SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person:	**Hall, J.**
Date of Document:	**2003 04 04**
Summary of Order/Relief Sought or statement of purpose in filing:	**Final Decision on application of General Motors Acceptance Corporation ("GMAC") for an Order approving payment to GMAC by the Receiver of the remaining amount owing to GMAC by Hickman Equipment Limited of the sum of $4,567,304.86 less previous payments (the "GMAC Debt") (re sub-file 7:34)**
Court Sub-File Number:	**9:07 (re sub-file 7:34)**

CITATION: Hickman re GMAC 2003NLSCTD47
DATE: 2003 04 04
DOCKET: 2002 01 T 0352

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

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

AND IN THE MATTER OF the Bankruptcy under the Insolvency Act

AND IN THE MATTER OF the Application of General Motors Acceptance Corporation

Heard March 19, 20, 21, 24 and 25, 2003

DECISION OF HALL, J.

Background

[1] By a Receiving Order made on the 13th of March, 2002, pursuant to the provisions of the **Bankruptcy and Insolvency Act ("BIA")** and filed with the Supreme Court of Newfoundland and Labrador in Bankruptcy on the 14th of March, 2002, Hickman Equipment (1985) Limited ("Hickman Equipment") was adjudged bankrupt and PricewaterhouseCoopers Inc. ("PWC") was appointed Trustee of the bankrupt estate (the "Trustee"). By a further Order of the Court granted on the 13th of March, 2002, and filed with the Court on the 14th of March, 2002, it was ordered that PWC be appointed Receiver ("Receiver") of Hickman Equipment (the "Receivership Order"). The Receivership Order gave PWC the overall mandate of developing a plan and procedural structure for the liquidation of the assets of Hickman Equipment, as defined in par. 6 of the Receivership Order, and also a plan for the determination of the rights of all creditors and claimants. In that regard, a Claims Plan was approved by this Court by an Order dated May 14, 2002, and filed May 17, 2002 (the "Claims Plan"). Paragraph 14 of the Claims Plan required the Trustee to issue a Final Determination either allowing a claim as a valid secured claim under s. 135(4) of the **BIA**, or disallowing it as a valid secured claim. Paragraph 15 of the Claims Plan provided that claims disallowed by the Trustee under this process were afforded a 30-day right of appeal under the **BIA**. The Trustee was not required under the Claims Plan to make findings as to the priorities between the security interests in the assets of Hickman Equipment as claimed by competing secured creditors.

[2] On December 11, 2002 the Trustee issued a Final Determination wherein it allowed the claim of General Motors Acceptance Corporation ("GMAC") with respect to certain listed equipment. However, the Trustee noted that, under a certain Security Agreement made between GMAC and Hickman Equipment on July 25, 2000 (the "Security Agreement (Leasing)"), GMAC was claiming a security interest in "vehicles" as defined in the Security Agreement (Leasing). The Trustee noted the following with respect to the definition of Vehicles:

> There have been issues raised by the collateral description in the Security Agreement (Leasing) as to the extent of the security granted by use of the following charging language in that Agreement:
>
> > *... new and used vehicles (including chassis) from manufacturers, distributors and others which [Hickman] will hold for lease or which now or may be leased to the public, all of which are hereinbefore referred to as "Vehicles", which term shall include all vehicles of like kinds or types now or hereafter acquired by [Hickman] (including all accessories and attachments thereto) and all replacements and substitutions therefore and all additions and*

accessions thereto.

The Trustee expresses no opinion on any of the issues that may be raised by any secured party relating to this charging language.

[3] Notwithstanding the general thrust of the GMAC application seeking payment of the GMAC Debt, counsel for GMAC agreed that the purpose of the application was principally to obtain a determination by the Court with respect to the following issues:

(a) Whether the word "Vehicle" as defined in the Security Agreement (Leasing) meant cars and trucks (as opposed to heavy industrial equipment and the like);

(b) Whether security interests created by the Security Agreement (Leasing) is only valid as against those Vehicles that were held for lease by Hickman Equipment;

(c) Whether the Security Agreement (Leasing) only created a security interest in Vehicles that were financed by GMAC (as opposed to all Vehicles owned by Hickman Equipment).

[4] Notwithstanding the name of the relevant Security Agreement as Security Agreement (Leasing), GMAC used the abbreviation "ISA" in relation thereto and for the purposes of this judgment, I will adopt that abbreviation.

What Collateral does the word "Vehicle" describe?

[5] The opening section of the ISA states:

> In the course of business, we acquire new and used vehicles (including chassis) from manufacturers, distributors and others which we will hold for lease or which now or may be leased to the public, all of which are hereinafter referred to as "Vehicles", which term shall include all vehicles of like kinds or types now owned or hereafter acquired by us (including all accessories and attachments thereto) and all replacements and substitutions therefore and all additions and accessions thereto.
>
> [Note: "we" and "us" refers to Hickman Equipment.]

[6] Counsel for GMAC submits that the defined term "Vehicles" means:

(a) New and used vehicles (including chassis) acquired by Hickman Equipment from manufacturers, distributors and others;

(b) which are held by Hickman Equipment for lease, and

(c) which includes all vehicles of like kinds or types now owned or hereafter acquired by Hickman Equipment.

[7] The ISA did not use the word "equipment" to describe the collateral secured. GMAC contends that use of the word "equipment" is inadequate to describe collateral in a Security Agreement and refers, in support of that position, to s. 11 of the **PPSA** which deals with the evidentiary requirements for a Security Agreement to be enforceable against a third party. Section 11(1) of the **PPSA** states:

11. (1) A security agreement is enforceable against a third party only where

(a) . . .

(b) the debtor has signed a Security Agreement that contains

(i) a description of the collateral by item or kind, or by reference to one or more of the following: "goods", "documents of title", "chattel paper", "security", "instrument", "money" or "intangible";

[8] Subsection (3) of s. 11 states:

A description is inadequate for the purpose of subsection 1(b)(i) if it describes the collateral as consumer goods or equipment without further describing the item or kind of collateral ... [Emphasis added.]

[9] GMAC counsel points out that **PPSA** Regulation 2(h) states:

(h) "Motor vehicle" means a mobile device that is propelled primarily by any power other than muscle power

(i) in, on or by which a person or thing may be transported or drawn, and that is designed for use on a road or natural terrain, or

(ii) that is being used in the construction or maintenance of roads,

and includes a peddle bicycle with a motor attached, a combine or a tractor, but does not include a device that runs on rails or machinery designed only for use in farming, other than a combine or a tractor.

[10] **PPSA** Regulation 2(p) states:

> (p) "Serial numbered goods" means a motor vehicle, trailer, mobile home, aircraft, boat or an outboard motor for a boat.

[11] Counsel for GMAC points out that as the collateral was inventory, there was no requirement under the **PPSA** to register the collateral by serial number. GMAC asserts that it is reasonable to interpret the word "vehicle" as describing a kind of collateral which would include a "motor" vehicle in addition to a vehicle which is propelled primarily by muscle power.

[12] Counsel for GMAC submits that there is a difference between what is required in describing collateral in a Financing Statement and a description that would be adequate for a Security Agreement. Regulation 23(1)(e) requires a secured creditor in the filing of Financing Statement with respect to items of inventory, whether or not those items of inventory are serial numbered goods, to enter a description of the collateral in accordance with Regulation 24. Regulation 24 provides that where the collateral is to be described in a Financing Statement by other than serial number, the registrant shall enter:

> (a) a description of the collateral by item or kind, or by reference to one or more of the following: "goods", "document of title", "chattel paper", "security", "instrument", "money" or "intangible";
>
> (b) a statement that a security interest has taken in all of the debtors present and after acquired personal property; ...

[13] As mentioned earlier, Regulation 24(2) provides that a description is inadequate for the purposes of par. (a) above if it describes the collateral as consumer goods or equipment without further describing the item or kind of collateral. GMAC contends because it is permissible to define the collateral by "kind", the word "Vehicles" is a generic description of "kind". He questions how one can describe items of heavy equipment without using the word "equipment" which is prohibited by both s. 11 of the **PPSA** for the Security Agreement and s. 24(2) of the Regulations for the Financing Statement, and he points out that no creditor has objected to GMAC's use of the words "all present and after-acquired property" in the Financing Statement. The objections of the creditors opposing GMAC center around the use of the word "Vehicles" in the Security Agreement.

[14] GMAC points to two separate texts on the subject of personal property security legislation to support its argument that its description of the collateral in the ISA as "Vehicles" is adequate. The first referred to was Catherine Walsh: **An Introduction to the New Brunswick Personal Property Security Act**. In her text at p. 78 Professor Walsh deals with the sufficiency of collateral description in a security agreement and she states:

> What level of specificity is required to satisfy an item or kind description for the purposes of s. 10? (The equivalent of Newfoundland s. 11) In a recent British Columbia case, a Trustee in Bankruptcy challenged the adequacy of the generic description "shelving" in a Security Agreement, arguing that it was insufficient to

> allow a third party to identify the relevant collateral. In a ruling against the Trustee, the Court regarded it as significant that s. 18 of the *British Columbia Act* (equivalent to Newfoundland s. 19) allowed an interested third party to demand a written approval or correction of an itemized list indicating which items are collateral. The provision of this mechanism was viewed as a deliberate signal from the Legislature of an intention "to set the threshold of identification of the [collateral] at a relatively low level". In arriving at this interpretation, the Court emphasized the importance of reading s. 10 in a manner that allows the business and financial community to comply with its requirements in as simple and certain a manner as can be achieved consistently with the intention underlying the requirement.
>
> Taking a liberal approach to the level of detail required to satisfy a description by item or kind description is unquestionably consistent with the wording and spirit of s. 10 and the **PPSA** generally (Professor Walsh cites in support of these propositions the cases GE Capital Canada Acquisitions Inc. v. Dix Performance (Trustee of) (1994), 8 PPSAC 2nd 197 (BC Supreme Court) and Affinity International Inc. v. Alliance International Inc. (1994), 96 MAN. R. 2nd 200 (Man.Q.B.))

[15] Ronald Cuming and Roderick Wood in their text **Alberta Personal Property Act Handbook** (Carswell 4th Edition) at pp. 136 and 137 deal with the same issues as raised by Professor Walsh in dealing with the collateral description required for written security agreements. They state:

> Section 10(1)(b) describes the essential contents of a written security agreement, including a description of the collateral . . . The section does not require an itemized collateral description in the security agreement; it permits the parties to use generic descriptions of the collateral and the labels for collateral set out in the definition section of the Act for example, a security agreement may describe the collateral as "automobiles". These broad descriptions do not inform a third party whether a particular automobile or item of tangible personal property of the debtor is encumbered by the security interest. Details of the collateral can be obtained through s. 18. This feature of the Act demonstrates that the purpose of s. 10 is not to prevent collusive arrangements between a secured party and a debtor designed to protect a debtor's property from seizure or bankruptcy. Its purpose is to provide evidence of the existence of security interest in "kinds" of collateral. It follows that if the parties wish to leave to oral arrangements the details of the collateral (or other features of the agreement such as the amount secured or the payment terms), there is nothing in the Act to preclude this.

[16] It is the contention of GMAC that if the **PPSA** proscribes use of the word "equipment" in a Security Agreement, then, any use of that word is inappropriate, even in conjunction with another word such as the description "heavy equipment". GMAC contends that a reasonable secured creditor would not use the word "equipment" in any form in its Security Agreement. He then asks that if GMAC cannot call what Hickman Equipment had in its inventory "equipment" – what can GMAC

call it in the Security Agreement?

[17] On this issue, counsel for John Deere Limited and John Deere Credit Inc. (collectively "Deere") argues that GMAC's counsel is simply trying to distract from the deficiencies of the description of the collateral in GMAC's ISA by pointing to the previously mentioned statements of Professors Walsh, Cuming and Wood to the effect that the threshold of identification of collateral should be set at a relatively low level. These authors opine that the protection of creditors against the risks of such generalized or imprecise descriptions of the collateral is in the right of a prospective creditor, pursuant to s. 19, to demand a written approval or correction of an itemized list indicating which items in the demand are collateral. Counsel for Deere contends that this position ignores a very fundamental point, namely, that s. 10 of the **PPSA** states:

> Except as otherwise provided in this or another Act, a security agreement is effective according to its terms. [Emphasis added.]

[18] Deere contends that GMAC had many other options as to how to describe the collateral over which it was taking security under the ISA without using the word "equipment". GMAC could simply have used the terms excavators, loaders, backhoes, drills, etc. Instead, it chose to use the word "Vehicles" ----- several of the creditors have pointed out that heavy equipment of the type sold and leased generally by Hickman Equipment does not fit within the dictionary definition of a vehicle, for example, **Blacks Law Dictionary**, Fifth Edition, describes a vehicle as:

> That in or on which persons, goods, etc., may be carried from one place to another, especially along the ground . . . Term refers to every device in, upon or by which a person or property is or may be transported on highway.

The shorter **Oxford English Dictionary** provides the following definition:

> A means of conveyance provided with wheels or runners and used for the carriage of persons or goods; a carriage, cart, wagon, sledge, etc.

The **Concise Oxford Dictionary of Current English**, Ninth Edition, defines a vehicle as:

> Any conveyance for transporting people, goods, etc., esp. on land.

[19] The creditors opposed to GMAC in this matter have urged upon me to find that the term "Vehicles" as used by GMAC in the ISA ought to be confined to its ordinary everyday dictionary meaning and therefore, ought to be interpreted by me to mean vehicles intended to carry passengers, or perhaps, to also include pickup trucks. The difficulty in coming to this conclusion stems from the fact that there is uncontraverted affidavit evidence to the effect that the inventory of Hickman Equipment held for lease to the public never consisted of passenger vehicles or pickup trucks. It always consisted of heavy construction, earth moving, and paving equipment such as excavators,

backhoes, loaders, bulldozers, etc. These are the terms used in a demand debenture entered into by Hickman Equipment with GMAC and in a Priority Agreement between CIBC, GMAC and Hickman Equipment. It seems somewhat preposterous then to conclude that the ISA was intended to grant GMAC security over a type of inventory which Hickman Equipment never, in its ordinary day-to-day business, possessed for the purpose of leasing to the public. The parties opposed to GMAC have urged upon me that I ought to apply the *contra proferentem* rule against GMAC because, GMAC, having chosen to describe the collateral over which it wished to take security as "Vehicles" should be stuck with the limitations of that description if it is in adequate. The Supreme Court of Canada in **Novopharm Limited v. Eli Lilly & Co.** and **Eli Lilly Canada Inc. et al.** (1998), 2 SCR 129 dealt with the question of the *contra proferentem* rule as a principle of contractual interpretation. Mr. Justice Iacobucci, at p. 165 under the heading "Contractual Interpretation and the Intention of the Parties" states:

> In order to ascertain whether the supply agreement conferred or had the effect of conferring a sublicence upon Apotex, it is first necessary to consider the proper approach to the interpretation of such a contract, and, in particular, the evidence which may be considered in this respect. In Consolidated-Bathurst, supra, at p. 901, Estey J., writing for himself and Pigeon, Dickson, and Beetz JJ., offered the following analysis:
>
> > Even apart from the doctrine of contra proferentem as it may be applied in the construction of contracts, the normal rules of construction lead a court to search for an interpretation which, from the whole of the contract, would appear to promote or advance the true intent of the parties at the time of entry into the contract. Consequently, literal meaning should not be applied where to do so would bring about an unrealistic result or a result which would not be contemplated in the commercial atmosphere in which the insurance was contracted. Where words may bear two constructions, the more reasonable one, that which produces a fair result, must certainly be taken as the interpretation which would promote the intention of the parties. Similarly, an interpretation which defeats the intentions of the parties and their objective in entering into the commercial transaction in the first place should be discarded in favour of an interpretation ... which promotes a sensible commercial result.
> >
> > From this passage emerge a number of important principles of contractual interpretation. Not all of these, however, apply to the instant appeal. One which surely does not is the doctrine of contra proferentem. Contra proferentem operates to protect one party to a contract from deviously ambiguous or confusing drafting on the part of the other party, by interpreting any ambiguity against the drafting party. When both parties are in agreement as to the proper interpretation of the contract, however, it is not open to a third party to assert that contra proferentem should be applied to interpret the contract against both contracting parties. Indeed, a third party has no basis at all upon which to rely upon contra proferentem: see G. H. L.

> Fridman, The Law of Contract in Canada (3rd ed. 1994), at p. 471. Therefore, I would, as a preliminary matter, reject the suggestion that the doctrine should apply to read any ambiguity in the contract against the drafting parties, in this case both Novopharm and Apotex.

[20] In **Sullivan v. Power** [2000] N.J. 249 at pars. 10 to 13 inclusive, I considered the Parol Evidence Rule and stated:

> 10. In a recent decision of the Supreme Court of Newfoundland, Court of Appeal, Cameron, J.A., in **Eco-Zone Engineering Limited. v. The Town of Grand Falls-Windsor and The Town of Bishop's Falls carrying on business under the name of Exploits Regional Services Board**, discussed the parol evidence rule. At paragraph 6 of her judgment rendered April 7, 2000, she states:
>
> > "The parol evidence rule has long been a part of the interpretation of contracts. However, there is no one definition of the rule and there is debate about whether it is a rule of evidence or a rule of substantive contract law. Indeed, some have asked if the rule is required."
>
> 11. At par. 7 of her judgment, Cameron, J.A., continues:
>
> > "...If the language of the written contract is clear and unambiguous, generally no extrinsic parol evidence may be admitted to contradict, vary, add to or subtract from the terms of the contract. There are, of course, well established exceptions of the parol evidence rule. For example, extrinsic evidence is admissible to prove a subsequent variation of a contract or that a condition precedent has not been met. The rule has no application when there is an allegation that a contract was obtained by fraud, misrepresentation or mistake. ... However, as the discussion below will address, rarely is it truly possible to interpret a document without any knowledge of the context and the parol evidence rule does not prohibit a court from admitting evidence of a contexual (sic) nature."
>
> 12. Cameron, J.A., at par. 8 of her judgment quoted from Iacobucci, J., of the Supreme Court of Canada in the case **Eli Lilly & Cole v. Novopharm Ltd.** [1998] 2 S.C.R. 129 at p. 166 where the learned Justice stated:
>
> > "The contractual intent of the parties is to be determined by reference to the words they used in drafting the document, possibly read in light of the surrounding circumstances which were prevalent at the time. Evidence of one party's subjective intention has no independent place in this determination."

13. Again, at paras. 10 and 11, Cameron, J.A., states:

> "While the excerpt from the decision of Justice Iacobucci in **Eli Lilly** only states that the contract may be read possibly in light of the surrounding circumstances, there is authority for the use of such evidence in the interpretation of a contract. (See: **Atlific (Nfld.) Ltd. v. Hotel Buildings Limited and Newfoundland** (1994), 120 Nfld. & P.E.I.R. 91 (NFCA)). In the often cited case of **Prenn v. Simmonds**, [1971] 3 All E.R. 237 (H.L.), Lord Wilberforce used the phrase "matrix of facts" to describe the circumstances which could, if not should, be considered by a trial judge in interpreting a contract, even in the absence of ambiguity. Lord Wilberforce said a pp. 239-40:
>
> > 'In order for the agreement of 6th July, 1960 to be understood, it must be placed in its context. The time has long passed when agreements, even those under seal, were isolated from the matrix of facts in which they were set and interpreted purely on internal linguistic considerations. ... We must ...enquire beyond the language and see what the circumstances were with reference to which the words were used, and the object, appearing from those circumstances, which the person using them had in view.'
>
> Lord Wilberforce elaborated on this matter in **Reardon Smith Line Ltd. v. Hansen-Tangen et al.**, [1976] 3 All E.R. 570 (H.L.), where he said at pp.574-75:
>
> > 'No contracts are made in a vacuum: there is always a setting in which they have to be placed. The nature of what is legitimate to have regard to is usually described as 'the surrounding circumstances' but this phrase is imprecise: it can be illustrated but hardly defined. In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.
> >
> > ... when one is speaking of aim , or object, or commercial purpose, one is speaking objectively of what reasonable persons would have in mind in the

> situation of the parties. It is in this sense and not in the sense of constructive notice or of estopping fact that judges are found using words like 'knew or must be taken to have known' ... .'
>
> As was pointed out in **Prenn**, the commercial or business object of the transaction, objectively ascertained, may be used in interpretation of a contract by enabling the court to reject an interpretation that frustrates the objective. In **Hill v. Nova Scotia (Attorney General)**, [1997] 1 S.C.R. 69 at p. 79 the Supreme Court of Canada approved of the view that in interpreting a contract, it need not be looked at in a vacuum. "It is perfectly proper, and indeed may be necessary, to look at the surrounding circumstances in order to ascertain what the parties were really contracting about.
>
> The authorities indicate that the factual matrix would include evidence regarding the purpose, aims and objectives of the contract. The factual matrix would not generally include, in my view, evidence of subsequent conduct of the parties (see **Delisle v. Bulman Group Ltd.** (1991), 54 B.C.L.R. (2d) 343 (B.C.S.C.), and **Arthur Andersen Inc. v. Toronto-Dominion Bank** (1994), 17 O.R. (3d) 363 (Ont. C.A.)) or evidence of contractual negotiations. In **Prenn** Lord Wilberforce specifically rejected the idea that evidence of negotiations should be received as part of the factual matrix. He said that it is only the final document which records a consensus." (Emphasis added).

[21] I am satisfied from my review of this case law that extrinsic evidence is admissible to provide a factual background to aid in determining the true intent of the parties to the ISA in using the word "Vehicles". Part of the extrinsic evidence available to me, to aid in this interpretation, is the Demand Debenture entered into in 1998 between Hickman Equipment and GMAC and the Priority Agreement entered into at the same time between CIBC, GMAC and Hickman Equipment. In the Priority Agreement " the GMAC financed collateral" was described as meaning:

> 1. All of the Companies present and after-acquired inventory consisting of all construction equipment (including but not limited to loaders, excavators and

bulldozers) . . .

2. All motor vehicles . . .

3. All equipment.

These categories of assets, however, were limited by the requirement that they, in fact, were "financed by GMAC".

[22] In the Debenture, "Equipment" was described as meaning:

> All goods or chattels (including, without limitation, all heavy construction, earth moving and paving equipment, and any related items of equipment or attachments or accessions thereto).

[23] It is worthy to note that in the present application none of the secured creditors opposing GMAC's position in this matter has claimed that prior to advancing funds to Hickman for the purchase of equipment, it obtained a copy of the ISA, reviewed the description of what constituted "Vehicles", and relied upon that description of the collateral as being confined to passenger vehicles and perhaps, pickup trucks. I adopt the position of Iacobucci, J., in **Novopharm** that it would be absurd to adopt an interpretation clearly inconsistent with the commercial interests of the parties, if the goal in interpreting the contract is to ascertain their true contractual intent. Similarly, I adopt the comments of Estey, J., in the consolidated-Bathurst case referred to in **Novopharm** that:

> . . . Similarly, an interpretation which defeats the intentions of the parties and their objective in entering into the commercial transaction in the first place should be

> discarded in favour of an interpretation ... which promotes a sensible commercial result.

[24] I am therefore satisfied that the term "Vehicles" as used in par. 1 of the ISA, was intended by the parties to the ISA to mean:

> 1. All of the inventory of Hickman Equipment consisting of construction equipment (including but not limited to loaders, excavators, and bulldozers);
>
> 2. Motor vehicles, earth moving and paving equipment and any related items of equipment or attachments or accessions thereto.

Is the Security Interest created by the ISA only valid as against vehicles held for lease by Hickman Equipment?

[25] The first paragraph of the ISA states:

> In the course of business, we acquire new and used vehicles (including chassis) from manufacturers, distributors and others which we will hold for lease or which now or may be leased to the public, all of which are hereinafter referred to as "Vehicles" ... [Emphasis added.]

[26] Par. 3 of the Agreement states as follows:

> To secure collectively the payment of all amounts owing by us to GMAC including, without limitation, all amounts advanced by GMAC for which GMAC may be obligated to advance as aforesaid and all amounts owing by us to GMAC from time to time in connection with the financing of Vehicles leased by us to the public and interest due thereon and any ultimate balance thereof, we hereby grant, assign, transfer, set over mortgage and charge in favour of, and grant to GMAC a security interest in all Vehicles **so acquired** ... [Emphasis added.]

[27] There is only one paragraph in the ISA, prior to the quoted section immediately above, referring to the acquisition of vehicles. It is the first paragraph thereof which I have partially set out in par. [25] hereof. It is simple common sense that the words "so acquired" refers to those vehicles described in the first paragraph which are described as vehicles "which we will hold for lease or which now or may be leased to the public". There is no ambiguity in the Agreement in this regard. In order for a "vehicle" (as I have found that term to mean) to be caught by the ISA, that vehicle must have been one which was acquired by Hickman Equipment and held for lease to the public or was, in fact, leased to the public. There is nothing in the remaining sections of the ISA to expand the term "Vehicles" beyond those held for lease or presently leased to the public.

Does the ISA only create a security interest in Vehicles that were financed by GMAC?

[28] In **Canadian Deposit Insurance Corporation v. Canadian Commercial Bank** (1991) 318; 1991 Carswell Alta. 308 at pars. 11 and 12, Stratton, J.A. of the Alberta Court of Appeal dealt with the issue of how a Court interprets a contract – i.e. – What does the contract mean? He stated:

> 11 This is surely a classic case of the Court being asked to interpret a contract. I am faced with the simple question - what does the contract mean? The significance of this question is succinctly explained in Odgers' *Construction of Deeds and Statutes*, 5th ed. (1967), in the following passage:
>
> > "... the court is faced with the question - what does the deed mean? It must be noticed that this is not necessarily the same as `what did the parties intend when they executed the document?' They are presumed to have intended to say that which they have in fact said, so their words as they stand must be construed. The question is, not what did the parties intend to say? - that is precluded by the presumption that they have said what they intended to say. The question to be solved is, what have they said? What meaning is to be attached to the expressions they have used?"
>
> 12 There are other basic rules of construction that, in my view, should apply in the interpretation of this contract. Simply stated, I must seek the true meaning from the document itself and in that process I must peruse the contract as a whole. The importance of this latter point is stressed in *An Introduction to the Law of Contracts*, by J.E. Côté, as follows (pp. 148-149):
>
> > "A contract must be read as a single entity. The individual phrases, clauses, sentences or paragraphs are not separate entities, however much the contract may be divided into separate numbered clauses for convenience. That means that no part of the contract can be interpreted without considering the influence on its meaning of other parts of the contract. They are its context,

> they supply examples of similar words used by the same authors for different purposes, and contrasting words used in similar situations. They provide other situations which may reinforce or militate against, an interpretation which in isolation would seem questionable. And most important of all, different parts of the same contract may provide clauses which, if each interpreted in isolation, would contradict each other. But if the contract is interpreted as a whole (as it should be), then the Court will try to read those clauses in a manner that will reconcile them with each other."

[29] I note the adoption by Stratton, J.A., of the comments by J.E. Côté in his work **An Introduction to the Law of Contract**, to the effect that a contract must be read as a single entity and that the individual phrases, clauses, sentences or paragraphs are not separate entities and that no part of the contract can be interpreted without considering the influence on its meaning of other parts of the contract. That is surely the case with respect to the ISA. As an example of the alleged complexity in the interpretation of this contract, and the interrelation of the various paragraphs to each other in determining this present issue, counsel for Deere has submitted a five-page memorandum on the interpretation of this one issue in a three-page contract. In order to make this judgment intelligible, it seems appropriate that the ISA ought to be reproduced in its entirety. I have therefore had it reproduced as Schedule "A" to this judgment. However, it should be noted that the original ISA did not contain paragraph numbering. In order to facilitate reference to the various paragraphs thereof, I have taken the liberty of adding paragraph numbering to the Schedule "A" version of that contract.

[30] Counsel opposed to GMAC take the position that the terms of the ISA taken together lead to the conclusion that the security interest which is created by the ISA is limited to vehicles specifically financed by GMAC and that the ISA does not create a security interest in all Vehicles in the "for lease" inventory of Hickman Equipment. The respondents contend that provisions concerning the "acquisition" of Vehicles and the "financing" of Vehicles are referenced throughout the ISA. They deny the GMAC contention that these concepts are to be kept separate because the ISA itself, they contend, does not keep the terms separate. They submit that the "financing" which is referenced in the contract, is "financing for acquisition of vehicles", and other obligations – such as taxes or liens – which by the terms of the document become an additional obligation of the debtor. The respondents contend that the ISA is all about financing acquisition of new and used vehicles. In contrast to GMAC's assertion that the primary purpose of the document was to create a security interest in all the vehicular inventory of Hickman Equipment, the respondents submit that the primary purpose was to facilitate the purchase of new vehicles by Hickman Equipment, to provide a promise by Hickman Equipment to pay GMAC for the financed vehicles, and to create a security interest in vehicles, the acquisition of which was facilitated by GMAC financing.

[31] Paragraph 1 of the ISA is the location where "Vehicles" is defined. GMAC relies upon this paragraph as establishing a defined term for use throughout the documents. GMAC has suggested that this paragraph sets the scene or tone for the Agreement, and the respondents generally agree with that. They agree that the focus in this paragraph is not upon ownership or inventory, but on acquisition. They point out, for example, that the document does not say "we have an inventory of

new and leased vehicles which now or may be leased to the public". The respondents therefore contend that the document is all about financing of the acquisition of new and used vehicles as opposed to creating a security interest in all the vehicular inventory.

[32] Paragraph 2 contains the statement: "We desire GMAC to furnish financing accommodation to us upon the security of Vehicles and proceeds thereof ..." The respondents argue that this is not an agreement by GMAC to provide the financing accommodation. They claim it is similar to a preamble which merely indicates Hickman's desire. It does not define what the financing accommodation is. They state that GMAC wishes the Court to believe that the financing accommodation can be wide-ranging, but the respondents claim that such an interpretation is not borne out either by the factual matrix surrounding the creation of the Agreement or by the remainder of the Agreement itself.

[33] Similarly, in par. 2 of the ISA, Hickman Equipment agrees to pay upon demand to GMAC "the amount it advances or is obligated to advance ***in connection with the financing by GMAC of Vehicles*** . . ." The respondents contend that this is what constitutes the promise on the part of Hickman Equipment to pay monies to GMAC. They claim that this illustrates an objective intention that all Vehicles would be financed by GMAC. The respondents contend that the ISA simply does not say that Hickman Equipment agrees to pay all amounts owing to GMAC on demand (as you would expect if this was a security agreement attaching all vehicular inventory of Hickman Equipment, for the general debts of Hickman Equipment to GMAC). Instead, they claim the document states that the Agreement by Hickman Equipment to pay upon demand is with respect to those amounts advanced by GMAC ***in connection with the financing of Vehicles***. The respondents contend that as part of the factual matrix, there is evidence that all of the financing, which was provided over the course of the relationship between Hickman Equipment and GMAC, was done on a unit-by-unit basis, which was provided to allow Hickman Equipment to purchase or acquire units. There was no general revolving line of credit, or other general loans. The evidence of surrounding circumstances is that historically, prior to the entry into the ISA, and subsequent thereto, GMAC furnished financing accommodation to facilitate the acquisition of new equipment. There never was, in fact, a GMAC Wholesale Plan enforced in effect between GMAC and Hickman Equipment as is referenced in par. 2. Lending was done on the basis of financing the acquisition of individual pieces of equipment, for which a Leasing Inventory Chattel Mortgage was taken by GMAC. The respondents point out that other terms used in the ISA support this interpretation. These include: (a) the use of the term "so acquired" in the charging section (par. 3); and (b) and the reference in par. 6 to:

> We shall execute in favour of GMAC any form of document which may reasonably be required by GMAC for amounts advanced to the manufacturer, distributor or seller, and shall execute such additional documents as GMAC may, at any time reasonably request in order to confirm or perfect title or security in the Vehicles.

The respondents contend that the reference in the contract to the acquisition to Vehicles or "Vehicles so acquired" means Vehicles for which GMAC advances the

purchase price – and this is the type of financing accommodation which, from the objective evidence, is referred to in the contract.

[34] The respondents note the word "acquired" in relation to vehicles acquired from manufacturers and distributors and others as referenced in par. 1 and the words "Vehicles so acquired" in par. 3. They contend that the addition of the words "so acquired" in par. 3 cannot be taken to simply be a restatement of the type of vehicles referred to in par. 1 because this renders the words "so acquired" in par. 3 meaningless and superfluous. They contend it also ignores the fact that the rest of the paragraph clearly references vehicles financed by GMAC. They contend that the use of the term "so" creates a link to "how acquired" because it is phraseology used by GMAC after they (a) describe acquisition and (b) reference financing accommodation. They contend that GMAC chose not to use the defined term "Vehicles" on its own. Having abandoned the use of the defined term, and modifying it with the language "so acquired" , the meaning of the words should be determined in the context the preceding two paragraphs establish, i.e. a dealer who acquires collateral through a financing vehicle granting a charge over that collateral acquired with the financing.

[35] As additional support for their contention, the respondents point to par. 7 which they say creates an obligation on Hickman Equipment to pay to GMAC as each Vehicle is sold "the amount you have advanced or become obligated to advance on our behalf pursuant to this agreement ... and any other amount which we may have become obligated to pay in respect of such Vehicle." The respondents contend that there would not be any amount to be remitted to GMAC in respect of a vehicle if GMAC had not, in fact, financed that vehicle. Yet, par. 7 says , "as each such vehicle 'is sold'". The respondents contend that this means that each Vehicle, as that term is used in the ISA, carries with it a specific debt and that such amounts must be paid to GMAC on its sale. They contend that this paragraph is not consistent with the broad security interest in vehicular inventory as asserted by GMAC.

[36] I am of the view that the position of the respondents with respect to this issue ignores the following fundamental concepts:

1. That it is perfectly legitimate for GMAC to seek, and Hickman Equipment to grant, security over vehicular inventory even though GMAC has not specifically financed the acquisition of a particular vehicle;

2. that a methodology established in a security agreement whereby an amount to be repaid to GMAC calculated by reference to the proceeds of the sale of a particular vehicle, does not, in and of itself, alter the nature of the security taken. These two concepts are separate and distinct; and

3. that there may well have been amounts of money owing by Hickman Equipment to GMAC which would not have been satisfied by the payment to GMAC of only the sale proceeds of those Vehicles specifically financed by GMAC. The interpretation proposed by the respondents would be that such amounts would be unsecured on a

> unit-by-unit basis if they could not be satisfied out of the sale proceeds the vehicles specifically financed by GMAC. This ignores the provision of par. 2 of the ISA where Hickman Equipment specifically states that it "...hereby agree, upon demand, to pay to GMAC the amount that it advances or is obligated to advance in connection with the financing by GMAC of Vehicles ..."

[37] I believe an analogy can be drawn between the ISA and a common practice which has evolved in this Province with respect to the financing of the development of residential subdivisions. It is not at all unusual for a developer to borrow a sum of money, and to secure the repayment of that sum of money, by granting a mortgage over the whole piece of land which it proposes to develop. The land, of course, is developed not only into individual residential building lots, but also roads, parks, sidewalks and other public places. Only the lots are intended to be sold to the public. The mortgage may well require the repayment of the secured sum calculated by reference to either a specific dollar amount per lot or a specific percentage of the sale price per individual lot, as the lot is sold. This method of calculating the amount, and the timing of the repayment, does not in any way render the mortgage, over the total land of the subdivision, into a mortgage of the individual lots only. The mortgage remains what it has always been, namely a mortgage over all the land of the subdivision. The payment methodology chosen is nothing more than that – a simple schedule of payments describing when the payment is due and how it is to be calculated. The same situation pertains with respect to the ISA. The mere fact that specific payments were required, referenced to the sale proceeds of a particular vehicle financed by GMAC, does not in any way change the general nature of the security. I do not accept that all of the references in the ISA modify, in any way, the basic thrust of the first three paragraphs of the ISA which clearly provide that Hickman Equipment grants a security interest over "Vehicles" as they are described in par. 1. The definition of "Vehicles" in par. 1 contains absolutely no reference whatsoever to the manner in which the acquisition of those Vehicles is financed. The granting of a security interest in all "Vehicles so acquired" in par. 3 is simply a reference to the Vehicles defined in par. 1 and is not a modification of the definition of Vehicles so as to limit that definition to vehicles that are specifically financed by GMAC. The words "so acquired" is nothing more than a "butt and suspenders" form of drafting.

Summary of Conclusions

[38] In summary therefore I find:

(1) that the ISA does not merely create a security interest in passenger cars and possibly pickup trucks, but rather creates a security interest in the types of equipment referred to in par. [24] hereof,

(2) the security interest created by the ISA is only over such Vehicles acquired by Hickman Equipment and held for lease or which then was leased or may, after the time of acquisition, be leased to the public; and

(3) that the ISA is not limited to creating a security interest only in Vehicles that were financed by GMAC but creates a security interest in all of the equipment more

particularly set out in par. [24] hereof.

Effect of this Judgment

[39] All of the parties to this application effectively agreed that what was sought from the Court was in the nature of a declaratory judgment. The Court is certainly empowered under the **Bankruptcy and Insolvency Act** to give such declaratory judgments. However, the impact of this present judgment on the specific claims of creditors must be determined in individual applications by those secured creditors seeking payment of the proceeds of the sale of equipment over which they claim a security interest. It is only in such individual applications that issues of validity, enforceability, and priority of the claimed security interest can be determined. Therefore this judgment is declaratory in nature only.

Nature of these Proceedings

[40] Counsel have asked me to comment on the issue of whether or not this present application and others of a similar nature heard to date are interlocutory in nature and that any orders or decisions resulting therefrom can only be appealed with the leave of the Court of Appeal. With respect, that is an issue for the Court of Appeal to decide. This present application, and others, have taken the form of appeals from a determination concerning the admission or disallowance of proofs of claim and proofs of security by the Trustee pursuant to s. 135 of the **Bankruptcy and Insolvency Act** ("BIA"). Subsection (4) of s. 135 states:

> A determination under subsection (1.1) or a disallowance referred to in subsection (2) is final and conclusive, within a 30 day period after the service of the notice referred to in subsection (3) or such other time as the Court may on application made within that period allow, the person to whom the notice was provided appeals from the trustee's decision to the Court in accordance with the general rules.

[41] The "Court" referred to in this section is of course the Trial Division of the Supreme Court of Newfoundland and Labrador. In commenting on this section Houlden and Morawetz in **2003 Bankruptcy & Insolvency Act**, Carswell 2002, in describing the procedure for appealing states:

> An appeal under s. 135(4) is made by motion to the Court. A notice of motion must be directed to the Court or an official of the Court and must specify the relief claimed in precise terms. ... The notice of motion must be served on the trustee. ... The appellant must file with the Court (a) the original notice of motion; (b) every affidavit to be used in support of the motion; and (c) proof of service of the notice of motion and supporting affidavits. ... In an appeal from a notice of disallowance, the proof of claim and the notice of disallowance perform the function of pleadings; Re Eskasoni Fisheries Ltd. (2000), 16 C.B.R. 173, 2000 Carswell NS 116, 187 N.S.R. (2d) 363, 585 A.P.R. 363 (N.S.C.C.) ... Under Rule 30(1), there is an appeal from the Registrar to the judge and under s. 193 from the judge to the Court of Appeal.

[42] Also, under par. G§69(1) Houlden and Morawetz describe an appeal from a notice of disallowance as a trial *de novo*. The Judge or Registrar hearing the appeal is not required to proceed solely upon the information before the trustee, the Court is entitled to accept and consider all evidence relevant to the claim.

[43] It is my view that there is only one action in place with respect to Hickman Equipment. That is the action commenced by the petition to have a receiving order issued as against Hickman Equipment. Once that receiving order is issued, all subsequent processes, unless otherwise ordered by the Court to be commenced as a separate action, are interlocutory to the originating petition. I am therefore of the view that these appeals from determinations made by the Trustee and disallowances of claims or security made by the Trustee, are interlocutory in nature. However, that does not invoke the provisions of Rule 57 of the Rules of the Supreme Court of Newfoundland and Labrador, 1986 because the BIA has specific provisions relating thereto which have precedence over Rule 57 of the local Rules.

[44] Section 193 of the **Bankruptcy & Insolvency Act** dealing with appeals to the Court of Appeal states:

> Court of Appeal – Unless otherwise expressed provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:
>
> (a) if the point at issue involves future rights;
>
> (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
>
> (c) if the property involved in the appeal exceeds in value ten thousand dollars;
>
> (d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and
>
> (e) in any other case by leave of the judge of the Court of Appeal.

[45] In commenting on this section Houlden and Morawetz state:

> If an appeal comes within paras (a) to (d) of s. 193, there is no need to apply for leave to appeal.
>
> The *Bankruptcy and Insolvency Act* does not distinguish between interlocutory and final judgments, and if the order or decision comes within s. 193, it is appealable regardless of whether it is interlocutory or final; ... [Citations omitted.] Ordinarily an interlocutory matter will not come within paras. (a) to (d) of s. 193 and leave to

appeal will have to be sought under para. (e).

[46] While I make no particular decision with respect to this matter, principally because the issue of whether an appeal is properly launched is entirely within the jurisdiction of the Court of Appeal, I can't help but note that all of the appeals brought before me from the Final Determinations of the Trustee involve property exceeding $10,000 in value. Therefore, there would not appear to be any need to apply for leave to appeal. My conclusions with respect to this portion of the judgment are solely for the assistance and guidance of counsel and are obiter to the remaining portions of this judgment or to any other judgment filed in this bankruptcy respecting appeals from the Final Determinations of the Trustee.

Costs

[47] While this application has been brought by GMAC, it has been argued essentially as an application for a declaratory judgment or a finding of fact and law which may be beneficial to the respondents herein or other litigants in determining their rights vis-a-vis Hickman Equipment. Before making any order with respect to costs concerning this application, the Court would, in the absence of agreement between the applicant, the respondents and PricewaterhouseCoopers Inc. as Receiver, wish to receive argument as to whom costs ought to be awarded and by whom those costs should be paid. This aspect of the mater awaits further application by one or more of the parties.

Justice

Thomas Kendell, Q.C. and Stacey Power for General Motors Acceptance Corporation.
Michael Harrington, Q.C. and Maureen Ryan, for John Deere Limited and John Deere Credit Inc.
Barry Learmonth for Ingersoll Rand.
J. Vernon French, Q.C. and John French for Bombardier Capital Leasing Limited and CULEASE Financial Services.
Gregory Smith and Brian Windsor for ABN-AMRO, Royal Bank of Canada, Cedar Rapids Inc. and Tramac Equipment Finance Limited.
Gregory Dickie and Kerry Hatfield for CIT Financial.

SCHEDULE "A"

SECURITY AGREEMENT (LEASING)

TO: GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA, LIMITED (GMAC)

(1) In the course of business, we acquire new and used vehicles (including chassis) from manufacturers, distributors and others which we will hold for lease or which now or may be leased to the public, all of which are hereinafter referred to as "Vehicles", which term shall include all vehicles of like kinds or types now owned or hereafter acquired by us (including all accessories and attachments thereto) and all replacements and substitutions therefor and all additions and accessions thereto.

(2) We desire GMAC to furnish financing accommodation to us upon the security of Vehicles and proceeds thereof and hereby agree, upon demand, to pay to GMAC the amount it advances or is obligated to advance in connection with the financing by GMAC of Vehicles with interest at the rate per annum designated by GMAC from time to time and then in force under the GMAC Wholesale Plan or otherwise as may be agreed upon.

(3) To secure collectively the payment of all amounts owing by us to GMAC including, without limitation, all amounts advanced by GMAC or which GMAC may be obligated to advance as aforesaid and all amounts owing by us to GMAC from time to time in connection with the financing of Vehicles leased by us to the public and interest due thereon and any ultimate balance thereof, we hereby grant, assign, transfer, set over, mortgage and charge in favour of and grant to GMAC a security interest in all Vehicles so acquired and in the proceeds thereof and in all leases relating therein to the full extent provided or permitted by law. The word proceeds shall have the meaning ascribed to it under applicable personal property security laws.

(4) Our possession of the Vehicles shall be for the purpose of storing and exhibiting same for lease and the leasing thereof to the public in the ordinary course of business. Save as hereinafter provided we shall not use the Vehicles illegally, improperly or for hire. GMAC shall at all times have the right of access to and inspection of the Vehicles and the right to examine our books and records pertaining to the Vehicles.

(5) W agree to keep the Vehicles free of all taxes, liens and encumbrances, and any sum of money that may be paid by GMAC in release or discharge thereof shall be paid to GMAC on demand as an additional part of the obligation secured hereunder.

(6) We shall not mortgage, pledge or lend the Vehicles and shall not transfer or otherwise dispose of or encumber them except as in the next paragraph more particularly provided. We shall execute in favour of GMAC any form of document which may reasonably be required by GMAC for the amounts advanced to the manufacturer, distributor or seller, and shall execute such additional documents as GMAC may at any time reasonably request in order to confirm or perfect title or security in the Vehicles. Execution by us of any instrument for the amount advanced shall be deemed evidence of our obligation and not payment therefor. We authorize GMAC or any of its officers or employees or agents to execute such documents in our behalf and to supply any omitted information and correct patent errors in any document executed by us as such officers, employees or agents may reasonably consider necessary and the said officers, employees and agents and each of them are hereby appointed our true and lawful attorney for such purposes.

(7) We understand that we may lease the Vehicles in the ordinary course of business and all such Vehicles shall be held by us as inventory. We further agree that as each such Vehicle is sold, we will faithfully and promptly remit to you the amount you advanced or have become obligated to advance on our behalf pursuant to this agreement, with interest at the aforesaid rate per annum designated and in effect under

the GMAC Wholesale Plan or as otherwise agreed and any other amounts which we may have become obligated to pay with respect to such Vehicle.

(8) At the option of GMAC, all amounts secured by this agreement shall immediately and automatically become due and payable upon the happening of any of the following events:

(a) if we shall fail to pay any amounts secured by this agreement when due or comply with any of the terms and conditions of this or any other agreement with GMAC;

(b) if we shall cease or threaten to cease to carry on business in the normal course, commit an act of bankruptcy, become insolvent, make an authorized assignment or a bulk sale of our assets or if we should propose a compromise or arrangement to our creditors or if a receiver should be appointed of any part of our assets;

(c) if any proceeding is taken in bankruptcy, insolvency or receivership by or against us or with respect to a compromise or arrangement, or to have us declared bankrupt or wound-up, or if any encumbrancer takes possession of any part of our assets;

(d) if any execution, sequestration or extent or any other process of any court having jurisdiction becomes enforceable against us or if any distress or analogous process is levied upon our assets or any part thereof; or

(e) if GMAC in good faith deems itself insecure or the vehicles to be in danger of misuse, loss, seizure or confiscation or that the prospect of payment or performance by us under this agreement is impaired.

(9) Upon the happening of any of the foregoing events, GMAC may:

(a) take immediate possession of the said Vehicles, without demand or further notice and without legal processes; for the purposes of facilitating such taking of possession and in the furtherance thereof, we shall, if GMAC so requests, assemble said Vehicles and make them available to GMAC at a reasonable convenient place designated by it, and GMAC shall have the right, and we hereby authorize and empower GMAC, to enter upon the premises wherever said Vehicles may be and remove the same. Thereupon GMAC may sell the said Vehicles and apply the net proceeds, after deducting all expenses and expenditures of taking and keeping possession thereof including reasonable legal fees and costs and any other legal expenses in connection with GMAC's exercise of any of its rights and remedies under this agreement, on account of amounts owing by us to GMAC and we shall be liable for any deficiency resulting from such sale and shall pay the same to GMAC forthwith upon demand. In the event of repossession of Vehicles as aforesaid by GMAC, the rights and remedies under applicable laws shall apply; provided that to the extent permitted by law, we, if a corporation, hereby agree that in the Province of Saskatchewan, The Limitation of Civil Rights Act, as the said Act is amended or may from time to time be amended, shall have no application to this agreement or any mortgage, charge or other security for the payment of money connected herewith or collateral hereto, or any agreement or instrument renewing or extending this agreement; all rights, benefits or protection whereof we hereby specifically waive;

(b) in its discretion, appoint by a document in writing a receiver or a receiver and manager

(hereinafter referred to as the "receiver"), of the Vehicles or any part thereof and may remove any receiver so appointed and appoint another in his or its place. A receiver so appointed shall be vested with all and any of the powers and discretions of GMAC and, without limiting the generality of the foregoing, such receiver shall have the power:

(i) to take possession of the Vehicles or any part thereof;

(ii) to carry on our business or any part thereof;

(iii) to borrow money required for the maintenance, preservation or protection of the Vehicles or any part thereof or for the carrying on of our business;

(iv) to sell all or any portion of the Vehicles on those terms and conditions and in the manner that the receiver may establish.

A receiver so appointed by GMAC is considered to be our agent and GMAC shall not in any way be responsible for any misconduct or negligence of said receiver.

(10) All the terms and provisions of this agreement shall be construed and determined in accordance with laws of the province where we maintain our principal place of business; provided, however, that any term, condition, clause or provision of this agreement which is not is [sic] conformity with the requirements of or in [sic] prohibited by such applicable laws of the said province shall be ineffective in that province, to the extent of such non-conformity or prohibition, without invalidating the remaining terms, conditions, clauses and provisions of this agreement.

(11) This agreement is in addition to and not in substitution for any other agreement, contract or other document which GMAC may hold or be given creating a security interest in all or any Vehicles now owned or hereafter acquired by us.

IN WITNESS WHEREOF each of the parties has caused this agreement to be executed by its duly authorized representative this 25th day of July, 2000.

ACCEPTED:

GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA, LIMITED	HICKMAN EQUIPMENT (1985) LIMITED
BY (Sgd.) Anthony Byrne	BY (Sgd.) Albert Hickman
TITLE [INDECIPHERABLE]	TITLE DIRECTOR

Witness

BY (Sgd.) Gary Bishop

TITLE