

709 722 1763 F-170 P.002/000 F-106

McINNES COOPER

BARRISTERS SOLICITORS & TRADE MARK AGENTS

Our File: TK-1041
May 13, 2003

Stacey Tower
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BY FAX

To Parties Listed on the
Attached Distribution List

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Dear Ladies and Gentlemen:

RE: **2003 01 H0023**
In the Supreme Court of Newfoundland and Labrador
Court of Appeal
Hickman Equipment Sub-File 7-91 - Terex Trucks

With reference to the above, we enclose herewith a copy of the Interlocutory Application (Inter Partes) which will be heard by the Court of Appeal on Tuesday, May 27th 2003 at 10:00 a.m.

Please note that we will forego our request to dispense with transcripts.

We will provide the transcripts as soon as is possible.

Yours very truly,



Stacey Tower

ST:jms
Enclosure

(C:\kender\K - 1041 - GIMAC - Group Holdings\Appeal - 7-21\All Solicitors - May 13-03.wpd)

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

**IN THE MATTER OF the Receivership of
Hickman Equipment (1985) Limited**

**AND IN THE MATTER OF the Application by
General Motors Acceptance Corporation
of Canada, Limited ("GMAC") for payment
to GMAC of the proceeds from the sale by
the Receiver of four Terex Trucks.**

BETWEEN:

AND:	GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA, LIMITED	APPELLANT
AND:	CIT FINANCIAL LTD.	FIRST RESPONDENT
AND:	JOHN DEERE LIMITED and JOHN DEERE CREDIT LIMITED	SECOND RESPONDENT
AND:	CANADIAN IMPERIAL BANK OF COMMERCE	THIRD RESPONDENT
AND:	ABN-AMRO BANK CANADA and ABN AMRO LEASING	FOURTH RESPONDENT
AND:	ROYAL BANK OF CANADA	FIFTH RESPONDENT
AND:	TRIMAC EQUIPMENT LTD.	SIXTH RESPONDENT
AND:	HICKMAN LEASING LIMITED	SEVENTH RESPONDENT
AND:	GROUP HOLDINGS LIMITED	EIGHT RESPONDENT
AND:	PRICEWATERHOUSECOOPERS INC, as Trustee in Bankruptcy and Receiver of Hickman Equipment (1985) Limited	NINTH RESPONDENT

**IN THE MATTER of an Application
pursuant to Rule 57.30 of the
Rules of the Supreme Court, 1986
for a determination as to whether
leave is required for the within Appeal**

**INTERLOCUTORY APPLICATION
(Inter Partes)**

**TO THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR, COURT OF APPEAL OR
ONE OF THE JUDGES THEREOF**

This is the Application of the Appellant, General Motors Acceptance Corporation of Canada, Limited ("GMAC") seeking an Order pursuant to *Rule 57*, declaring that the Order being appealed is not an interlocutory order, and that the requirement for filing a transcript of the proceeding being appealed, be dispensed with. GMAC says:

1. By Order of the Supreme Court of Newfoundland and Labrador ("Court") granted on the 13th day of March 2002 and filed with the Court on the 14th day of March 2002 it was ordered that Pricewaterhouse Coopers Inc. ("PWC") be appointed Receiver of Hickman Equipment (the "Receivership Order").
2. By a Receiving Order (the "Receiving Order") made on the 13th day of March 2002, Hickman Equipment was adjudged bankrupt and PWC appointed as trustee of the estate of the bankrupt in bankruptcy (the "Trustee").
3. Pursuant to an Order of the Court 14th day of May 2002 (the "May 14th Order") PWC commenced and completed the liquidation of substantially all of the assets of Hickman Equipment by auction, including four large Terex Trucks of which the appellant, GMAC, claimed to be the first secured creditor.
4. The gross proceeds received by PWC from the sale of these four trucks was \$760,000 ("Proceeds").
5. GMAC claimed that there was \$977,961.60 owing on these four trucks, as of March 11, 2002.
6. On November 21, 2002, GMAC initiated an interlocutory application inter-partes claiming full entitlement to the proceeds based upon certain security, more particularly set out in its application.
7. GMAC's application was heard by Mr. Justice Hall on January 23rd, and 24th, 2003.
8. By decision dated February 20, 2003, the Honourable Justice Hall denied GMAC's application, and held that GMAC was not a secured creditor with respect to the four Terex Trucks ("Decision").
9. On February 28, 2003, the Order was filed with the Supreme Court Registry ("Order").
10. On March 3, 2003, GMAC filed a Notice of Appeal in the within matter.

- 11. Leave to appeal was not sought by GMAC, as the Order was not interlocutory in nature. That is, the Decision was wholly dispositive of, and a final determination on the issue of GMAC's security interest in the Terex Trucks.
- 12. GMAC further states that the parties to the within Appeal do not require a transcript of the proceedings being appealed.
- 13. GMAC repeats the foregoing, and requests an Order from this Honourable Court of Appeal declaring:
 - (a) that the Order is not interlocutory in nature;
 - (b) that leave is not required for the Appeal in this matter; and
 - (c) that the requirement for filing transcripts dispensed with.

DATED at St. John's, Newfoundland, this 23rd day of April, 2003.



Thomas Kendell, Q.C.
 McInnes Cooper
 Solicitors for the Appellant
 Whose Address for Service is:
 P. O. Box 5939
 Fifth Floor, The Baine Johnston Centre
 10 Fort William Place
 St. John's, Newfoundland
 A1C 5X4

TO: Court of Appeal
 Registry
 Duckworth St.
 St. John's, NL

AND TO:

Gregory W. Dickie
 White Ottenheimer & Baker
 10 Fort William Place
 St. John's, NL
 Solicitors for CIT Financial Ltd.

Maureen Ryan
Stewart McKelvey Stirling Scales
Suite 1100, Cabot Place
100 New Gower St.
St. John's, NL
Solicitors for John Deere Ltd./John Deere Credit Inc

Geoffrey Spencer
Benson Myles
Suite 900, Atlantic Place
215 Water St.
St. John's, NL
Solicitors for Canadian Imperial Bank of Commerce

Brian Winsor
Curtis Dawe
Fortis Bld, 139 Water St.
St. John's NL
Solicitors for ABN-AMRO and Royal Bank of Canada and Trimac Equipment

Griffith Roberts
Cox Hanson O'Reilly Matheson
Scotia Centre, 401-235 Water St.
St. John's, NL A1C 1B6
Solicitors for Hickman Leasing Limited and Group Holdings Limited

Anna Locke
Patterson Palmer
Scotia Centre, 235 Water St.
P.O. Box 610, Stn. C,
St. John's, NL A1C 1L3
Solicitors for PricewaterhouseCoopers Inc.

2003 01H 0023

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL

IN THE MATTER OF the Receivership of
Hickman Equipment (1985) Limited

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BETWEEN:

GENERAL MOTORS ACCEPTANCE
CORPORATION OF CANADA, LIMITED

APPELLANT

AND:

CIT FINANCIAL LTD.

FIRST RESPONDENT

AND:

JOHN DEERE LIMITED and JOHN DEERE
CREDIT LIMITED

SECOND RESPONDENT

AND:

CANADIAN IMPERIAL BANK OF COMMERCE

THIRD RESPONDENT

AND:

ABN-AMRO BANK CANADA and ABN AMRO
LEASING

FOURTH RESPONDENT

AND:

ROYAL BANK OF CANADA

FIFTH RESPONDENT

AND:

TRIMAC EQUIPMENT LTD.

SIXTH RESPONDENT

AND:

HICKMAN LEASING LIMITED

SEVENTH RESPONDENT

AND:

GROUP HOLDINGS LIMITED

EIGHT RESPONDENT

AND:

PRICEWATERHOUSECOOPERS INC, as
Trustee in Bankruptcy and Receiver of
Hickman Equipment (1985)Limited

NINTH RESPONDENT

AFFIDAVIT

I, Thomas Kendell, Q.C., Solicitor, of the City of St. John's in the Province of Newfoundland,
Canada, make oath and say as follows:

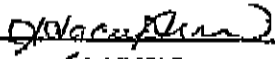
1. That I am a partner with the law firm of McInnes Cooper, solicitors for the
Appellant/Applicant in the within Application.

- 109 1221103 L-111 P.005/009 P-103
2. That by letter dated March 4, 2003 to each of the nine (9) Respondents, I suggested that transcripts of the proceeding being appealed would not be required for the within appeal, and requested that should any of the respondents feel transcripts ought to be provided, to advise as such.
 3. There have been no requests by any of the Respondents for the Appellant to provide the Transcript.
 4. That the parties do not require a transcript of the proceeding being appealed for the purposes of the within appeal.
 5. That I have read the foregoing Application and say that the facts therein deposed are true to the best of my knowledge, information and belief.

SWORN TO before me at the City)
of St. John's, in the Province of)
Newfoundland and Labrador,)
this 20th day of April, 2003:)



Thomas Kendell, Q.C.



BARRISTER

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

**IN THE MATTER OF the Receivership of
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AND:	GROUP HOLDINGS LIMITED	EIGHT RESPONDENT
AND:	PRICEWATERHOUSECOOPERS INC, as Trustee in Bankruptcy and Receiver of Hickman Equipment (1985)Limited	NINTH RESPONDENT

NOTICE TO THE RESPONDENTS

You are hereby notified that the foregoing Application will be made to the Judge at the Court of Appeal sitting at St. John's, Newfoundland, on 27th day of May, 2003 at the hour of 10 o'clock in the forenoon or soon hereafter as the Application can be heard.

TO: ATTACHED DISTRIBUTION LIST

McINNES COOPER

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FAX COVER SHEET

DATE: May 13, 2003

OUR FILE: TK-1041

NAME	COMPANY	FAX NO.	JOB #
Gregory W. Dickie	White Outcalt & Baker Solicitors for CITC	722-9210	
Maureen Ryan	Stewart McKelvey Stirling Scales Solicitors for John Deere Limited and John Deere Credit Limited	722-4565	
Geoffrey Spencer	Benson Myles Solicitors for CIBC	579-2647	
Brian Winsor	Curtis Dawe Solicitors for ABN-AMRO, Royal Bank of Canada and Trimac Equipment Limited	722-7521	
Griffith Roberts	Cox Hanson O'Reilly Matheson Solicitors for Hickman Leasing Limited and Group Holdings Limited	726-2992	
Anna Locke	Panerson Palmer Law Solicitors for the Receiver and PricewaterhouseCoopers	722-0483	

FROM: Stacey Tower

ORIGINAL: Sent By Mail Sent By Courier Held In File

COMMENTS:

We are transmitting 49 pages (including this cover sheet) If you do not receive all pages. PLEASE CALL Mary AS SOON AS POSSIBLE. Telephone (709) 722 8735. If you have received this facsimile transmission in error, please notify us immediately by telephone (collect) and return the original transmission to us by mail without making a copy or destroy it. This transmission may be subject to solicitor-client privilege and/or contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Disclosure to any person other than the intended recipient shall not constitute waiver of privilege. Thank you.

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