

02/10/2003

10:39

WILLIAMS, ROEBOTHAN, MCKAY, MARSHAL → 7220463

NO. 369 003

Summary of Current Document

Name of Issuing Party or Person	TD Asset Finance Corp.
Date of Document:	February 7, 2003
Summary of Order/Relief Sought	Submission of TD Finance Asset Corp. in response to Interlocutory Application (Inter Partes) of Canadian Imperial Bank of Commerce for payment to CIBC of various proceeds in the possession of the Receiver including, inter alia, accounts receivable, cash on hand, income tax refunds, sale of parts inventory, sale of assets by tender-Show Tech and Celebration Rent-Alls, sale of Fabtek forwarder, sale of various pieces of equipment over which no specific charge is identified and all other proceeds covered by CIBC's security
Court Sub-File Number	7:49

2002 01T 0352

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

IN THE MATTER OF a Court ordered
 Receivership of Hickman Equipment (1985) Limited
 ("Hickman Equipment") Pursuant to Rule 25 of the
Rules of 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")

**SUBMISSION OF TD FINANCE ASSET CORP. IN RESPONSE TO THE
INTERLOCUTORY APPLICATION (INTER PARTES) OF CANADIAN IMPERIAL
BANK OF COMMERCE**

1. This is the Submission of TD Asset Finance Corp. ("TD") with respect to the within Interlocutory Application of Canadian Imperial Bank of Commerce ("CIBC").
2. TD has made an application (the "TD Proceeds Application") for payment of the proceeds of sale including the following equipment better identified in the TD Proceeds Application and any other proceeds as yet unidentified (the "Other Proceeds") arising from the disposition of equipment subject to the TD security interest claim approved by this Honourable Court. The TD Proceeds Application has Court Sub-File No: 7:47.

	Net Proceeds of Sale
(a) 744H Loader (DW744HX576952)	\$192,500.00
(b) 120 Excavator (P00120X031958)	\$107,000.00
(c) 200LC Excavator (FF0200X501500)	\$91,834.00
(d) 644H Loader (DW644H574161)	\$114,791.00
(e) John Deere 792D Excavator (FF792DX010221)	\$58,900.00
(f) Timberjack 230A Forwarder (CT7296)	\$25,000.00

3. The Receiver's Final Determination with respect to CIBC (currently under appeal by CIBC) has allowed the security interest of CIBC in the assets covered by a debenture dated January 7, 1985, as amended, subject to, subordination to the security interests of holders of Permitted Encumbrances as defined in the Debenture as amended.
4. TD says that subject to the production of documents of Hickman Equipment (1985) Limited which may be in the possession of the Receiver and in respect of which requests have been made to the Receiver on behalf of TD for production, that the security interests held by TD over the TD Units, the TD Trade In Units and/or the Other Proceeds (or the traceable proceeds of sale thereof) may qualify as Permitted Encumbrances as defined in the Debenture security dated January 7, 1985, as amended.
5. If the TD Security Interest claim over the TD Units, the TD Trade In Units and/or Other Proceeds qualify as Permitted Encumbrances, TD submits that the CIBC security interest is subordinated to the Permitted Encumbrances of TD over the TD Units and the TD Trade In Units and/or the Other Proceeds (or the traceable proceeds of sale thereof).

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6. Accordingly TD submits that if the TD Security Interests over the TD Units, the TD Trade In Units and/or the Other Proceeds (or the traceable proceeds of sale thereof) so qualify as Permitted Encumbrances, TD has priority over the claim of CIBC to the payment of the traceable Proceeds of the sale of the TD Units and the TD Trade In Units and/or Other Proceeds.

DATED at the City of St. John's, in the Province of Newfoundland, this 7th day of February, A.D. 2003.



WILLIAMS, ROEBOTHAN, MCKAY &
MARSHALL

Solicitors for the Plaintiff
Whose address for service is:
209 Duckworth Street
St. John's, Newfoundland
A1C 5W1
Attn: D. Bradford L. Wicks

TO: See attached distribution list



Fax Cover Sheet

To: Doug Beatty/Tracy Fulham
 Company: PricewaterhouseCoopers
 Fax: (416) 814-8907

From: James A. Kirby, CA, CIRP
 Fax: (709) 722-1428

Date: February 10, 2003

No. of Pages:
 (incl. this page)

9

If this fax is incomplete or illegible, please telephone:

PricewaterhouseCoopers Inc.
 Atlantic Place
 215 Water Street, Suite 802
 Box 75
 St. John's, NL
 Canada A1C 6C9
 Telephone +1 (709) 722 3883
 Facsimile +1 (709) 722 1428

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Re: Hickman Equipment

Please post the attached to the web site:

Sub-File #	Creditor	Description
7:25	TD Asset Finance Corp.	re TDC

If you have any questions please call.

Yours very truly,
PricewaterhouseCoopers Inc.
Receiver

Per:


 James A. Kirby, CA, CIRP
 Senior Vice-President

JAK/cmc

Encl.

Beatty-RightFax(SAMPLE).doc

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NO. 367 D002

Williams, Roebothan, McKay & Marshall**BARRISTERS, SOLICITORS, NOTARIES**

DANIEL E. WILLIAMS, Q.C.
 STEPHEN D. MARSHALL
 LOIS J. SKANES, Q.C.
 JAMIE MARTIN
 VALERIE A. HYNES
 KATHRYN A. MERCER

GLEN ROEBOTHAN
 D. BRADFORD L. WICKS
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 SUSAN M. KING
 TREVOR N. BRIDGER

DAVID D. MCKAY
 GLENDA C.L. BEST
 VANESSA C. GAUTHIER
 DONALD E. ANTHONY
 TAMMY L. DROVER

February 10, 2003

WITHOUT PREJUDICE

Patterson Palmer
 Barristers & Solicitors
 P.O. Box 610
 Scotia Tower
 Water Street
 St. John's, Newfoundland
 A1C 5L3

Attention: Anna Locke

Dear Madam::

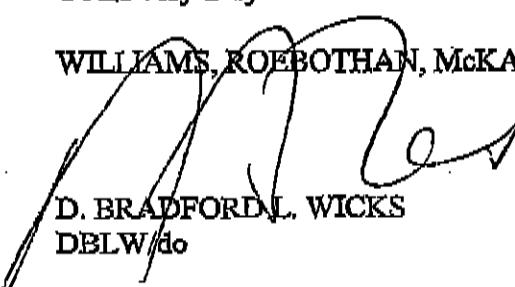
RE: Hickman Equipment (1985) Ltd.
 Our Client -TD Asset Finance Corp.

Please find enclosed herewith the response of our client, TD Asset Finance Corp. to the Application of John Deere Credit Inc. Court Sub-file No. 7:25 which has been filed with the Supreme Court and which we ask be posted on the PricewaterhouseCoopers Website.

I trust this is satisfactory.

Yours very truly

WILLIAMS, ROEBOTHAN, MCKAY & MARSHALL


 D. BRADFORD L. WICKS
 DBLW/do

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NO. 367 003

Summary of Current Document

Name of Issuing Party or Person	TD Asset Finance Corp.
Date of Document:	February 7, 2003
Summary of Order/Relief Sought	Submission of TD Finance Asset Corp. in response to Interlocutory Application (Inter Partes) of John Deere Credit Inc. for payment of proceeds from the sale by the Receiver of the equipment referenced in the Application
Court Sub-File Number	7:25

2002 01T 0352

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR**TRIAL DIVISION**

IN THE MATTER OF a Court ordered
 Receivership of Hickman Equipment (1985) Limited
 ("Hickman Equipment") Pursuant to Rule 25 of the
Rules of 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")

**SUBMISSION OF TD FINANCE ASSET CORP. IN RESPONSE TO THE
INTERLOCUTORY APPLICATION (INTER PARTES) OF JOHN DEERE CREDIT
INC.**

1. This is the Submission of TD Asset Finance Corp. ("TD") with respect to the within Interlocutory Application of John Deere Credit Inc. ("JDCI").
2. TD says that it has priority over the claim of JDCI to the following equipment (and any other equipment in respect of which TD has a valid perfected security interest) in respect of which payment of the proceeds of the sale by the Receiver thereof is claimed by JDCI:

1991 230A TJ Serial 1# CT7296	Net Proceeds of Sale \$25,000.00
1992 JD 792 Serial # FF0792DX010221	\$58,900.00

(collectively referred to as the "TD Trade In Units")

3. TD repeats the contents of its application (The "TD Proceeds Application") for payment to it of the proceeds of the sale of the equipment of Hickman Equipment (1985) Limited which is subject to a TD security interest claim including, *inter alia*, the TD Trade In Units bearing Court Sub-File # 7:47.
4. By Order of this Honourable Court dated February 4th, 2003, the Final Determination of the Receiver allowing the TD security interest claim as a valid secured claim was approved.
5. It is submitted that TD holds a valid secured claim by way of Lease # 5 (better described in the TD Proceeds Application) over *inter alia*, the following equipment.
 - i) Timberjack 610 Forwarder Serial #993353
 - ii) John Deere 270LC Excavator Serial # FF270X070714

(Collectively referred to as the "Original Collateral".)
6. The Final Determination of the Receiver with respect to TD discloses the following:
 - i) The Timberjack 610 Excavator Serial #993353 referenced above was sold to Burton's Cove Logging and Lumber Limited. The Timberjack 230A

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Forwarder Serial #CT7296 referenced above was accepted as a trade in for the Timberjack 610 Forwarder.

ii) The JD 270LC Excavator Serial # FF0270X070714 referenced above was sold to Arthur Fowlow Ltd. The 792 D Excavator Serial # FF792DX010221 referenced above was, *inter alia*, accepted as a trade in for the JD 270LC Excavator.

7. TD submits that pursuant to the PPSA (NL), TD's interest in the Original Collateral was perfected by registration of a financing statement in the PPSA(NL) registry as No. 517565 on September 1, 2000 (Lease #5). Therefore TD has a perfected security interest in the Original Collateral. Accordingly it is submitted that it holds a continuously perfected interest in the TD Trade In units and the traceable proceeds of sale thereof, the proceeds of sale of which are also claimed by JDCL.

8. TD submits that pursuant to the PPSA (NL), TD also, *inter alia*, perfected a security interest in the equipment covered by lease #3 (better set out in the TD Proceeds Application) by registration of a financing statement in the PPSA (NL) as No. 1572426 and No. 1575417 on January 29, 2002 and by Lease #6 (better set out in the TD Proceeds Application) as No. 598847 on October 17, 2000 and No. 596635 on October 16, 2000.

9. Notwithstanding the valid perfected security interest held by JDCL effective December 14, 1999 as set out in the Final Determination of the Receiver with respect to JDCL, TD says that it is entitled to the benefit of a subordination agreement between it and JDCL set out in a letter dated August 31, 2000, a copy of which is attached hereto as Schedule "A".

10. TD submits that by virtue of the subordination agreement aforesaid, and Section 41 of the PPSA (NL), that TD is entitled to priority over the claim of JDCL to the traceable proceeds from the sale by the Receiver of the TD Trade In Units. Accordingly, the claim of JDCL to these proceeds of sale ought to be subordinated to that of TD.

DATED at the City of St. John's, in the Province of Newfoundland, this 7th day of February, A.D. 2003.



WILLIAMS, ROEBOTHAN, MCKAY &
MARSHALL

Solicitors for the Plaintiff
Whose address for service is:
209 Duckworth Street

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NO. 367 Q006

St John's, Newfoundland
A1C 5W1
Attn: **D. Bradford L. Wicks**

TO: See attached distribution list

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NO. 367 D007



31-AUG-00

JOHN DEERE CREDIT INC.
1001 CHAMPLAIN AVENUE, #401
BURLINGTON, ONTARIO
(71524)

Attn: MARIANNE CURIC,

RE: HICKMAN EQUIPMENT (1985) LIMITED

We are in the process of arranging lease financing for the above company. Our searches indicate that financing statements have been filed by or on behalf of JOHN DEERE CREDIT INC, indicating that you have a security interest in certain assets or undertakings of the above company.

Please confirm by signing below and return by fax to my attention at 613-226-8091, indicating that you have no security interest, lien or encumbrance of any kind on the Equipment described as follows:

1	MODEL 610 FORWARDER FULL 16' LOGWOOD DECK WITH SERCO LOADER	UNIT #C000773	S/N	993353
1	MODEL 1410 8 WHEEL FORWARDER	UNIT #C00762	S/N	17D00279
1	160LC EXCAVATOR	UNIT #C000810	P00160X041475	
1	160LC EXCAVATOR	UNIT #C000864	P00160X041476	
1	160LC EXCAVATOR	UNIT #C000865	P00160X041477	
1	450LC BASE EXCAVATOR	UNIT #C000862	FF0450X090545	
1	310 SE BACKHOE LOADER	UNIT #C000856	T0310SE891140	
1	200LC EXCAVATOR	UNIT #C000851	FF0200X501521	
1	270LC EXCAVATOR	UNIT #C000835	FF0270X070714	
1	200LC EXCAVATOR	UNIT #C000854	FF0200X501500	
1	744H LOADER	UNIT #C000860	DW744H0576952	

Your prompt reply is greatly appreciated.

Yours truly,

Susan McAllister

JOHN DEERE CREDIT INC.

Signature

Marie Curic
Title: Asst. to the President for Sept. 05/00
Date: Sept. 05/00

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NO. 367 008

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NO. 367 009

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National Leasing Group Inc.

R. Paul Burgess

709-754-0915

ORIX Financial Services Canada Ltd.

Donald Yaëck

416-236-3010

Goodman Associates

Paul G. Goodman

902-425-3777

Merrick Holm

Carl Holm, Q.C.

902-429-8215

Royal Bank of Canada

Thomas O. Boyne, Q.C.

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TD Asset Financial Corp.

D. Bradford L. Wicks

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Wells Fargo Equipment Finance Co.

Richard Jones

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Patterson Palmer Hunt Murphy

Frederick J. Constantine

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