

2003 NO. 0034
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL

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

**AND IN THE MATTER OF the
Bankruptcy and Insolvency Act**

**AND IN THE MATTER OF the
Application of John Deere Limited
and John Deere Credit Inc. in respect
of the Transition Issue**

<u>BETWEEN:</u>	JOHN DEERE LIMITED AND JOHN DEERE CREDIT INC.	APPLICANTS/ APPELLANTS
<u>AND:</u>	CANADIAN IMPERIAL BANK OF COMMERCE	RESPONDENT

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<u>AND:</u>	JOHN DEERE LIMITED AND JOHN DEERE CREDIT INC.	APPLICANTS/ FIRST RESPONDENT
<u>AND:</u>	CIT FINANCIAL LTD.	SECOND RESPONDENT
<u>AND:</u>	ABN-AMRO BANK OF CANADA AND ABN-AMRO LEASING	THIRD RESPONDENT
<u>AND:</u>	ROYAL BANK OF CANADA	FOURTH RESPONDENT

<u>AND:</u>	TRAMAC EQUIPMENT FINANCE INC.	FIFTH RESPONDENT
<u>AND:</u>	CEDARAPIDS, INC.	SIXTH RESPONDENT
<u>AND:</u>	INGERSOLL-RAND INC.	SEVENTH RESPONDENT
<u>AND:</u>	GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA, LIMITED	EIGHTH RESPONDENT
<u>AND:</u>	PRICEWATERHOUSECOOPERS INC. as Trustee in Bankruptcy and Receiver of Hickman Equipment (1985) Limited	NINTH RESPONDENT

INTERLOCUTORY APPLICATION (INTER PARTES)

THE INTERLOCUTORY APPLICATION (INTER PARTES) of the John Deere Limited and John Deere Credit Inc. (collectively "Deere") says:

1. Deere seeks the confirmation of this Honourable Court of Appeal as to the following matters:
 - (a) that the within Appeals are matters for determination pursuant to the *Bankruptcy and Insolvency Act* RSC 1985, c.B-3, as amended (the "BIA") and the Bankruptcy and Insolvency General Rules (the "BIA Rules") enacted pursuant thereto;
 - (b) that the decision of the Honourable Mr. Justice Hall dated the 4th day of April, 2003 in proceedings in the Supreme Court, Trial Division, in the matter of the *Bankruptcy and Insolvency Act*, bearing number 2002 01T 0352, court sub-file 7:36 (the "Decision") is a final decision and not an interlocutory decision;
 - (c) that the BIA Rules apply to the perfection and conduct of the within Appeals; and,
 - (d) that Rule 57 of the Rules of the Supreme Court, 1986, under the *Judicature Act* RSNL 1990, c. J-4, applicable to appeals of final decisions apply to the filing and delivery of the appeal books and factums in the within Appeals.
2. Deere further requests that the Honourable Court of Appeal set dates for the filing of any appeal book or other record and factums by the parties hereto.
3. Deere further requests that the Honourable Court of Appeal hear the within Appeals at the same time.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador this 28th day of August, 2003.

Mary

MAUREEN E. RYAN
STEWART MCKELVEY STIRLING SCALES
Solicitors for the Appellants
Whose address for service is:
100 New Gower Street
11th Floor, Cabot Place
P.O. Box 5038
St. John's, Newfoundland
A1C 5V3

TO: SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

Court of Appeal
Duckworth Street
St. John's, NL.
A1C 5M3
Attention: Registry

TO: Mr. Geoff Spencer
BENSON MYLES

Solicitors for Canadian Imperial Bank of Commerce
whose address for service is:
Suite 900, Atlantic Place
P.O. Box 1538, Stn. "C"
St. John's, NL, A1C 5N8

TO: Mr. Thomas R. Kendall, Q.C.

MCINNIS COOPER
Solicitors for General Motors
Acceptance Corporation of Canada, Limited
whose address for service is:
10 Fort William Place
P.O. Box 5939
St. John's, NL, A1C 5K8

TO: **Mr. Gregory M. Smith**
CURTIS, DAWE
Solicitors for ABN-AMRO,
Royal Bank of Canada,
Cedarapids, Inc. and
Tramac Equipment Finance Limited
whose address for service is:
11th Floor, Fortis Building
139 Water Street
P.O. Box 337, Stn. "C"
St. John's, NL, A1C 5J9

TO: **Mr. Gregory W. Dickie**
WHITE OTTENHEIMER & BAKER
Solicitors for CIT Financial Ltd.
whose address for service is:
Baine Johnston Centre
10 Fort William Place
P.O. Box 5457
St. John's, NL, A1C 5W4

TO: **Carl A. Holm, Q.C.**
MERRICK HOLM
Solicitors for PricewaterhouseCoopers Inc. as Receiver
whose address for service is:
1801 Hollis Street, Suite 2100
Halifax, NS, B3J 2X6

For your protection our documents are sent via e-mail and are not available on the Internet.

<u>AND:</u>	TRAMAC EQUIPMENT FINANCE INC.	FIFTH RESPONDENT
<u>AND:</u>	CEDARAPIDS, INC.	SIXTH RESPONDENT
<u>AND:</u>	INGERSOLL-RAND INC.	SEVENTH RESPONDENT
<u>AND:</u>	GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA, LIMITED	EIGHTH RESPONDENT
<u>AND:</u>	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 heard by the judge presideing in chambers at the Court of Appeal at St. John's, Newfoundland, on Tuesday, the 9th day of September 2003, at the hour of 10:00 in the forenoon or so soon thereafter as the application can be heard.

AND FURTHER TAKE NOTICE that on the hearing of the application, the judge may make an order in favour of the applicant in your absence and without further notice unless you or your solicitor:

- A. Cause to be delivered to the Applicant's solicitor at the address named herein for service, not later than 48 hours before the hearing of the application, a true copy of any affidavit or other material that you or your solicitor intend to read on the hearing of the application, and
- B. Appear on the hearing of the application at the time and place appointed for the hearing.

TO: **Mr. Geoff Spencer**
BENSON MYLES
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whose address for service is:
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AFFIDAVIT

I, Maureen E. Ryan, of the City of St. John's, in the Province of Newfoundland and Labrador make oath and say as follows:

- 1 I am a partner with Stewart McKelvey Stirling Scales, solicitors for John Deere Limited and John Deere Credit Inc., and as such have personal knowledge of the matters set out herein and in the Interlocutory Application (Inter Partes) of the Appellants dated 28 August, 2003.
- 2 I have read and understood the aforesaid Interlocutory Application, and the facts set out therein are true and correct to the best of my knowledge, information and belief.
3. I swear this Affidavit in support of the Interlocutory Application (Inter Partes) of the Appellants dated 28 August, 2003.

SWORN TO, at St. John's, in
the Province of Newfoundland
this 28 day of August
A.D., 2003 before me:

Margaret M. Miller
Barrister, Commissioner of Oaths or
Notary Public - NL



MAUREEN E. RYAN