

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person:	John Deere Limited
Date of Document:	<u>7</u> February 2003
Summary of Order/Relief Sought or Statement of Purpose in filing:	Memorandum of Fact and Law of John Deere Limited in respect of its Interlocutory Application (Inter Partes) for payment to John Deere Limited of the proceeds from the sale by the Receiver of the equipment referenced in the Interlocutory Application filed in Court Sub-File Numbered 7:26
Court Sub-File Number:	7:26

2002 01T 0352

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN THE MATTER OF

A Court ordered Receivership
of Hickman Equipment (1985) Limited
("Hickman Equipment") pursuant to Rule 25
of the *Rules of the Supreme Court, 1986*
under the *Judicature Act*, RSNL 1990,
c. J-4, as amended

AND IN THE MATTER OF

the *Bankruptcy and Insolvency Act*,
RSC 1985, c. B-3, as amended

**MEMORANDUM OF FACT AND LAW OF
JOHN DEERE LIMITED ("JDL")**

Michael F. Harrington, Q.C.
Stewart McKelvey Stirling Scales
Solicitors for John Deere Limited and
John Deere Credit Inc.
Whose address for service is:
P.O. Box 5038
Suite 1100, Cabot Place
100 New Gower Street
St. John's, NL A1C 5V3

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MEMORANDUM OF FACT AND LAW OF
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1. JDL files this Memorandum of Fact and Law in support of its Interlocutory Application (Inter Partes) (i) for a determination of its priority and entitlement, vis-à-vis other claimants, to the proceeds from the sale of those assets of Hickman Equipment which were listed at Schedule "A" to the Interlocutory Application (Inter Partes) filed in Court Sub-File 7:26, and (ii)

for an order that the Receiver pay the auction proceeds from the sale of those assets (the “JDL Units”) to JDL.

2. A final determination has been issued by the Trustee in respect of the claims of JDL (the “JDL Final Determination”).

Reference: Affidavit of Douglas A. Dicker, sworn on 12 December 2002, Exhibit A.

3. JDL submits that it has a valid purchase money security interest (as defined in section 2 (hh) of the Personal Property Security Act, S.N.L. 1998 c. P-7.1 (the “PPSA”)) in all of the JDL Units.

Reference: Affidavit of Douglas A. Dicker, sworn on 12 December 2002, Exhibit A;

PPSA, section 2 (hh).

4. JDL has caused a financing statement, registration no. 5595, to be registered in the Personal Property Registry on 14 December 1999. By this financing statement, JDL perfected the security interest which it has in the JDL Units.

Reference: Affidavit of Douglas A. Dicker, sworn on 12 December 2002, Exhibit A;

Affidavit of Bruce C. Grant, sworn 7 February 2003, Exhibit “I”.

5. Purchase Money Security Interest notices (“PMSI notices”) were sent by registered mail by JDL on 14 December 1999 to CIBC Equipment Finance Ltd., Bombardier Capital Leasing Ltd., ABN Amro Bank Canada, Canadian Imperial Bank of Commerce and General Motors Acceptance Corporation of Canada, Limited. In accordance with section 70(2) of the PPSA, the PMSI

notices are considered to have been given not later than on the expiry of the 10th day after the date of registration, in this case on 25 December 1999.

Reference: Affidavit of Ernest G. Reid, Q.C., dated 16 October 2002;
PPSA, section 70(2).

6. JDL submits that the date upon which Hickman Equipment obtained possession as debtor of each of the JDL Units was later than 25 December 1999.

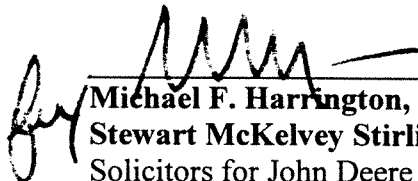
Reference: Affidavit of Douglas A. Dicker, sworn on 7 February 2003.

7. It is therefore submitted that JDL has complied with all of the requirements of section 35(2) of the PPSA and, in accordance with each of sections 35 and 36 of the PPSA, JDL has a perfected purchase money security interest in the JDL Units which ranks ahead of the claims of any other secured creditor.

Reference: PPSA, sections 35, 36.

8. JDL therefore requests that the Court declare that in respect of the JDL Units the security interest of JDL has priority over all other creditors and JDL is entitled to payment of the auction proceeds therefrom.

DATED AT St. John's, in the Province of Newfoundland and Labrador, this 7th day of February 2003.



Michael F. Harrington, Q.C.
Stewart McKelvey Stirling Scales
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