid in full at the rate of 24% per annum calculated monthly. Lessee further agrees to pay to BCL a returned cheque or nonsufficient funds (NSF) charge of \$35.00 to reimburse BCL for its time and expense incurred with respect to a cheque or a pre-authorized debt that is returned for any reason.

18. Notices: Any notices and demands required to be given herein shall be given to the parties in writing and delivered, sent by registered mail or facsimile at the address as herein set forth, or to such other address as the parties may hereafter substitute by written notice given in the manner prescribed in this section. BCL and Lessee hereby agree that all documents, including this Lease Agreement, sent by facsimile or other means of electronic transmission to the other party shall be considered to be original documents.

19. Assignments by BCL: BCL may at any time assign all or any part of its interest in the Equipment of this Lease without the Lessee's consent. In the event of such assignment, the assignee shall be entitled to enforce the rights so assigned to it but shall be under no liability to Lessee to perform any of the obligations of BCL hereunder and the Lessee's rights hereunder as against BCL shall be unaffected except as herein specifically provided. In the event of such assignment the assignee shall not be liable to the Lessee for any breach of warranty or any other liability arising from the manufacture or use of the Equipment or its fitness for use for the purposes for which it was intended, the sole remedy of Lessee being against the original Supplier. Lessor covenants and agrees not to assert against the assignee any claim by way of abatement, defense, set-off, compensation, counterclaim or the like which Lessee may have against BCL and Lessee shall pay to such assignee all Rent and other amounts due hereunder unconditionally and shall not assert any defense.

to institute in any action for debts or other amounts due and owing, except the defense of payment, notwithstanding such equipment carries any warranties pertaining to the equipment shall be limited to the manufacturer and BCL agrees to the exercise of such warranties.

Assignments and Subleasing: Lessee shall not sublet or part with possession of the equipment or permit its use by any person other than Lessee or its employees who are qualified and competent to operate the Equipment. Lessee shall not assign this Lease without BCL's prior written consent. BCL may assign this Lease without Lessee's consent. Lessee agrees to pay an assignment fee to BCL of \$100.00 or BCL's actual cost, whichever is greater.

21. **Enurement:** This Lease shall be binding upon the parties and their respective heirs, executors, administrators, successors and permitted assigns.
22. **Interpretation:** Wherever the context of this Lease so requires, the singular number shall include the plural and vice versa, and that words importing the masculine gender shall include the feminine and neuter genders, and that if more than one person is named as Lessee, the liability of such each Lessee shall be joint and several. Where an individual is a Lessee, such individual acknowledges that the Equipment is not a "consumer good" within the meaning of The Personal Property Security Act of Manitoba, or similar legislation of any other province.
23. **Non-Cancelable:** This Lease cannot be cancelled or terminated except as expressly provided in this Lease and will remain in force for the full Lease Term.
24. **Applicable Law:** This Lease shall be construed according to the laws of the Province of Equipment Location.
25. **Financing Statement:** BCL may file a financing statement or similar registration with respect to this Lease so as to give notice to interested parties. The Lessee agrees to waive all rights to notice as may be applicable under any such registration of the lease. Any such filings or registrations are not necessarily to be deemed evidence of any intent to create a security interest either any similar legislation of any other province, under The Personal Property Security Act of Manitoba or under any similar legislation of any other province.
26. **Severability:** In the event that any provision of this Lease Agreement shall be invalid, illegal or unenforceable, it shall not affect the validity, legality or enforceability of any other provision of the Lease Agreement.
27. **Headings:** This insertion of headings in this Lease is for convenience of reference only and shall not affect the interpretation of this Lease.
28. **Execution:** This Lease shall not become binding upon BCL until accepted by BCL as evidenced by the signature of a duly authorized officer of BCL in the space provided on reverse side.
29. **Choice of Language:** The parties agree that this document be written in the English language. Lessee aux présentes convient à ce que ce document soit rédigé en anglais.
30. **Credit Investigation:** BCL may conduct a personal investigation or credit check upon Lessee subject to applicable legislation.
31. **BCL Financing:** This Lease Agreement and the Equipment will be subject to any rights and interest in and to the Equipment granted by BCL under any contract or contracts to a financing institution.
32. **Time:** Time is of the essence of this Lease.
33. **Inspection:** BCL or its agents shall have the right, and Lessor shall allow them free access to inspect the Equipment or request
34. **Net Lease:** Lessor shall pay all costs, fees and taxes (other than taxes on income levied on BCL under the Income Tax Act of Canada or any Provincial Income Tax Act) relating to the Equipment and this Lease. The

Rent shall be absolutely net to BCL free of all setoffs or expenses of any kind.

35. **Lessee's Waive:** To the extent permitted by law or statute and to the extent the same extends to and relates to this Lease Agreement as amended or renewed or any collateral security thereto or promissory note, Lessee waives the benefit of all provisions of any applicable conditional sales, regulatory credit and other statutes and regulations made in any manner, affect, restrict or limit the rights of BCL including without limiting the generality of the foregoing, all of its rights, benefits and protection given or afforded to it by Sections 19 to 24 of the Sales of Goods on Condition Act of British Columbia as amended, Section 49 of the Law of Property Act of Alberta as amended and the provisions of the Limitation of Civil Rights Act of Saskatchewan as amended. Lessee also waives any right to demand security for costs in the event of litigation.
36. **Pre-Authorized Payment Plan:** If Lessee has completed the pre-authorized payment section on reverse side, Lessee warrants that the signatures appearing on the reverse hereof are those of the persons authorized to sign on the account with the bank of the Lessee. The Lessee authorizes and requests its bank to pay and debit the bank account specified on the attached specimen of check ("Specified Account") whether it continues to be maintained at the location set forth on the attached specimen check or is maintained at another branch of the bank at payments purporting to be drawn on the bank on behalf of Lessee payable to the Lessor, or its Assignee and are presented to the bank for payment and to pay and debit to the Specified Account all amounts specified on any magnetic or computer produced paper tape that is or purports to be a direction on behalf of the Lessee to credit an amount to the payee and to debit such amount to the Specified Account. Lessee acknowledges that provision and delivery of this authorization to BCL constitutes delivery by the Lessee to the Bank.
37. **Software:** Any other provision of this Lease notwithstanding, if software is described or listed so as to constitute or appear to constitute part of the Equipment or is supplied for use therewith, Lessee acknowledges and agrees that (a) Lessor may not have, and does not purport to have, title to or ownership of such or the right to lease, license, sub-license, or grant possession of, or grant the right to use, same; (b) the Equipment which is the subject of this Lease is not HARDWARE ONLY; (c) rent is payable in respect of HARDWARE ONLY, and the Lessor does not, by virtue of this Lease or otherwise, purport to lease, sub-lease, license, sub-license or authorize Lessee to possess or use any software.
38. **Entire Agreement:** This Lease, clauses 1-38 inclusive, together with the Delivery and Acceptance Certificate, schedules, amendments or addenda which are accepted in writing by BCL, constitute the entire agreement between BCL and the Lessee. The Lessee acknowledges that the Supplier or its sales representatives are not agents of BCL and are not, therefore, authorized to waive, amend or change terms and conditions of the Lease.
39. **Annual Rental Adjustment:** If the Master Lease Schedule provides for Rental Payments based on Prime Rate, Rental Payments shall be adjusted to reflect changes in Prime Rate with the frequency stated on the Master Lease Schedule during the Term and on the termination or expiry of the same Master Lease Schedule. As soon as practicable after the end of each calendar year and the termination or expiry of the Master Lease Schedule, Lessor shall prepare and submit to Lessee a statement showing each such adjustment and the resulting net debit or credit balance which shall be paid by Lessor or Lessee, as applicable, within 10 days of such statement. Each such statement shall be binding on Lessee, absent manifest error. For the purpose of this Master Lease Agreement, Prime Rate means the per annum rate of interest which Canadian Imperial Bank of Commerce announces from time to time in Canada as its Prime rate, which is a reference rate it uses to determine rates of interest charged by it for loans made in Canada in Canadian dollars.



LEASE EQUIPMENT SCHEDULE

1001 1

ATTACHED TO AND FORMING PART OF MASTER LEASE AGREEMENT NO. 1998062601 DATED JULY 2, 1998
BETWEEN BOMBARDIER CAPITAL LEASING LTD. (BCL) AND HICKMAN EQUIPMENT (1985) LIMITED
("LESSEE")

BCL hereby agrees to lease to Lessee upon and subject to the terms, conditions and provisions set forth in this Lease Schedule ("Schedule") and in the above referred to Master Lease Agreement ("Lease Agreement"), the Equipment described or identified below, (the "Equipment").

SUPPLIER: HICKMAN EQUIPMENT (1985) LTD
ADDRESS: 1269 Topsail Head
Mount Pearl, Newfoundland A1N 3C4
CONTACT: Mr. John King, Controller
TELEPHONE: (709) 748-2003
FACSIMILE: (709) 365-1146
H.S.T.: R102345758

LOCATION OF EQUIPMENT:

TERM AND RENTAL PROVISIONS

Lease Commencement Date: July 2, 1998

Lease Term 48 Months (No. of complete months)
Rent Payment Period: Monthly Quarterly Other

RENT: Due in advance on the first day of each month Rent Amount: _____ \$ 48,504.32

Province: Sales Tax: _____

Goods and Services Tax _____ 7 275 66 5

Total Rental Payment: 55,780.00

PURCHASE OPTION

(a) At the end of the month of the lease term for \$ 100

SUPPLEMENTAL CONDITIONS

SEE ATTACHED SCHEDULE B

HICKMAN EQUIPMENT (1985) LIMITED

"Lessee"); TITLE

BY *John H. Green* 81st *John*

BOMBARDIER CAPITAL LEASING LTD.

Lesson 10

Ex. Group 1500, Box 1, 1865-1874

LEASE EQUIPMENT SCHEDULE

1. **TERM:** The term of this Lease ("Term") begins on the date the equipment is shipped to Lessee. Unless sooner terminated by Lessor, the Term will end after the number of months specified above from the date the Term commences, provided, however, that if the Term commences on OTHER THAN the 1st day of the month, the Term shall be extended to the last day of the month in which the Term ends, according to this Section. If the Rent includes a cost of service or maintenance, Lessor acknowledges that such inclusion is for Lessee's convenience and Lessee will not assert against Lessor any claim by way of abatement, defense, set-off, compensation, counterclaim or the like which Lessee might have under any service or maintenance agreement.
2. **RENT AND RENT ADJUSTMENT:** Lessee agrees to pay rent as follows: (a) If the Term commences on other than the 1st day of the month, Lessee will pay pro rata rent from the date of shipment to the end of the month in which shipment took place and (b) the Periodic Rent Payment ("Rent") for the first complete calendar period of the Term, when Lessee executes this Lease; and (c) subsequent Rent in advance on the 1st day of each calendar period of the Term. Lessee shall make all payments at BCL's office shown above, or as BCL specifies in writing. BCL's invoice is NOT a condition of Lessee's obligation to pay Rent and/or interest charges when due. Lessor's obligations under this Lease shall be absolute and unconditional under all circumstances whatsoever and, without limitation
3. **PURCHASE OPTION:** Lessee shall, when not in default under the Lease Agreement and upon 30 days' prior written notice to BCL, have the option to purchase all but not less than all of the Equipment on the Option Dates and for the Option Prices referred to below subject to the terms, conditions and provisions of the Lease Agreement.
4. **CONTINUING AGREEMENT:** Provided Lessee is not in default hereunder, this Agreement will be automatically renewed on a month-to-month basis upon the expiration of the Term ("Renewal Period") upon and subject to the terms and conditions set forth herein including the periodic Rent; unless either BCL or Lessee has notified the other in writing within thirty (30) days prior to the expiration of the Term to the effect that the Renewal Period will not be entered into. During the Renewal Period, either party may cancel this Agreement providing thirty (30) days written notice to the other party.
5. **AGREEMENT:** This Schedule shall be deemed to take effect and form part of the Lease Agreement pursuant to Section 1 of the Master Lease Agreement on the date BCL receives an invoice from the Supplier of the Equipment with such invoice to be in BCL's name. Lessee hereby authorizes BCL to insert, where applicable, the serial number of the Equipment. Lessee hereby agrees that the Equipment is located at the above location and shall not be removed without prior written consent of BCL.

SCHEDULE A

This schedule is part of the Lease Equipment Schedule No.1 dated July 2, 1998 and of the Master Lease Agreement between Hickman Equipment (1985) Limited and Bombardier Capital Leasing Ltd. number 1998062601.

EQUIPMENT DESCRIPTION

MODEL	DESCRIPTION	SERIAL NUMBER
TC62H	WHEEL LOADER	DWTC62H567754
160LC	EXCAVATOR	P00160X040322
244H	WHEEL LOADER	T6244HX000131
270LC	EXCAVATOR	FF0270X070316
310E	BACKHOE	T0310EX846764
310SE	BACKHOE	T0310SE846871
310SE	BACKHOE	T0310SE847170
744H	WHEEL LOADER	DW744HM567456
644G	WHEEL LOADER	DW644GB566323
690E	EXCAVATOR	DW690EL565815
200LC	EXCAVATOR	FF0200X050658
200LC	EXCAVATOR	FF0200X050655

Total Purchase Price : \$1,928,155.57 plus HST

[Signature]
PLEASE INVESTIGATE

SCHEDULE B

This schedule B is part of the Lease Equipment Schedule No.1 dated July 2, 1998 and of the Master Lease Agreement between Hickman Equipment (1985) Limited and Bombardier Capital Leasing Ltd. number 1998062601.

EARLY PAYOFF SCHEDULE

In the event that the Lessee wishes to terminate the Lease or a portion of the Lease, the following ratios will apply, such ratio being simply multiplied by the original value of the prepaid equipment(s) according to the invoice number R09518 dated June 25, 1998 at the corresponding Period in time after the corresponding rental is paid by Lessee.

PERIOD	RATIOS	PERIOD	RATIOS	PERIOD	RATIOS
1	1.10336461	17	.744578107	33	.368676792
2	1.08142706	18	.721593959	34	.344596259
3	1.05942520	19	.698542908	35	.320445711
4	1.03735954	20	.675424434	36	.296224111
5	1.01522906	21	.652238539	37	.271932495
6	.993034792	22	.6288985222	38	.247569827
7	.970775171	23	.605663964	39	.223136107
8	.948450721	24	.582274247	40	.198630815
9	.926060924	25	.558817108	41	.174054472
10	.903606297	26	.535290991	42	.149406557
11	.881085805	27	.511696414	43	.124686
12	.858499965	28	.48803286	44	.099894
13	.835848259	29	.464300329	45	.07503
14	.813130168	30	.440498819	46	.0501
15	.790346212	31	.416627813	47	.0251
16	.767495352	32	.39268731	48	0


PLEASE INITIAL

R 1624

D 1

ASSIGNMENT AGREEMENT

A M.T. DEARL

THIS AGREEMENT made this 2nd day of July 1998.

REGISTRY OF
CONDITIONAL SALES
BILLS OF SALE
CHATTEL MORTGAGES

'98 SEP -1 P2:30

705859 SEP 1 '98

BETWEEN:

BOMBARDIER CAPITAL LEASING LTD.

(hereinafter called the "Secured Party")

OF THE FIRST PART

- and -

HICKMAN EQUIPMENT (1985) LTD.

(hereinafter called the "Debtor")

OF THE SECOND PART

WHEREAS the Debtor and Secured Party have entered into a lease agreement made as of July 2, 1998 (the "Master Lease");

AND WHEREAS the Debtor is engaged in the business of renting or leasing equipment and desires the ability to rent or lease the equipment (the "Equipment") which is described as part of the Collateral in the Master Lease to various lessees;

AND WHEREAS the parties agree that Debtor may sub-lease the Equipment but only on the conditions set forth below;

NOW THEREFORE for valuable consideration, (the receipt and sufficiency whereof are hereby acknowledged), the parties agree as follows:

1. Secured Party agrees that any provision in the Master Lease to the contrary notwithstanding, Debtor may lease (any reference to lease shall include rent or sublease) each item of Equipment in the regular course of its business, subject and subordinate, however, to the security interest of Secured Party.
2. To secure payment of all of Debtor's obligations under the Master Lease, Debtor:
 - (i) grants to Secured Party a security interest and hereby grants, assigns and transfers its rights to any and all presently existing or hereafter arising leases or rental agreements pertaining to any items of Equipment (collectively, "Lease Agreements") and all accounts and general intangibles relating to the Collateral which may now exist or hereafter arise, together with all rights arising thereunder,

under registration number 1624
registered with this Registry on the
2nd day of July, A.D., 1998
and renewed
Registration No. 1624
Date: 1/1/99

including all payments due and to become due thereunder, all of which shall be deemed to constitute Collateral for all purposes under the Master Lease;

- (ii) upon request by Secured Party, agrees to mark all Lease Agreements with such legend as may be specified by Secured Party to the effect that they are subject and subordinate to the Master Lease and to deliver originals of each Lease Agreement to Secured Party so that Secured Party may perfect its interest by possession; and
- (iii) agrees to do, make, execute and deliver all such additional and further acts, assurances and instruments as Secured Party may require in order to vest in and assure to Secured Party its rights in the Lease Agreements or in any other of the Collateral, including, without limitation, execution and delivery of such financing statements as Secured Party may request to perfect and continue the security interest hereby granted.

3. So long as Debtor is not in default in the performance of any of its obligations under the Master Lease (the "Obligations"), Debtor may collect and retain all lease payments due and owing under Lease Agreements.

4. Debtor warrants and represents that:

- (i) all Lease Agreements shall be genuine and executed by the parties identified therein, which parties shall be authorized to execute the Lease Agreements;
- (ii) each Lease Agreement shall be the exclusive Lease Agreement executed in connection with the rental of the Equipment for the period covered;
- (iii) all information in the Lease Agreements or supplied by Debtor to Secured Party in connection with the Lease Agreements shall be true and correct;
- (iv) the Lease Agreements shall, at all times, be free and clear of all liens and encumbrances of any kind;
- (v) the obligation of the Lessee to make payments thereunder shall be free and clear of any defence, offset or counterclaim which may be asserted against Debtor;
- (vi) Debtor has not and will not, without the prior written consent of Secured Party, accept in excess of two (2) months' advance rent under a Lease Agreement;

- (vii) Debtor will not modify, amend or extend the time for payment or waive performance in any material respect under any Lease Agreement without the express prior written consent of Secured Party; and
- (viii) the execution by it of this assignment has been duly authorized by all necessary corporate action, that this assignment is a valid, legal and binding obligation of the Debtor and that the persons signing below on behalf of the Debtor have been duly authorized to do so.

5. Debtor further agrees to:

- (i) allow Secured Party (no less frequently than monthly) to inspect and photograph the Equipment at each location where Debtor conducts its business or where the Equipment may then be located;
- (ii) allow, cooperate with and/or give assistance to Secured Party so that Secured Party or its representative may perform inspections of any type on the Debtor and/or Equipment including, but not limited to, physical inspections as set forth in (i) herein, phone audits, record check inspections, off-site inspections (collectively, "Inspections");
- (iii) maintain customary business records on the Equipment and allow Secured Party to inspect and copy all such business records during regular business hours;
- (iv) remove the Equipment from the location specified in the Master Lease only pursuant to the terms of the Lease Agreements; and
- (v) to pay a fee for the herein referenced inspections of \$100.00 per unit of Equipment for all units inspected pursuant to the Master Lease and this Agreement, which fee shall be due on the first day of the following month.

6. Debtor assigns to Secured Party only its rights and not its obligations under the Lease Agreements. Debtor shall continue to be obligated to perform all the contractual duties imposed on it as set forth in the Lease Agreements. In the event the Debtor fails to perform any of its duties or obligations set forth in any Lease Agreement, which failure results in damage to or claims asserted against Secured Party, Debtor shall defend and indemnify Secured Party from any claims or damages arising therefrom, including the payment of reasonable legal fees necessary to defend Secured Party or enforce its rights in the Lease Agreement.

7. In the event of a default by Debtor in the performance of an Obligation, Secured Party may exercise all remedies set forth in the Master Lease including, but not limited to, the right to notify each obligor under each Lease Agreement to make payments directly to Secured Party.
8. Capitalized terms used herein and not otherwise defined in this Agreement shall have the meanings ascribed in the Master Lease.
9. This assignment shall be binding on the Debtor and the successors and permitted assigns of the Debtor and shall enure to the benefit of the Secured Party, its successors and assigns. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Secured Party.
10. This assignment shall be construed in accordance with the laws of the Province of Newfoundland and the Debtor agrees that any lawsuit, action or proceeding arising out of or relating to this assignment may be instituted in the courts of such province and the Debtor hereby accepts and irrevocable submits to the jurisdiction of the said courts and acknowledges their competence and agrees to be bound by any judgment thereof; provided that nothing herein shall limit the Secured Party's rights to bring proceedings against the Debtor or any lessee under any of the Lease Agreements elsewhere.

DATED the 2nd day of July 1998.

BOMBARDIER CAPITAL LEASING LTD.


 By: _____
 Name: George W. Calver
 Title: Group Vice President & General Manager

HICKMAN EQUIPMENT (1985) LTD.


 By: _____
 Name: John King
 Title: ASSISTANT SALES MANAGER

AFFIDAVIT OF BONA FIDES

I, George W. Calver, of the City/Town of Barnard, in the State of Vermont, U.S.A. with Bombardier Capital Leasing Ltd. the Secured Party named in the Assignment Agreement annexed hereto makes oath and say as follows:

1. **THAT** I am a duly authorized employee with Bombardier Capital Leasing Ltd. at 6400 Auteuil Street, Suite 200, in the City/Town of Brossard, in the Province of Quebec, Canada;
1. **THAT** I am aware of the circumstances connected with the said Assignment Agreement and have a personal knowledge of the facts herein deposed to;
1. **THAT** the said Assignment Agreement hereto annexed was executed in good faith and for valuable consideration, and not for the mere purpose of protecting the book debts therein mentioned against the creditors of Hickman Equipment (1985) Ltd., the Assignor, or for the purpose of preventing such creditors from recovering any claims which they have against the said Assignor.

SWORN TO before me at Colchester
In the State of Vermont on the 26th day of August, 1998.

BOMBARDIER CAPITAL LEASING LTD.



George W. Calver
Notary Public for the State of Vermont
Notary expires 2/10/99

BOMBARDIER CAPITAL LEASING LTD.

July 17th, 1998

Re: Hickman Equipment (1985) Limited
P.O. Box 820, Topsail Road West
Mount Pearl, Newfoundland A1N 3O8

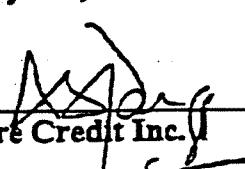
To Whom It May Concern:

We are the secured party under certain registrations made against the Debtor under the *Registration of Deeds Act ("RDA")*. We are advised that you propose to establish certain credit facilities in favour of the Debtor and that you have requested this letter as a condition to the establishment of such credit facilities.

In consideration of the establishment of your financing arrangements with the Debtor, we confirm that we will, upon receipt of \$1,036,875.09 for the noted asterisked ("*") units on Schedule "A", by Wednesday, July 22, 1998, plus a per diem rate of \$205.00, if past the above date, release any interest held in the property charged by your Lease Agreement as more particularly described in Schedule "A".

This letter may be relied upon by you and your successors and assigns but not by any other party.

Very truly yours,


John Deere Credit Inc.

By: Alan Denbo

Title: MANAGER, CREDIT

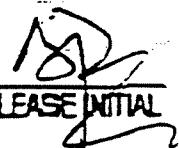
SCHEDULE A

This schedule A is part of the Lease Equipment Schedule No.1 dated July 2, 1998 and of the Master Lease Agreement between Hickman Equipment (1995) Limited and Bombardier Capital Leasing Ltd. number 1998062601.

EQUIPMENT DESCRIPTION

MODEL	DESCRIPTION	SERIAL NUMBER
TC62H	WHEEL LOADER	DWTC62H567754
160LC	EXCAVATOR	P00160X040322
244H	WHEEL LOADER	T6244HX000131
270LC	EXCAVATOR	FF0270X070316
310E	BACKHOE	T0310EX846764
310SE	BACKHOE	T0310SE846871
310SE	BACKHOE	T0310SE847170
744H	WHEEL LOADER	DW744HM567458
644G	WHEEL LOADER	DW644G8566323
690E	EXCAVATOR	DW690E1565815
200LC	EXCAVATOR	FF0200X050658
200LC	EXCAVATOR	FF0200X050656

Total Purchase Price : \$1,928,155.57 plus HST



PLEASE INITIAL

BOMBARDIER CAPITAL LEASING LTD.

July 10th, 1998

Re: Hickman Equipment (1985) Limited
P. O. Box 820, Topsail Road West
Mount Pearl, Newfoundland, A1N 308
(Debtor)

To Whom It May Concern:

We are the secured party under certain registrations made against the Debtor under the *Registration of Deeds Act* ("RDA"). We are advised that you propose to establish certain credit facilities in favour of the Debtor and that you have requested this letter as a condition to the establishment of such credit facilities.

In consideration of the establishment of your financing arrangements with the Debtor, we, our successors and assigns, confirm that we have no interest in the property charged by your Lease Agreement as more particularly described in Schedule "A".

This letter may be relied upon by you and your successors and assigns but not by any other party.

Very truly yours,

Bernice Wade

CANADIAN IMPERIAL BANK
OF COMMERCE

By Bernice Wade

Title Administrative Assistant
(for BRIAN HENCHY, DIRECTOR)

2002-03-05
14:49

Atlantic PPRS
Search Results Report

/111a005JR
page 1

A debtor or serial numbered collateral item remains searchable for 30 days after becoming inactive.

Province/Territory Searched : Newfoundland and Labrador

Searched By : S177115
Date/Time of Search : 2002-03-05 / 14:48
Type of Search : Serial Numbered Collateral
Search Criteria : Serial Number : FFO200X050655

4B

Summary of Results Found

Prov/Terr Searched	Exact Matches	Close Matches	Total Matches
Newfoundland and Labrador	1	0	1

1 registrations contained information that matched the search criteria exactly and the following table indicates which were selected to be included in or excluded from the registrations to be printed in detail.

Exact Matches selected to be included

NF	112581	FFO200X050655, Excavator, model 200LC
----	--------	---------------------------------------

Count: 1

The search criteria provided did not closely match any information in the registry at the date and time indicated above.

Registration Details

Province/Territory : Newfoundland and Labrador
Registration Type : PPSA Financing Statement
Registration Number : 112581
Registration Date/Time : 2000-02-18 / 15:46
Expiry Date : 2004-02-18
Your File Number :

History of Registration Activity

Activity	Number	Date	Time	Expiry Date	Your File Number
Original	112581	2000-02-18	15:46	2004-02-18	
Amendment	1339091	2001-11-08	12:39	2004-02-18	

Debtors

ADDED DELETED

Debtor Type : Enterprise
Hickman Equipment (1985) Limited
King, John

112581

2002-03-05
14:49

Atlantic PPRS
Search Results Report

/Aika005JR
page 2

1269 Topsoil Road
Mont. Pearl NF Canada A1N 3C8

Secured Parties	ADDED	DELETED
Bombardier Capital Leasing Ltd. Cormier, Marc, Regional Manager SUITE 601 440 King Street Fredericton NB Canada E3B 5H8 Telephone : 506-460-6534 Fax : 506-460-6505	112581	1339091

Bombardier Capital Leasing Ltd. , Legal SUITE 200 6400 Auteuil Street Brossard NB Canada J4Z3P5 Telephone : 450-443-4400 Fax : 450-443-2423	1339091
--	---------

General Description Collateral	ADDED
	112581

1 Wheel Loader, model TC62H, serial number: DWTC62H567754 1 Wheel Loader, model 244H, serial number: T6244HX000131 1 Backhoe, model 310E, serial number: T0310EX846764 1 Backhoe, model 310SF, serial number: T0310SE847170 1 Wheel Loader, model 744H, serial number: DW744HM567458 1 Wheel Loader, model 644G, serial number: DW644GB566323 1 Excavator, model 690E, serial number: DW690EL565815 2 Excavators, model 200LC, serial numbers: FFO200X050658, FFO200X050655	1339091
---	---------

1 Wheel Loader, model TC62H, serial number: DWTC62H567754 1 Wheel Loader, model 244H, serial number: T6244HX000131 1 Backhoe, model 310E, serial number: T0310EX846764 1 Backhoe, model 310SF, serial number: T0310SE847170 1 Wheel Loader, model 744H, serial number: DW744HM567458 1 Wheel Loader, model 644G, serial number: DW644GB566323 1 Excavator, model 690E, serial number: DW690EL565815 2 Excavators, model 200LC, serial numbers: FFO200X050658, FFO200X050655	1339091
---	---------

excluded the collateral subject to the discharge:
1 Backhoe, model 310SF, serial number: T0310SE847170
1 Excavator, model 690E, serial number: DW690EL565815

Serial Numbered Collateral	ADDED	DELETED
Collateral Type		
Serial Number	Description	
Motor Vehicle FFO200X050655	Excavator, model 200LC	112581
Motor Vehicle FFO200X050658	Excavator, model 200LC	112581

2002-03-05
14:49

Atlantic PPRS
Search Results Report

/AAka005JR
page 3

Motor Vehicle DW690EL565815	Excavator, model 690E	112581	1339091
Motor Vehicle DW644GB566323	Wheel Loader, model 644G	112581	
Motor Vehicle DW744HE567458	Wheel Loader, model 744H	112581	
Motor Vehicle TU310SE847170	Backhoe, model 310SF	112581	1339091
Motor Vehicle TU310EX846764	Backhoe, model 310E	112581	
Motor Vehicle T6244HX000131	Wheel Loader, model 244H	112581	
Motor Vehicle DWTC62H567754	Wheel Loader, model TC62H	112581	

Pre-PPSA registration information continued by this registration ADDED DELETED
===== ===== =====

Number/	County or Venue/	
Date	Act	

704250	not applicable	112581
1998-08-12	Conditional Sales Act	

*** End of Report ***

B) Department/	C) Amount Needed <u>2,217,378.90 \$</u>		
Business Unit: <u>CIFD</u>			
D) Approval:	E) Denomination:	US\$ <input type="checkbox"/>	CDN \$ <input checked="" type="checkbox"/>
F) Request Date: <u>1998 July 21st</u>			
G) Value Date: <u>1998 July 21st</u>			
H) Method of Funding:	Check <input type="checkbox"/>	Wire Transfer: <input checked="" type="checkbox"/>	ACH: <input type="checkbox"/> (If W/T or ACH, complete section J)
I) Payees Name: <u>HICKMAN EQUIPMENT (1985) LIMITED</u>		K) Reason: <u>(Check ✓)</u>	
Address: <u>P.O. BOX 820</u>		1) Replacement/Override Funding to A/P System <input type="checkbox"/>	
<u>Mount Pearl, NFLD</u>		2) Rollovers <input type="checkbox"/>	
<u>A1N 3C8</u>		3) Prepaid Expenses <input type="checkbox"/>	
J) Payees Bank: <u>CIBC</u>	4) Direct Expense <input type="checkbox"/>		
Address: <u>Atlantic Place</u>	5) Fixed Asset <input type="checkbox"/>		
<u>St-John, NFLD</u>	6) Employee Advance <input type="checkbox"/>		
Account Name: <u>SAME</u>	7) Earning Asset (Attach Term Sheet) <input checked="" type="checkbox"/>		
Account #: <u>0002801</u>	8) Other (Use Explanation Section) <input type="checkbox"/>		
Attention:	L) Explanation <u>PURCHASE AND LEASEBACK IN HICKMAN'S FILE</u>		
ABA/Transit #: <u>00063-010</u>	AMOUNT: <u>1,928,155.57 \$</u>		
Foreign Cur. Swift #:	HST: <u>289,223.33 \$</u>		
Intermediary Bank:	TOTAL: <u>2,217,378.90 \$</u>		
ABA/Transit #:			
Foreign Cur. Swift #:			

ACCOUNTING USE ONLY

Check/Wire Transfer #: _____ Date: _____
 Document Attached: Yes No - G/L Account(s) #: _____
 Vendor #: _____

BANK AUTHORIZED SIGNORS:

Name: _____
 Name: _____

(2 SIGNATURES REQUIRED)

Signature: _____
 Signature: _____

OCT 23 2002 11:27 De INTRIA ITEMS 514 876 4670 A 98763881

P 01/03

00001
JL 101 / 98 MONTREAL
Due & Return Date ~~NOV 10 1998~~ PA
MAY 10 / 1999

RE PAYEMENT INTER-ÉCHI EN 1990 DE CAN 2,817,870.90
AU COURS CHANGÉ 1.0

BOMBARDEUR CAPITAL LEASING LTD.
6571 CHEMIN DE L'ESPRESSO
VALCOURT
J0E 2L0

Frances Hamotie
Frances Tibodeau

2 pages
8050
CIBC

Fay 450-443-8950 Tel. 1-800-324-4542

Le 23 octobre 2002

EQUIPMENT PURCHASE AND SALE AGREEMENT

BY AND BETWEEN MINIMAX EQUIPMENT (1988) LIMITED
MINISTRY OF CONDITIONAL SALES, BILLS OF SALE
AND CHATTEL MORTGAGES
ST. JOHN'S, NEWFOUNDLAND
1290 Tessel Road, Mount Pearl, Newfoundland A1N 3C8
a corporation duly incorporated with its principal place of business at:

hereby certify this to be a true copy of a document
stated with this Registry on the 5 day of
FEB A.D. 1999 and recordholder referred to as the "Seller")
cor registration number 270 485
stated 2000-01-01 00000000
as February 9, 1999
BOMBARDIER CAPITAL LEASING LTD., a corporation duly incorporated with its principal place
of business at 6400 Avenue, 2nd Floor, Broadview, Quebec J0Z 3P5
(hereinafter referred to as "Bombardier Capital Leasing Ltd.")
G.S.T. Registration #: 101198620

FOR GOOD AND VALUABLE CONSIDERATION SELLER AND BOMBARDIER CAPITAL LEASING LTD. HAVE AGREED AS FOLLOWS:

SECTION 1- PREAMBLE

1.1 WHEREAS Seller owns by good and marketable title all of the equipment and machinery, (herein, collectively the "Equipment") described in Schedule "A" annexed hereto.

1.1 WHEREAS Seller desires to sell the Equipment to Bombardier Capital Leasing Ltd. who is prepared to purchase same in consideration of the undertaking of Seller to execute forthwith with Bombardier Capital Leasing Ltd. a Leasing Agreement for the Equipment in Bombardier Capital Leasing Ltd.'s standard form and to pay the rental therein provided.

SECTION 2- SALE

2.1 Seller hereby sells the Equipment to Bombardier Capital Leasing Ltd. and all warranties related thereto to Bombardier Capital Leasing Ltd. hereby accepting, in consideration of the payment by Bombardier Capital Leasing Ltd. to Seller of the sum of ONE MILLION FIVE HUNDRED AND SIXTY SIX THOUSAND FOUR HUNDRED AND THIRTY DOLLARS AND NINETY (1,566,430.90), (Purchase Price), being the aggregate of the amounts indicated on Schedule "A" with respect to each part of Equipment.

2.2 Seller acknowledges receipt of the Purchase Price and hereby gives a full and final release to Bombardier Capital Leasing Ltd. with respect to the payment thereof.

SECTION 3- REPRESENTATIONS AND WARRANTIES BY SELLER

3.1 Seller hereby covenants, represents and warrants to Bombardier Capital Leasing Ltd. as follows:

3.1.1 Seller owns the Equipment by good and marketable title, free and clear of all liens, privileges, hypothecs, legal hypothecs, prior claims, security interests, mortgages, encumbrances and charges of any nature;

3.1.2 The purchase price and all sales, exercise and other taxes and duties payable in respect of the original purchase of the Equipment by the Seller have been fully paid;

3.1.3 The sale of the Equipment hereunder does not constitute a sale of the seller's enterprise, does not require the consent of any third party, shareholder, creditor or holder of any security of Seller or of any governmental authority or agency and the execution of this Agreement and the transfer of title to the Equipment from Seller to Bombardier Capital Leasing Ltd. hereunder shall not constitute a breach of, or default under, the terms of the constituting documents of Seller or of any order, decree or regulation or agreement by which Seller or the Equipment is or may be bound or affected;

3.1.4 All corporate proceedings and actions necessary to authorize the execution and delivery of this Agreement and the accomplishment of the transaction envisaged herein have been duly passed and adopted by Seller;

3.1.5 The Equipment is in good operating condition, has been properly maintained and serviced, complies with all applicable laws, regulations and orders governing its possession, use and the safety and the protection of the environment, has all safety, health and hazard warning labels and decals affixed thereto as required by law or as affixed by the manufacturer thereof, is free from defects, malfunctions or premature or other deteriorations, whether hidden or apparent, and is of the quality and durability expected and performs adequately for the use for which it was originally purchased by Seller, and shall remain in such condition throughout the term of the Leasing Agreement mentioned in the preamble hereto, save for normal wear and tear;

3.1.6 Seller has abided by and fully complied with all recommendations or requirements of all warranties, specifications, operating manuals, procedures, directives, recall notices and the like of the original manufacturer, supplier or parts supplier;

3.1.7 The Equipment has not been attached or joined to any immovable property so as to have caused it to lose its individuality; and

3.1.8 The Seller acknowledges, agrees and confirms that the Seller originally selected and purchased the Equipment from the supplier or suppliers chosen by it, that at all times it has been in possession of, used, operated and maintained the Equipment and that the Equipment is being sold to and purchased by the Bombardier Capital Leasing Ltd., a financial institution, solely for the purposes of leasing the same back to the Seller on a financing basis under the terms of the above-referenced Leasing Agreement. As a result and, in those circumstances and as part of the consideration inducing the Seller to enter into this

This is Exhibit "ND3" referred to
in the Affidavit hereto

Agreement, the Seller hereby renounces to and agrees not to assert against the Bombardier Capital Leasing Ltd., as lessor, any right, remedy or recourse based on Articles 1854 to 1869 both inclusive of the Civil Code of Quebec and to the extent necessary the provisions of this paragraph 3.1.18 shall be deemed to form the part of the said Leasing Agreement.

3.1.9 The Equipment is presently and will remain located at Seller's place of business situated in Newfoundland

SECTION 4- FINAL PROVISIONS

4.1 Seller shall execute and deliver all other documents and shall do all other acts which may be reasonably required by Bombardier Capital Leasing Ltd. for the purpose of conferring upon Bombardier Capital Leasing Ltd. a clear and absolute title to the Equipment and for the purpose of giving full effect to the provisions of this Agreement.

4.2 This Agreement shall be governed and interpreted in accordance with the laws of the Province of Newfoundland.

4.3 This Agreement together with the documents referred to herein constitute the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be modified unless by writing and signed by an authorized officer of the party against whom such modification is claimed to be enforceable.

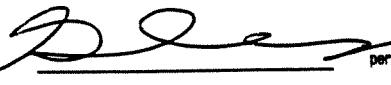
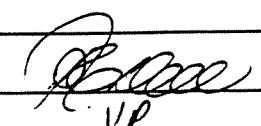
4.4 This Agreement shall enure to the benefit of, and be binding upon, the parties hereto, their respective heirs, executors, administrators, successors and assigns.

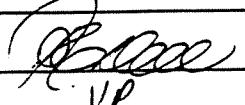
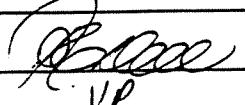
4.5 The present document has been drawn up in English language at the express request of the parties. Le présent document a été rédigé en langue anglaise à la demande expresse des parties.

4.6 Seller acknowledges that, before signing, Seller was given sufficient time to read, to ask for explanations and clarifications as to the terms and conditions of this Agreement, and to consult its advisors and as a result Seller declares that it understands and is satisfied with all of the provisions of this Agreement.

DATED AT Mount Pearl, this 20th day of August, 19 98

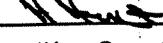
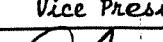
BOMBARDIER CAPITAL LEASING LTD.

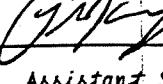
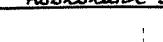
per : 
 title : 

per : 
 title : 

HICKMAN EQUIPMENT (1985) LIMITED

(Seller)

per : 
 title : 

per : 
 title : 

Schedule A
TO EQUIPMENT PURCHASE AND SALE AGREEMENT

This schedule A is part of the Equipment Purchase and Sale Agreement dated August 28, 1998 between Hickman Equipment (1985) Limited and Bombardier Capital Leasing Ltd.

EQUIPMENT DESCRIPTION

MODEL	DESCRIPTION	SERIAL NUMBER
450LC	EXCAVATOR	FF0450X090093
370XX	EXCAVATOR	FF0370X080106
230LC	EXCAVATOR	FF0230X060319
160LC	EXCAVATOR	P00160X040411
120	EXCAVATOR	P00120X030899
200LC	EXCAVATOR	FF0200X500415
310E	BACKHOE	T0310EX850513

Total Purchase Price : \$1,566,430.99 plus HST



PLEASE INITIAL

AFFIDAVIT OF BONA FIDES

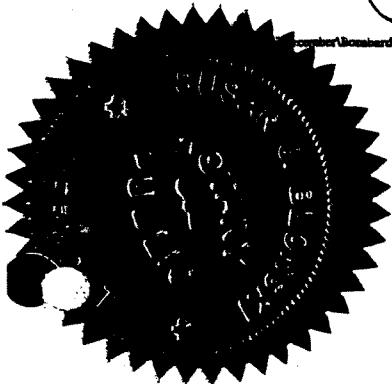
I, Georges Calver, a duly authorized representative and agent of Bombardier Capital Leasing Ltd., the Purchaser in the attached Equipment Purchase and Sale Agreement, make oath and say:

1. **THAT** I am an agent of Bombardier Capital Leasing Ltd. and am duly authorized to swear the within Affidavit;
2. **THAT** the above noted Equipment Purchase and Sale Agreement was executed in good faith and for good consideration, as set forth therein and not for the purpose of protecting the chattels therein mentioned against the creditors of the Vendor, or for the purpose of preventing them from recovering any claims that they may have against the Vendor.

SWORN TO (OR AFFIRMED) at
Colchester, in the
Province of Vermont
this 26th day of January
1998:

Susan
NOTARY PUBLIC

90



LEASE EQUIPMENT SCHEDULE

No: 2

ATTACHED TO AND FORMING PART OF MASTER LEASE AGREEMENT NO.: 1998062601 DATED July 2, 1998
BETWEEN BOMBARDIER CAPITAL LEASING LTD., (BCL) AND HICKMAN EQUIPMENT (1985) LIMITED

BCL hereby agrees to lease to Lessee upon and subject to the terms, conditions and provisions set forth in this Lease Schedule ("Schedule") and in the above referred to Master Lease Agreement ("Lease Agreement"), the Equipment described or identified below (the "Equipment");

SUPPLIER: HICKMAN EQUIPMENT (1985) LIMITED
ADDRESS: 1269 Topsail Road
Mount Pearl, Newfoundland A1N 3C8
CONTACT: Mr. John King, Controller
TELEPHONE: (709) 748-2003 **FACSIMILE:** (709) 368-1146
H.S.T.: R102345758

QUANTITY	DESCRIPTION
	SEE ATTACHED SCHEDULE A

LOCATION OF EQUIPMENT:

TERM AND RENTAL PROVISIONS

Lease Commencement Date: August 28, 1998

Lease Term: 48 Months (No. of complete months)

Rent Payment Period.: Monthly Quarterly Other

RENT: Due in advance on the first day of each month Rent Amount: 39,870.72\$

Provincial Sales Tax: _____ 0.00 \$

Goods and Services Tax: 5,980.61\$

Total Rental Payment: 45,851.33\$

PURCHASE OPTION

(a) At the end of the 48th month of the lease term for \$ 1.00

SUPPLEMENTAL CONDITIONS

SEE ATTACHED SCHEDULE B

HICKMAN EQUIPMENT (1985) LIMITED		BOMBARDIER CAPITAL LEASING LTD.	
("Lessee")	TITLE	("Lessor")	TITLE
BY: 	<u>Vice President</u>	BY: 	<u>John Doe</u>
	TITLE		TITLE
<u>Assistant Sales Manager</u>		<u>VP</u>	
SIGNATURE OF AUTHORIZED OFFICERS		SIGNATURE OF AUTHORIZED OFFICERS	
TITLE		TITLE	

• LEASE EQUIPMENT SCHEDULE

1. **TERM:** The term of this Lease ("Term") begins on the date the Equipment is shipped to Lessee. Unless sooner terminated by Lessor, the Term will end after the number of months specified above from the date the Term commences; provided, however, that if the Term commences on OTHER THAN the 1st day of the month, the Term shall be extended to the last day of the month in which the Term ends, according to this Section. If the Rent includes a cost of service or maintenance, Lessee acknowledges that such inclusion is for Lessee's convenience and Lessee will not assert against Lessor any claim by way of abatement, defense, set-off, compensation, counterclaim or the like which Lessee might have under any service or maintenance agreement.
2. **RENT AND RENT ADJUSTMENT:** Lessee agrees to pay rent as follows; (a) if the Term commences on other than the 1st day of the month, Lessee will pay pro rata rent from the date of shipment to the end of the month in which shipment took place and (b) the Periodic Rent Payment ("Rent") for the first complete calendar period of the Term when Lessee executes this Lease; and (c) subsequent Rent in advance on the 1st day of each calendar period of the Term. Lessee shall make all payments at BCL's office shown above, or as BCL specifies in writing BCL's invoice is NOT a condition of Lessee's obligation to pay Rent and/or interest charges when due. Lessee's obligations under this Lease shall be absolute and unconditional under all circumstances whatsoever and, without limitation.
3. **PURCHASE OPTION:** Lessee shall, when not in default under the Lease Agreement and upon 30 days' prior written notice to BCL, have the option to purchase all but not less than all of the Equipment on the Option Dates and for the Option Prices referred to below subject to the terms, conditions and provisions of the Lease Agreement.
4. **CONTINUING AGREEMENT:** Provided Lessee is not in default hereunder, this Agreement will be automatically renewed on a month-to-month basis upon the expiration of the Term ("Renewal Period") upon and subject to the terms and conditions set forth herein including the periodic Rental unless either BCL or Lessee has notified the other in writing within thirty (30) days prior to the expiration of the Term to the effect that the Renewal Period will not be entered into. During the Renewal Period, either party may cancel this Agreement providing thirty (30) days written notice to the other party.
5. **AGREEMENT:** This Schedule shall be deemed to take effect and form part of the Lease Agreement pursuant to Section 1 of the Master Lease Agreement on the date BCL receives an invoice from the Supplier of the Equipment with such invoice to be in BCL's name. Lessee hereby authorizes BCL to insert, where applicable, the serial number of the Equipment. Lessee hereby agrees that the Equipment is located at the above location and shall not be removed without prior written consent of BCL.

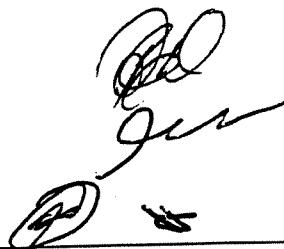
SCHEDULE A

This schedule A is part of the Lease Equipment Schedule No.2 dated August 28, 1998 and of the Master Lease Agreement between Hickman Equipment (1985) Limited and Bombardier Capital Leasing Ltd. number 1998062601.

EQUIPMENT DESCRIPTION

MODEL	DESCRIPTION	SERIAL NUMBER
450LC	EXCAVATOR	FF0450X090093
370XX	EXCAVATOR	FF0370X080106
230LC	EXCAVATOR	FF0230X060319
160LC	EXCAVATOR	P00160X040411
120	EXCAVATOR	P00120X030899
200LC	EXCAVATOR	FF0200X500415
310E	BACKHOE	T0310EX850513

Total Purchase Price : \$ 1,566,430.99 plus HST



PLEASE INITIAL

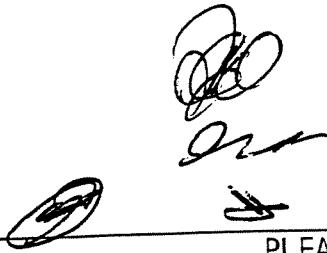
SCHEDULE B

This schedule B is part of the Lease Equipment Schedule No.2 dated August 28, 1998 and of the Master Lease Agreement between Hickman Equipment (1985) Limited and Bombardier Capital Leasing Ltd. number 1998062601.

EARLY PAYOFF SCHEDULE

In the event that the Lessee wishes to terminate the Lease or a portion of the Lease, the following ratios will apply, such ratio being simply multiplied by the original value of the prepaid equipment(s) according to the invoice number(s) 040802,042424,042337,042330,042329,040996,043031 dated Sept. 26, 1997, July 28, 1998, July 31, 1998, July 02, 1998, July 27, 1998, July 24, 1998 at the corresponding Period in time, after the corresponding rental is paid by Lessee.

PERIOD	RATIOS	PERIOD	RATIOS	PERIOD	RATIOS
1	1.10336461	17	.744578107	33	.368676792
2	1.08142706	18	.721593959	34	.344596259
3	1.05942520	19	.698542908	35	.320445711
4	1.03735954	20	.675424434	36	.296224111
5	1.01522906	21	.652238539	37	.271932495
6	.993034792	22	.6288985222	38	.247569827
7	.970775171	23	.605663964	39	.223136107
8	.948450721	24	.582274247	40	.198630815
9	.926060924	25	.558817108	41	.174054472
10	.903606297	26	.535290991	42	.149406557
11	.881085805	27	.511696414	43	.124686
12	.858499965	28	.48803286	44	.099894
13	.835848259	29	.464300329	45	.07503
14	.813130168	30	.440498819	46	.0501
15	.790346212	31	.416627813	47	.0251
16	.767495352	32	.39268731	48	.0


PLEASE INITIAL

ASSIGNMENT AGREEMENT

CONDITIONAL SALES
BILLS OF SALE
CHATTING MORTGAGES

'99 FEB -5 P2:30

THIS AGREEMENT made this 28th day of August 1998.

B E T W E E N:

BOMBARDIER CAPITAL LEASING LTD.

(hereinafter called the "Secured Party")

OF THE FIRST PART

- and -

HICKMAN EQUIPMENT (1985) LTD.

(hereinafter called the "Debtor")

OF THE SECOND PART

WHEREAS the Debtor and Secured Party have entered into a lease agreement made as of July 2, 1998 (the "Master Lease");

AND WHEREAS the Debtor is engaged in the business of renting or leasing equipment and desires the ability to rent or lease the equipment (the "Equipment") which is described as part of the Collateral in the Master Lease to various lessees;

AND WHEREAS the parties agree that Debtor may sub-lease the Equipment but only on the conditions set forth below;

NOW THEREFORE for valuable consideration, (the receipt and sufficiency whereof are hereby acknowledged), the parties agree as follows:

1. Secured Party agrees that any provision in the Master Lease to the contrary notwithstanding, Debtor may lease (any reference to lease shall include rent or sublease) each item of Equipment in the regular course of its business, subject and subordinate, however, to the security interest of Secured Party.
2. To secure payment of all of Debtor's obligations under the Master Lease, Debtor:
 - (i) grants to Secured Party a security interest and hereby grants, assigns and transfers its rights to any and all presently existing or hereafter arising leases or rental agreements pertaining to any items of Equipment (collectively, "Lease Agreements") and all accounts and general intangibles relating to the Collateral which may now exist or hereafter arise, together with all rights arising thereunder,

including all payments due and to become due thereunder, all of which shall be deemed to constitute Collateral for all purposes under the Master Lease;

- (ii) upon request by Secured Party, agrees to mark all Lease Agreements with such legend as may be specified by Secured Party to the effect that they are subject and subordinate to the Master Lease and to deliver originals of each Lease Agreement to Secured Party so that Secured Party may perfect its interest by possession; and
- (iii) agrees to do, make, execute and deliver all such additional and further acts, assurances and instruments as Secured Party may require in order to vest in and assure to Secured Party its rights in the Lease Agreements or in any other of the Collateral, including, without limitation, execution and delivery of such financing statements as Secured Party may request to perfect and continue the security interest hereby granted.

3. So long as Debtor is not in default in the performance of any of its obligations under the Master Lease (the "Obligations"), Debtor may collect and retain all lease payments due and owing under Lease Agreements.

4. Debtor warrants and represents that:

- (i) all Lease Agreements shall be genuine and executed by the parties identified therein, which parties shall be authorized to execute the Lease Agreements;
- (ii) each Lease Agreement shall be the exclusive Lease Agreement executed in connection with the rental of the Equipment for the period covered;
- (iii) all information in the Lease Agreements or supplied by Debtor to Secured Party in connection with the Lease Agreements shall be true and correct;
- (iv) the Lease Agreements shall, at all times, be free and clear of all liens and encumbrances of any kind;
- (v) the obligation of the Lessee to make payments thereunder shall be free and clear of any defence, offset or counterclaim which may be asserted against Debtor;
- (vi) Debtor has not and will not, without the prior written consent of Secured Party, accept in excess of two (2) months' advance rent under a Lease Agreement;

- (vii) Debtor will not modify, amend or extend the time for payment or waive performance in any material respect under any Lease Agreement without the express prior written consent of Secured Party; and
- (viii) the execution by it of this assignment has been duly authorized by all necessary corporate action, that this assignment is a valid, legal and binding obligation of the Debtor and that the persons signing below on behalf of the Debtor have been duly authorized to do so.

5. Debtor further agrees to:

- (i) allow Secured Party (no less frequently than monthly) to inspect and photograph the Equipment at each location where Debtor conducts its business or where the Equipment may then be located;
- (ii) allow, cooperate with and/or give assistance to Secured Party so that Secured Party or its representative may perform inspections of any type on the Debtor and/or Equipment including, but not limited to, physical inspections as set forth in (i) herein, phone audits, record check inspections, off-site inspections (collectively, "Inspections");
- (iii) maintain customary business records on the Equipment and allow Secured Party to inspect and copy all such business records during regular business hours;
- (iv) remove the Equipment from the location specified in the Master Lease only pursuant to the terms of the Lease Agreements; and
- (v) to pay a fee for the herein referenced inspections of \$100.00 per unit of Equipment for all units inspected pursuant to the Master Lease and this Agreement, which fee shall be due on the first day of the following month.

6. Debtor assigns to Secured Party only its rights and not its obligations under the Lease Agreements. Debtor shall continue to be obligated to perform all the contractual duties imposed on it as set forth in the Lease Agreements. In the event the Debtor fails to perform any of its duties or obligations set forth in any Lease Agreement, which failure results in damage to or claims asserted against Secured Party, Debtor shall defend and indemnify Secured Party from any claims or damages arising therefrom, including the payment of reasonable legal fees necessary to defend Secured Party or enforce its rights in the Lease Agreement.

7. In the event of a default by Debtor in the performance of an Obligation, Secured Party may exercise all remedies set forth in the Master Lease including, but not limited to, the right to notify each obligor under each Lease Agreement to make payments directly to Secured Party.
8. Capitalized terms used herein and not otherwise defined in this Agreement shall have the meanings ascribed in the Master Lease.
9. This assignment shall be binding on the Debtor and the successors and permitted assigns of the Debtor and shall enure to the benefit of the Secured Party, its successors and assigns. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Secured Party.
10. This assignment shall be construed in accordance with the laws of the Province of Newfoundland and the Debtor agrees that any lawsuit, action or proceeding arising out of or relating to this assignment may be instituted in the courts of such province and the Debtor hereby accepts and irrevocable submits to the jurisdiction of the said courts and acknowledges their competence and agrees to be bound by any judgment thereof; provided that nothing herein shall limit the Secured Party's rights to bring proceedings against the Debtor or any lessee under any of the Lease Agreements elsewhere.

DATED the 28th day of August 1998.

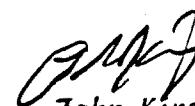
BOMBARDIER CAPITAL LEASING LTD.

By: 
Name: George W. Calver

Title: Group Vice President & General Manager

HICKMAN EQUIPMENT (1985) LTD.

By: 
Name: Hubert Hunt
Title: Vice President


John King
Assistant
Sales Manager

AFFIDAVIT OF BONA FIDES

I, Georges Colver, of the City of Colchester, in the State of Vermont, Vice President with Bombardier Capital Leasing Ltd., the Secured Party named in the Assignment Agreement annexed hereto make oath and say as follows:

1. THAT I am a duly authorized employee with Bombardier Capital Leasing Ltd. at 6400 Auteuil Street, Suite 200, in the City/Town of Brossard, in the Province of Quebec, Canada;
2. THAT I am aware of the circumstances connected with the said Assignment Agreement and have a personal knowledge of the facts herein deposed to;
3. THAT the said Assignment Agreement hereto annexed was executed in good faith and for valuable consideration, and not for the mere purpose of protecting the book debts therein mentioned against the creditors of Hickman Equipment (1985) Ltd., the Assignor, or for the purpose of preventing such creditors from recovering any claims which they have against the said Assignor.

SWORN TO before me at Colchester
in the State of Vermont, on the
26th day of January, 1998:
[Signature]

BOMBARDIER CAPITAL LEASING LTD.

Susan B. Blonski
Commissioner of Oaths
[affix seal]



BOMBARDIER CAPITAL LEASING LTD.

September 4, 1998

Re: Hickman Equipment (1985) Limited
P.O. Box 820, Topsail Road West
Mount Pearl, Newfoundland A1N 3O8
(Debtor)

To Whom It May Concern:

We are the secured party under certain registrations made against the Debtor under the *Registration of Deeds Act ("RDA")*. We are advised that you propose to establish certain credit facilities in favour of the Debtor and that you have requested this letter as a condition to the establishment of such credit facilities.

In consideration of the establishment of your financing arrangements with the Debtor, we confirm have no interest in the property described in Schedule "A".

This letter may be relied upon by you and your successors and assigns but not by any other party.

Very truly yours,


John Doe Credit Inc.

By: Ann Beno

Title: Manager, Credit

SCHEDULE A

This schedule A is part of the Lease Equipment Schedule No.2 dated August 28, 1998 and of the Master Lease Agreement between Kickman Equipment (1985) Limited and BOMBAERGER CAPITAL LEASING LTD. number 1998052601.

EQUIPMENT DESCRIPTION

MODEL	DESCRIPTION	SERIAL NUMBER
450LC	EXCAVATOR	FF0450X090093
370ZX	EXCAVATOR	FF0370X080106
230LC	EXCAVATOR	FF0230X060379
160LC	EXCAVATOR	P00160X040471
120	EXCAVATOR	P00120X030899
200LC	EXCAVATOR	P00200X050475
310E	BACKHOE	T0310X060918

Total Purchase Price : \$ 1,566,430.89 plus HST


PLEASE INITIAL

BOMBARDIER CAPITAL LEASING LTD.

Sept 3, 1998

Re: Hickman Equipment (1985) Limited
P. O. Box 820, Topsail Road West
Mount Pearl, Newfoundland, A1N 3O8
(the "Debtor")

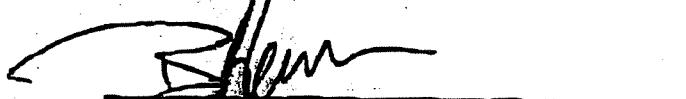
To Whom It May Concern:

We are the secured party under certain registrations made against the Debtor under the *Registration of Deeds Act* ("RDA"). We are advised that you propose to establish certain credit facilities in favour of the Debtor and that you have requested this letter as a condition to the establishment of such credit facilities.

In consideration of the establishment of your financing arrangements with the Debtor, we, our successors and assigns, confirm that we have no interest in the property charged by your Chattle Mortgage as more particularly described in Schedule "A".

This letter may be relied upon by you and your successors and assigns but not by any other party.

Very truly yours,


CANADIAN IMPERIAL BANK
OF COMMERCE
By Brian Henchey
Title Director

2000-02-18
14:16

Atlantic PPRS
Verification Statement
(New)

/111a003uf
page 1

Province : Newfoundland and Labrador
Registration Type : PPSA Financing Statement
Registration Number : 113359
Registration Date/Time : 2000-02-18 / 14:39
Expiry Date : 2004-02-18
Your File Number :

Registrant Name and Address

Registrant User ID: G174526
RI Group Inc.
Williams, Kona L., President
147 Westmorland Street
Fredericton NB Canada E3B 3L4

Debtor

Debtor Type : Enterprise
Hickman Equipment (1985) Limited
King, John
1269 Topsoil Road
Mont. Pearl NF Canada A1N 3C9

Secured Party

Bombardier Capital Leasing Ltd.
Cormier, Marc, Regional Manager
SUITE 601 440 King Street
Fredericton NB Canada E3B 5H3

General Description Collateral

1 Excavator, model 450LC, serial number: FFO450X090093
1 Excavator, model 370XX, serial number: FFO370X0801061
1 Excavator, model 230LC, serial number: FFO230X060319
1 Backhoe, model 310E, serial number: T0310EX850513

Serial Numbered Collateral

Collateral Type	Serial Number	Description
Motor Vehicle	T0310EX850513	Backhoe, Model 310E
Motor Vehicle	FFO230X060319	Excavator, Model 230LC
Motor Vehicle	FFO370X080136	Excavator, Model 370XX
Motor Vehicle	FFO450X090093	Excavator, Model 450LC

Pre-PPSA registration information continued by this registration

Number/	County or Venue/
Date	Act
713825	not applicable
1998-12-11	Conditional Sales Act

2002-03-05
19:57

Atlantic PPRS
Search Results Report

/111a0022
page 1

1 debtor or serial numbered collateral item remains searchable for 30 days after becoming inactive.

Province/Territory Searched : Newfoundland and Labrador

Searched By : S177115
Date/Time of Search : 2002-03-05 / 19:57
Type of Search : Serial Numbered Collateral
Search Criteria : Serial Number : FF0230XD60319

(JB)

Summary of Results Found

Prov/Terr Searched	Exact Matches	Close Matches	Total Matches
Newfoundland and Labrador	2	0	2

2 registrations contained information that matched the search criteria exactly and the following table indicates which were selected to be included in or excluded from the registrations to be printed in detail.

Exact Matches selected to be included

NF 112359	FF0230XD60319, Excavator, Model 230LC
NF 84358	FF0230XD60319, 1998 JOHN DEERE 230LC EXCAVATOR

Count: 2

The search criteria provided did not closely match any information in the registry at the date and time indicated above.

Registration Details

Province/Territory : Newfoundland and Labrador
Registration Type : PPSA Financing Statement
Registration Number : 112359
Registration Date/Time : 2000-02-18 / 14:39
Expiry Date : 2004-02-18
Your File Number :

History of Registration Activity

Activity	Number	Date	Time	Expiry Date	Your File Number
Original	112359	2000-02-18	14:39	2004-02-18	



Debtors

ADDED DELETED

112359

Debtor Type : Enterprise

Hickman Equipment (1985) Limited

King, John

2002-03-05
19:57

Atlantic PPRS
Search Results Report

/file0022
page 2

1269 Topsoil Road
Mont. Pearl NF Canada A1N 3C8

~~Secured Parties~~

Bombardier Capital Leasing Ltd.
Cormier, Marc , Regional Manager
SUITE 601 440 King Street
Fredericton NB Canada E3B 5H8
Telephone : 506-460-6534
Fax : 506-460-6505

ADDED DELETED

112359

~~General Description Collateral~~

1 Excavator, model 450LC, serial number: FFO450X090093
1 Excavator, model 370XX, serial number: FFO370X0801061
1 Excavator, model 230LC, serial number: FFO230X060319
1 Backhoe, model 310E, serial number: T0310EX850513

ADDED

112359

~~Serial Numbered Collateral~~

Collateral Type

Serial Number Description

Motor Vehicle	Backhoe, Model 310E	112359
TO310EX850513		
Motor Vehicle	Excavator, Model 230LC	112359
FFO230X060319		
Motor Vehicle	Excavator, Model 370XX	112359
FFO370X080106		
Motor Vehicle	Excavator, Model 450LC	112359
FFO450X090093		

ADDED

DELETED

112359

112359

112359

112359

Pre-PPSA registration information continued by this registration

ADDED DELETED

Number/ County or Venue/
Date Act

713825	not applicable	112359
1998-12-11	Conditional Sales Act	

Registration Details

Province/Territory	:	Newfoundland and Labrador
Registration Type	:	PPSA Financing Statement
Registration Number	:	84358
Registration Date/Time	:	2000-02-02 / 16:26
Expiry Date	:	2006-02-02
Your File Number	:	5046-JD1

History of Registration Activity

2002-03-05
19:57

Atlantic PPRS
Search Results Report

/A11a0022
page 3

Activity	Number	Date	Time	Expiry Date	Your File Number
Original	84358	2000-02-02	16:26	2006-02-02	5046-JD1
Amendment	86579	2000-02-03	19:17	2006-02-02	5046-JD1

Debtors	ADDED	DELETED
-----	-----	-----
Debtor Type : Enterprise B.C.L. CONSTRUCTION LTD.	84358	=====

P.O. BOX 2688, STN A
St Johns NF Canada A1C 6K1

Secured Parties	ADDED	DELETED
-----	-----	-----
John Deere Credit	84358	=====

1001 Champlain Avenue, Suite 400
Burlington ON Canada L7L 5Z4

General Description Collateral	ADDED	DELETED
-----	-----	-----
ONE (1) JOHN DEERE 230LC EXCAVATOR & ONE (1) JOHN DEERE 544G TOOL CARRIER together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto and all proceeds of the foregoing in any form including goods, documents of title, chattel paper, securities, instruments, money and intangibles, derived directly or indirectly from any dealing with the collateral and a right to an insurance payment or any other payment that indemnifies or compensates for loss or damage to the collateral or the proceeds of the collateral.	86579	=====

Serial Numbered Collateral	ADDED	DELETED
-----	-----	-----

Collateral Type Serial Number	Description	ADDED	DELETED
-----	-----	-----	-----
Motor Vehicle FF0230XD60319	1998 JOHN DEERE 230LC EXCAVATOR	84358	=====
Motor Vehicle DW544GD560550	1997 JOHN DEERE 544G TOOL CARRIER	84358	=====

*** End of Report ***

A) BCG Company: (Place "X")

BCI BCL BFI BCI Finance BCLL

P21

RJ Finc Nordtrac BCRC

B) Department/

C) Amount Needed

\$1,801,395.64

Business Unit: CIFD

D) Approval:

E) Denomination:

US\$ CDN \$ Other \$

F) Request Date: September 4, 1998

G) Value Date: September 4, 1998

H) Method of Funding: Check Wire Transfer: ACH: (If W/T or ACH, complete section J)

I) Payees Name: HICKMAN EQUIPMENT (1985) LIMITED

K) Reason: *(Check ✓)*

Address: P.O. BOX 820

1) Replacement/Override Funding to A/P System

Mount Pearl, NFLD

2) Rollovers

A1N 3C8

3) Prepaid Expenses

J) Payees Bank: CIBC

4) Direct Expense

Address: Atlantic Place

5) Fixed Asset

St-John, NFLD

6) Employee Advance

Account Name: SAME

7) Earning Asset (Attach Term Sheet)

Account #: 0002801

8) Other (Use Explanation Section)

Attention:

L) Explanation PURCHASE AND LEASEBACK IN HICKMAN'S FILE

ABA/Transit #: 00063-010

AMOUNT \$1,566430.99

Foreign Cur. Swift #:

HST\$234,964.65

Intermediary Bank:

TOTAL \$1,801,395.64

ABA/Transit #:

Foreign Cur. Swift #:

ACCOUNTING USE ONLY

Check/Wire Transfer #:

Date: _____

Document Attached: Yes No

G/L Account(s) #:

Vendor #:

卷之三

100

1 SEP/09/1948 RENE LEVESQUE
MAPREAL, PQ

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ON A WELL EQUIPPED
INTER-STATE TRUCK TRAILER
FOR THE TRAILER'S EQUIPMENT

DEPARTMENT OF CAPITAL LEASING LTD.

10

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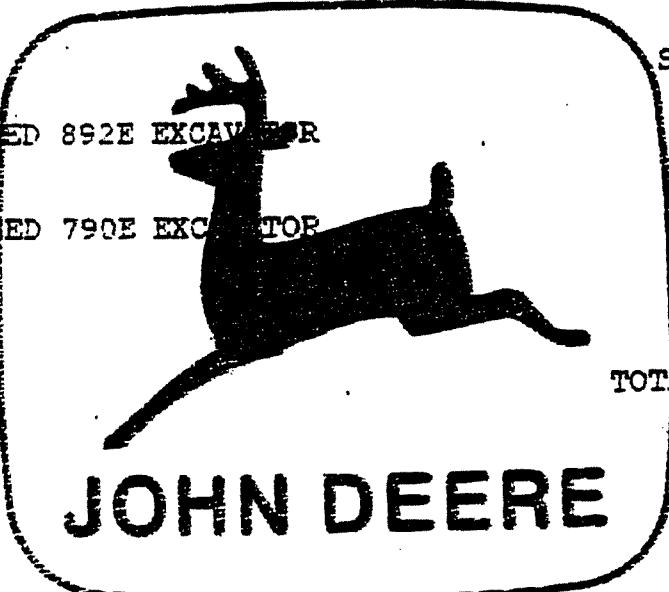
SAME AS BELOW

MARINE CONTRACTORS
(EQUIPMENT ACCOUNT)
P.O. BOX 62
PASADENA, NF AOL 1E0

MOUNT PEARL		
DATE	TIME	PAGE
07/06/99	10:27:04 (0)	01
ACCOUNT NO.	PHONE NO.	INVOICE NO.
7096862015	709	6862015 R11232
SHIP VIA		PURCHASE ORDER
SALES TAX LICENSE NO.		FEDERAL EXEMPTION NO.
		SALESPERSON
		WCH

CONTRACT #: 002172

ONE ONLY JOHN DEERE 27CLC EXCAVATOR	267000.00
STK#: N1397	
PIN#: FF0270X070371	
ONE ONLY JOHN DEERE 370 EXCAVATOR	343000.00
STK#: N1556	
PIN#: FF0370X080106	
H.S.T.	91500.00
	SUB TOTAL 701500.00
LESS TRADE ONE ONLY USED 892E EXCAVATOR	215000.00CR
STK#: N1603	
PIN#: FF892EX007239	
LESS TRADE ONE ONLY USED 790E EXCAVATOR	195000.00CR
STK#: N1599	
PIN#: FF79EX015357	
H.S.T.	61500.00CR
	TOTAL CHARGE 230000.00



WE'RE VERY BIG ON SERVICE

G.S.T./H.S.T. REGISTRATION NO. R102345758

GOODS RECEIVED BY _____

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