

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person	PricewaterhouseCoopers Inc., Trustee and Court Appointed Receiver
Date of Document:	____ August 2004.
Summary of Order/Relief Sought or statement of purpose in filing:	Application for Court Direction for the Release of documents and other information provided to the Receiver by Deloitte & Touche LLP and Deloitte & Touche Inc. ("Deloitte")
Court Sub-File Number:	7:63

**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, 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")

**INTERLOCUTORY APPLICATION
(Inter Partes)**

The Application of PricewaterhouseCoopers Inc., Trustee and Court Appointed Receiver of Hickman Equipment (the "Applicant") says as follows:

1. On or about 12 March 2003, the Applicant filed an Interlocutory Application (*Inter Partes*) (sub-file 7:56) requesting a Court Order directing Deloitte to disclose

certain documentation and information to the Applicant and seeking Court direction with respect to the same (the "March Application"). The materials requested from Deloitte, as set out in paragraph 6 of the March Application, included any property of Hickman Equipment in its possession and any documents in electronic or hard copy form of any kind relating in whole or in part to Hickman Equipment, its dealings or property, from January 1, 1997 to the present, and in particular:

- a. All working papers pertaining to the audit of Hickman Equipment for the fiscal years 1997, 1998, 1999 and 2000, together with all working papers developed or prepared in respect of the calendar year 2001;
- b. All correspondence to and from or relating to Hickman Equipment including copies of all correspondence conducted by e-mail relating in whole or in part to Hickman Equipment, its dealings or property during the period January 1, 1997 to the present;
- c. All books, documents or papers of any kind relating to the inventory of Hickman Equipment in the period January 1, 1997 to the present;
- d. All reports, memos, correspondence, files or documents of any kind prepared for or relating to any work performed by D & T alone or in connection with others for Hickman Equipment during the period January 1, 1997 to the present; and
- e. All invoices submitted to Hickman Equipment for any services rendered by D & T for the period January 1, 1997 to present.

(Collectively referred to herein as the "Auditors' Information".)

2. The March Application was heard before Mr. Justice Hall who rendered a written decision on July 22, 2003 that was supplemented by a *corrigendum* on that same date.
3. As well, by an Order with respect to the March Application dated July 22, 2003, filed July 28, 2003 (the "Order"), Justice Hall ordered that Deloitte disclose the Auditors' Information to the Applicant but set certain restrictions on the Applicant's authority to disclose the Auditors' Information obtained pursuant to the Order. Specifically, it directed that the Applicant could not release any of the Auditors' Information to anyone other than its solicitors, its retained experts or advisors without further order of this Honourable Court and upon notice to Deloitte. Furthermore, it was ordered that before the Applicant could release the Auditors' Information to its solicitors, its retained experts or advisors, such persons must have had undertaken not to reveal or disseminate it to any third party.
4. Deloitte complied with the Order and provided the Auditors' Information to the Applicant accordingly.
5. As contemplated in the March Application, the Applicant and its solicitors used the Auditors' Information to prepare opinions as to the merits of a possible claim by the Applicant against Deloitte as the auditors of Hickman Equipment. Two

opinions, a legal opinion and one from an accounting perspective, have been prepared (the "Opinions").

6. Prior to finalizing the Opinions, in order to protect against the expiration of any potential limitation periods, in December 2003, the Applicant was granted leave, by way of an *Ex Parte* Application (sub-file 7:59), to issue a Statement of Claim against Deloitte, but was ordered not to proceed to serve the Statement of Claim without further Court Order. As such, the Statement of Claim of the Applicant, as Plaintiff, against Deloitte, as Defendant, being action no. 2003-01T-4587, was issued from the Supreme Court Registry on December 24, 2003. To date, the Applicant retains the original Statement of Claim and has not proceeded to serve it.
7. The Applicant has taken no further steps with respect to this action against Deloitte, pending further direction from the secured creditors and an Order of the Court to do so, as contemplated by application sub-file 7:61, which is still ongoing before this Honourable Court.
8. The Applicant is of the view that the Opinions, and the Auditors' Information upon which the Opinions are based, would be of benefit to the secured creditors in determining to what extent, if any, they wish to participate in (and thereby fund) the Applicant's action against Deloitte. Specifically, the Opinions, and the Auditors' Information would enable the secured creditors to assess the merits of

the action, the litigation costs and the potential quantum for recovery. This in turn would effectively dictate whether and to what extent the Applicant will be proceeding with the action.

9. The Applicant therefore submits that the Opinions and the Auditors' Information should be made available to the secured creditors. However, due to the sensitive and/or privileged nature of the Opinions and the Auditors' Information, the Applicant submits that such release and disclosure should be effected in such a way so as to ensure the utmost discretion and protection of the Auditors' Information and also to maintain the privilege associated with the Opinions, be it solicitor/ client and/or litigation privilege.

10. The Applicant therefore applies for an Order from this Honourable Court granting it the authority to release the Opinions and the Auditors' Information but subject to the following conditions:

- a. To ensure limited distribution and dissemination, the Opinions and the Auditors' Information shall be released only upon the request of a secured creditor;
- b. The Opinions and the Auditors' Information so released to the secured creditor who requests them shall be used for the sole purpose of assessing and determining to what extent, if any, the secured creditor

wishes to participate in (and thereby fund) the Applicant's action against Deloitte;

- c. Such release and disclosure of the Opinions to those secured creditors who request and receive them must be effected in such a way so as to preserve the litigation and/or solicitor privilege under which they were prepared. Accordingly, prior to releasing the Opinions, the Applicant and the secured creditor so requesting must confirm and acknowledge that such release on the part of the Applicant does not constitute a waiver of privilege. Similarly, the secured creditor must confirm and acknowledge that it will not release or disclose the Opinions other than as is contemplated herein, and in particular, that it will not release or disclose the Opinions to Deloitte; and

- d. Secured creditors who request and receive the Opinions and the Auditors' Information shall not disclose them to anyone other than:

- i. their solicitors; and
- ii. Any experts or advisors retained by the secured creditor to assess or assist in assessing or evaluating the documents.

DATED at St. John's, in the Province of Newfoundland and Labrador, this ____ day of August, 2004.

PATTERSON PALMER
Solicitors for the Applicant
whose address for service is:
Suite 1000, 235 Water Street
P.O. Box 610
St. John's, NL A1C 5L3

Attention: Frederick J. Constantine

Issued at St. John's on the ____ day of August, 2004.

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NOTICE

You are hereby notified that the foregoing application will be made to the Judge presiding
in Chambers at the Court House at St. John's, Newfoundland and Labrador on
_____, the _____ day of _____, 2004, at 10 a.m. or so soon
thereafter as the application can be heard.

TO: See attached distribution list.