

<b><i>SUMMARY OF CURRENT DOCUMENT</i></b>	
<b>Name of Issuing Party or Person</b>	PricewaterhouseCoopers Inc., in its capacities as Receiver and Trustee of Hickman Equipment (1985) Limited
<b>Date of Document:</b>	26 February 2003
<b>Summary of Order/Relief Sought or statement of purpose in Filing:</b>	Directions concerning PWC's interest in 29 pieces of Equipment which had been rented to it by United Rentals (Canada) Limited
<b>Court Sub-File Number</b>	7:54

2002 01T 0352

## IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

**IN THE MATTER OF** the *Companies' Creditors Arrangement Act*,  
Chapter C-36 of the Revised Statutes of Canada, 1985, as amended

**AND IN THE MATTER OF** the plan of compromise or arrangement of Hickman Equipment (1985) Limited

**AND IN THE MATTER OF** Rule 25 of the *Rules of the Supreme Court*, 1986 under the *Judicature Act*, R.S.N. 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

**AND**

District of Newfoundland  
Court No. 9733  
Estate No. 100813

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE BANKRUPTCY OF HICKMAN EQUIPMENT (1985) LIMITED**, carrying on business at 1269 Topsail Road, in the City of Mt. Pearl in the Province of Newfoundland and Labrador

**INTERLOCUTORY APPLICATION  
(INTER PARTES)**

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

1. By Order of this Honourable Court granted on the 13<sup>th</sup> day of March, 2002, and filed with the Court on the 14<sup>th</sup> day of March, 2002, it was ordered that the Applicant be appointed Receiver of Hickman Equipment (the "Receivership Order").
2. By a Receiving Order (the "Receiving Order") made on the 13<sup>th</sup> day 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 and Insolvency on the 14<sup>th</sup> day of March, 2002, HEL was adjudged bankrupt and the Applicant was appointed Trustee of the Estate of the bankrupt in bankruptcy.
3. The Receivership Order provided, in part:
  6. THIS COURT ORDERS that PricewaterhouseCoopers Inc., having an office in the City of St. John's (the "Receiver") be appointed the receiver without security pursuant to Rule 25 of the *Rules of the Supreme Court*, 1986 under the *Judicature Act*, R.S.N. 1990, c. J-4, of all the property, assets, entitlements and undertaking (the "Assets") of Hickman Equipment wherever situate including without limitation all property assets and undertaking comprised in the term "Property" as such term is defined in the Initial Order, all on and subject to the directions, powers, authorities and terms of this Order and such further and other order as this Court may hereafter make.
  7. THIS COURT ORDERS that the Receiver is hereby directed to take immediate possession as soon as practically possible of the Assets with power and authority to receive, preserve, protect and realize upon the Assets, or any part thereof, subject to the terms, conditions and in the manner authorized hereunder until further Order of this Court.
  9. THIS COURT ORDERS that the Receiver be and is hereby authorized, if, in its opinion, it is necessary or desirable for the purpose of receiving, preserving, protecting and realizing upon the Assets, to do any or all of the following:
    - a) ...
    - b) ...
    - c) ...
    - d) to review the accounts and records of Hickman Equipment, of any person holding security granted by Hickman Equipment and of any person who may have purchased equipment or property from Hickman Equipment to determine the source and application of funds received and disbursed in connection with the dealings of Hickman Equipment with property of or security granted to such secured creditors; and ...

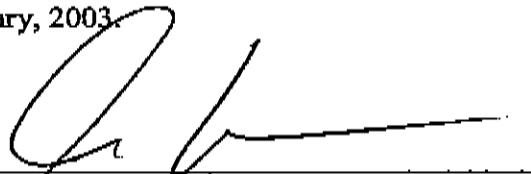
11. THIS COURT ORDERS that, for the purposes of its performance of its duties under this Order or any subsequent order of this Court, the Receiver be and is empowered to review the books and records of Hickman Equipment to determine if those books and records establish that monies or other property and assets of Hickman Equipment are properly accounted for, and whether there are any claims or potential claims by or against Hickman Equipment or any other person who may have received such monies, property or assets, and to report to this Court with respect to the nature and extent of such claims or potential claims.
34. THIS COURT ORDERS that the Receiver may, from time to time, being an interlocutory application before this Court for advice and directions in discharge of its powers and duties hereunder.

4. Counsel for United Rental has asked the Applicant to confirm it claims no interest by or on behalf of Hickman Equipment in the 29 pieces of equipment described in the Affidavit of James Kirby.
5. The Applicant has assembled information for the purpose of making a determination of its interest in the Equipment as Receiver or Trustee.
6. Counsel to the Applicant has advised he is not able, based on the current information, to provide a definitive opinion to PWC in respect of any interest it may have in the Equipment.
7. The Applicant seeks the advice and direction of this Honourable Court as to whether the Applicant can or should exercise its powers and duties under the Receivership Order to:
  - (a) continue to assemble information for the purpose of:
    - (i) making a determination of interests in the Equipment; or
    - (ii) bringing this matter back before this Court for determination based on more complete information; or
  - (b) bring the matter before the Court for a determination of the interests, if any, which it, creditors of HEL, United Rentals, ABN AMRO, or others may have in the Equipment based on the information set out in the Affidavit of James Kirby, supplemented by such other information as interested parties may seek to adduce; or
  - (c) having made this report setting out information assembled to date, take no further steps and leave it to interested parties to pursue the matter if and as they see fit; or
  - (d) take such other actions or steps as the Court considers fit.

8. If this Honourable Court advises and directs the Applicant to continue to assemble information for either of the purposes referred to in paragraph 7(a), the Applicant seeks an Order or Orders:

- (a) directing all persons with any information about any of the Equipment, including knowledge of dealing with any of the Equipment from January 1, 1998 to the present time, to make all such information available to the Applicant, information to include any and all contracts, agreements, correspondence, e-mails, accounts and records, and documentation of any kind dealing with the Equipment, and empowering the Applicant to have any person believed to have any knowledge about the Equipment or any dealings with it to attend by subpoena to be examined by or on behalf of the Applicant concerning the Equipment and any dealing with it;
- (b) directing that all reasonable costs incurred by the Applicant for any of the purposes referred to herein or in exercising the authority provided herein are proper costs of the Receivership to be allocated and paid in accordance with the provisions of the Cost Allocation Plan.

DATED at Halifax, Nova Scotia, this 26<sup>th</sup> day of February, 2003.



**CARL A. HOLM, Q.C.**  
Solicitors for PricewaterhouseCoopers Inc.  
in its capacities as Receiver and Trustee  
of Hickman Equipment (1985) Limited

whose address for service is:  
Merrick Holm  
1801 Hollis Street, Suite 2100  
PO Box 1054  
Halifax, NS B3J 2X6

or  
c/o PricewaterhouseCoopers Inc.  
215 Water Street, Suite 802  
St. John's, NL A1C 6C9

ISSUED at St. John's, Newfoundland and Labrador, this \_\_\_\_\_ day of February, 2003.

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*Registrar*

(201224)

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2002 01T 0352

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

**IN THE MATTER OF** the *Companies' Creditors Arrangement Act*,  
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**AND IN THE MATTER OF** the plan of compromise or  
arrangement of Hickman Equipment (1985) Limited

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**AND**

District of Newfoundland  
Court No. 9733  
Estate No. 100813

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF  
HICKMAN EQUIPMENT (1985) LIMITED**, carrying  
on business at 1269 Topsail Road, in the City of  
Mt. Pearl, in the Province of Newfoundland and  
Labrador

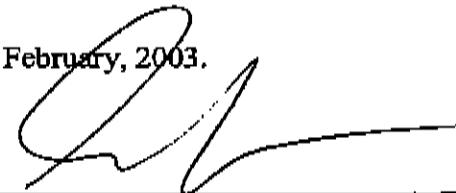
**NOTICE**

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 Wednesday, the 12<sup>th</sup> day of March, 2003, at 10:00 a.m. or so soon thereafter as the application can be heard.

YOU ARE FURTHER NOTIFIED that the Court has directed that persons wishing to reply or respond to the within Application are to file a reply or response with the Court on or before March 7, 2003 and to give notice of their reply or response to other parties in these proceedings in accordance with the terms of Orders earlier issued in these proceedings

TO: See distribution list attached hereto as Schedule "A"

DATED at Halifax, Nova Scotia, this 26<sup>th</sup> day of February, 2003.



**CARL A. HOLM, Q.C.**

Solicitor for PricewaterhouseCoopers Inc.,  
in its capacities as Receiver and Trustee of  
Hickman Equipment (1985) Limited  
whose address for service is:  
Merrick Holm  
1801 Hollis Street, Suite 2100  
PO Box 1054  
Halifax, NS B3J 2X6

or

c/o PricewaterhouseCoopers Inc.  
215 Water Street, Suite 802  
St. John's, NL A1C 6C9

ISSUED at St. John's, Newfoundland and Labrador, this \_\_\_\_\_ day of February, 2003.

*Registrar*

(201294)

**Schedule "A"****Parties Who Have Been Served**

ABN Amro Bank Canada/ ABN Amro Leasing & Tramac Equipment Ltd.	Aubrey L. Bonnell, Q.C./ Brian Winsor David Timms Brent Keenan	709-722-7521 905-331-2020
Bombardier Capital Leasing & Culease Financial Services	John French	709-754-2701
Caterpillar Equipment	Colin D. Grant	905-849-5512
CAT Finance	James Smyth, Q.C./ Philip Warren	709-754-5662
Cedarrapids	Nathan Mixdorf/ Francoise Belzil	319-399-4760 780-413-3152
CIBC	R. Wayne Myles/ Geoffrey Spencer	709-579-2647
CIBC Equipment Finance Ltd./CIT Financial Ltd.	Gregory W. Dickie	709-722-9210
Contract Funding Group Inc.	Mark G. Klar	416-218-1831
Daimler Chrysler Financial Services/Daimler Chrysler Capital Services/Mercedes- Benz of Canada Inc.	Philip Buckingham/ Peter O'Flaherty Elaine Gray	709-722-4720 416-863-3527
Fabtek Corp.	Linc A. Rogers Rhodie E. Mercer, Q.C.	416-863-2653 709-726-5705
GE Capital	Harvey Chaiton Frederic Scalabrini	416-218-1849 905-319-4855
GMAC	Thomas R. Kendell, Q.C.	709-722-1763
Group Holdings Ltd./ Hickman Equipment/ Hickman Holdings Ltd.	Robert Stack/ Griffith D. Roberts	709-726-2992
Ingersoll-Rand Canada Inc.	R. Barry Learmonth, Q.C. Jonathan Wigley	709-739-8151 416-863-6275

## 4

John Deere Ltd./ John Deere Credit Inc.	Neil L. Jacobs/ Bruce Grant/Maureen Ryan	709-722-4565
MTC Leasing Inc./ National Leasing Group Inc.	R. Paul Burgess	709-754-0915
ORIX Financial Services Canada Ltd.	Donald Yaeck	416-236-3010
Goodman Associates Inc.	Paul G. Goodman	902-425-3777
Royal Bank of Canada	Thomas O. Boyne, Q.C.	902-463-7500
TD Asset Finance Corp.	D. Bradford L. Wicks	709-753-5221
United Rentals	Robert Frank	416-360-8277
Wells Fargo Equipment Finance Co.	Richard B. Jones	416-361-6303

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**IN THE MATTER OF THE BANKRUPTCY OF  
HICKMAN EQUIPMENT (1985) LIMITED**, carrying  
on business at 1269 Topsail Road, in the City of Mt. Pearl,  
in the Province of Newfoundland and Labrador

**AFFIDAVIT OF JAMES KIRBY**Sworn **26** February 2003

27<sup>th</sup>  
Jan

I, James A. Kirby, C.A., CIRP, Senior Vice-President of PricewaterhouseCoopers Inc. of St. John's, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. By Order of this Court granted on the 13<sup>th</sup> day of March, 2002, PricewaterhouseCoopers Inc. was appointed the Receiver of Hickman Equipment (1985) Limited ("HEL") and by a Receiving Order granted on March 13, 2002 appointed as the Trustee of the Estate of HEL in Bankruptcy. In this Affidavit, PricewaterhouseCoopers Inc. is referred to in its capacities as Receiver and Trustee as "PWC".
2. I am Senior Vice-President of PWC and as such have personal knowledge of all matters herein deposed to, except where stated to be based on information and belief.
3. United Rentals of Canada, Inc. ("United Rentals") filed a Proof of Claim in the Estate of HEL in Bankruptcy dated April 16, 2002. It claimed to be owed the sum of \$1,265,654.07 by HEL (the "United Rental Receivable") against which it claimed a right to set off an amount of \$329,254.74 acknowledged to be owed by United Rentals to HEL (the "HEL Receivable"). United Rentals' entitlement to assert a set-off is the subject of a separate application for directions to this Court.
4. The most significant component of the United Rental Receivable is \$1,245,567.45 claimed as rent owed to United Rentals under a "Rental Out Contract". A true copy of a 4-week rental billing invoice is attached as Exhibit "A".
5. The Billing Invoice describes 29 pieces of equipment, as follows:
  - (a) Excavators - 3 John Deere Model 450LC Excavators as follows:

(1)	450LC	Ser #: FF0450X090166
(2)	450LC	Ser #: FF0450X090410
(3)	450LC	Ser #: FF0450X090411
  - (b) Terex Trucks - 10 Terex Model TA35 Trucks as follows:

(4)	TA 35	Ser #: A7761066
(5)	TA 35	Ser #: A7761096
(6)	TA 35	Ser #: A7761065
(7)	TA35	Ser #: A7761111
(8)	TA35	Ser #: A7761112
(9)	TA 35	Ser #: A7761082
(10)	TA 35	Ser #: A7761095
(11)	TA 35	Ser #: A7761064
(12)	TA 35	Ser #: A7761062
(13)	TA 35	Ser #: A7761061
  - (c) Ingersoll Rand - Hydr Track Drills - 14 Inger Rand Model: ECM590 Track Drills as follows:

(14) ECM590 Ser #: R11116EF  
(15) ECM590 Ser #: R11185CG  
(16) ECM590 Ser #: R11205EG  
(17) ECM590 Ser #: R11245EH  
(18) ECM590 Ser #: R11246EH  
(19) ECM590 Ser #: R11247EH  
(20) ECM590 Ser #: R11189CG  
(21) ECM590 Ser #: R11206EG  
(22) ECM590 Ser #: R11183CG  
(23) ECM590 Ser #: R11237DH  
(24) ECM590 Ser #: R11241EH  
(25) ECM590 Ser #: R11224AH  
(26) ECM590 Ser #: R11212GG  
(27) ECM590 Ser #: R11209FG

(d) Office Trailers -2 - 40-ft. Freuhauff Trailers as follows:

(28) DV-165 Ser #: 2H8V043705017315  
(29) AQ-2893 Ser #: 2T92079316A013198

6. Macleod Dixon LLP, counsel to United Rentals, in a letter dated April 16, 2002, enclosing the Proof of Claim, stated:

United Rentals seeks written confirmation from the Trustee that no interest in the Equipment is claimed by or on behalf of Hickman.

7. On October 1, 2002, Merrick Holm, on behalf of PWC, wrote Macleod Dixon advising, in part:

First of all, with respect to your letter of April 16, 2002, you inquired if PWC claimed an interest in the equipment that was subject to a lease dated May 31, 2001 (the "Lease"). At the time, PWC was not in a position to provide a response, given that it had not reviewed Hickman's records with respect to the Lease.

PWC has subsequently conducted an initial phase of investigation of the activities of Hickman that has disclosed that many of the books and records of Hickman concerning transactions with many of its customers, including United Rentals, are missing. Accordingly, PWC is still unable to indicate whether or not it will make a claim either as receiver or trustee to the equipment that was the subject of the Lease.

8. PWC has acquired additional information concerning the 29 pieces of equipment described in paragraph 3 and in respect of an Ingersoll Rand Model ECM590 Track Drill, Serial #R1115EF. (The 29 pieces described in paragraph 3 together with the ECM590 Serial #R115EF are collectively referred to in this Affidavit as the "Equipment".)

9. The only piece of the Equipment in the physical possession of PWC and sold by it at auction was the Ingersoll Rand Drill, Serial #R11115EF.

10. Attached as Exhibit "B" to this my Affidavit is a true copy of an e-mail to PWC's counsel, Carl Holm, from Ms. Janis Byrne, in-house counsel for RDN, a construction company which carries on business in Labrador, advising that all equipment was returned to HEL by December 2, 2001 and some pieces prior to that date. RDN has not used any of the Equipment since that date.
11. The Equipment and PWC's interest therein is the subject of this Application for Directions.
12. Except for the Drill sold at auction, PWC does not know the current location of the Equipment.

#### Summary History of Equipment

13. Based on and limited by the information obtained and reviewed to date by or on behalf of PWC, PWC believes the following to be a reasonable summary description of transactions relating to the Equipment:

- I. Excavators - To date, PWC has not determined when or how the Excavators were purchased by HEL. In chronological order by date, documents found in HEL records or provided to it or Receiver's counsel, show:
  - (i) one (1) Excavator was invoiced to Hickman Leasing Limited, June 28, 1999;
  - (ii) all three (3) Excavators were rented to HEL by United Rentals, under short term rental agreements beginning June 22, 1999; the last short term rental agreement expired in December 2001;
  - (iii) two (2) of the Excavators were invoiced to United Rentals (Goose Bay) by HEL by invoice dated August 9, 1999;
  - (iv) all three (3) Excavators were invoiced to ABN AMRO Leasing by HEL by invoices dated August 9, 1999 (ABN AMRO has provided copies of these invoices to Receiver's counsel; to date, copies have not been identified in HEL's records);
  - (vi) HEL rented the Excavators under short term rental agreements for periods up to December 2001 (PWC does not have full particulars at this time, but it appears the Excavators remained in Labrador from mid June 1999 to at least late 2001; PWC does not know the current location of the Excavators - see Exhibit "B");
  - (vii) ABN AMRO Leasing wire transferred \$8,268,500 to the account of HEL at the CIBC on August 27, 1999 to pay, *inter alia*, for the Excavators; United Rentals is identified in ABN AMRO's documents as the Customer.

II. Terex Trucks

(a) In chronological order by date, documents found in HEL records or provided to it or Receiver's counsel show in respect of the ten (10) Terex Trucks described in paragraph 3(b) of my Affidavit:

- (i) eight (8) of the Trucks were sold to HEL by CIT pursuant to Conditional Sale Contracts made in June and/or July of 1999;
- (ii) HEL issued purchase orders to United Rentals dated July 23, 1999 for rental of the eight (8) Trucks by HEL from United Rentals;
- (iii) United Rentals rented eight (8) of the Trucks to HEL under short term leases commencing in July of 1999; job locations are generally shown as Labrador (the 8 Trucks continued to be rented under short term leases to HEL up to December 2001);
- (iv) PWC believes HEL rented the Terex Trucks under short term rental agreements to contractors; PWC does not have full particulars of all re-rent contracts but has located re-rent contracts for some Trucks commencing at dates from July 1999 and continuing for periods up to December 2001;
- (v) eight (8) of the Terex Trucks were invoiced to United Rentals by HEL on invoices dated August 9, 1999;
- (vi) eight (8) of the Terex Trucks were invoiced to ABN AMRO Leasing by HEL on invoices dated August 9, 1999; ABN has provided copies of these invoices to the Receiver's counsel; to date, copies have not been identified in HEL's records;
- (vii) ABN AMRO Leasing wire transferred \$8,268,500 to the account of HEL at the CIBC on August 27, 1999 to pay, *inter alia*, for eight (8) of the Terex Trucks; United Rentals is identified in ABN AMRO documents as the Customer;
- (viii) two (2) of the Trucks were sold to HEL by CIT pursuant to Conditional Sales Contracts dated in September 1999;
- (ix) the two (2) Trucks referred to above were invoiced to ABN AMRO by HEL on invoices dated April 3, 2000;
- (x) United Rentals rented the two (2) Trucks to HEL under short term leases commencing in May of 2000; the two (2) Trucks continued to be rented under short term leases to HEL up to December 2001;
- (xi) PWC believes HEL rented the two (2) Terex Trucks under short term rental agreements to contractors; PWC does not have full particulars of all

re-rent contracts but has located a re-rent contract for one (1) of the Trucks commencing in May of 2000;

(xii) ABN AMRO Leasing wire transferred \$1,219,000 to the account of HEL at the CIBC on September 5, 2000 to pay, *inter alia*, for the two (2) Trucks; United Rentals is shown as the Customer.

(b) Based on a review of materials provided by or on behalf of CIT, I verily believe that:

- (i) on numerous occasions from August 19, 1999 to and including December 2001, personnel of CIT conducted audits to determine the status of the Terex Trucks; in audits conducted in August and November of 1999, June-September of 2000, and September of 2001, it was indicated the Trucks were rented to RDN and generally copies of rental agreements were provided (at the time of 1 audit, 2 of the Trucks were not rented; on another occasion, 1 Truck was not rented). The audits conducted in periods December through May indicated Trucks parked on the Highway at construction sites; audit reports were signed off by HEL personnel as accurate; CIT personnel were not advised any of the Trucks had been sold;
- (ii) payments continued to be made as required under conditional sales contracts in respect of the ten (10) Terex Trucks up to December 2001;
- (iii) amounts continue to be owed to CIT in respect of each of the ten (10) Terex Trucks.

(c) Information acquired via CIT's audits is consistent with information provided by RDN.

(d) PWC has caused inquiries to be made at the Registry of Motor Vehicles for the Province of Newfoundland and Labrador for the year 2001 and has determined that HEL was shown as the registered owner of all ten (10) Terex Trucks.

### III. Ingersoll Rand Drills

(a) In chronological order by date, documents found in HEL records or provided to it or Receiver's counsel show in respect of the 14 IR ECM 590 Drills described in paragraph 3(c) and the IR ECM 590 Drill referred to in paragraph 6 of my Affidavit:

- (i) eight (8) of the Drills (7 of the Drills described in paragraph 3(c) and the 1 Drill referred to in paragraph 6 of this Affidavit) were supplied by Ingersoll Rand to HEL pursuant to conditional sales agreements or rental agreements at various times between approximately July 1998 and the end of July 1999;

- (ii) United Rentals rented four (4) of the Drills to HEL under short term leases commencing in July of 1999; job locations are generally shown as in Labrador (the Drills continued to be rented under short term leases to HEL up to December 2001);
- (iii) PWC believes HEL rented the Drills under short term rental agreements to contractors commencing in 1999 but, to date, has not identified any re-rent contracts;
- (iv) eight (8) of the Drills were invoiced to United Rentals by HEL on invoices dated August 9, 1999;
- (v) eight (8) of the Drills were invoiced to ABN AMRO Leasing by HEL on invoices dated August 9, 1999 (ABN has provided copies of the invoices to the Receiver's counsel; to date, copies of these invoices have not been identified in HEL's records);
- (vi) ABN AMRO Leasing wire transferred \$8,268,500 to the account of HEL at the CIBC on August 27, 1999 to pay, *inter alia*, for eight (8) of the Drills; United Rentals is identified in ABN AMRO documents as the Customer;
- (vii) one (1) of the Drills was sold to HEL by Ingersoll Rand by Conditional Sale Agreement made in September 1999;
- (viii) the Drill referred to in the preceding paragraph was invoiced to ABN AMRO Leasing by HEL on an invoice dated April 3, 2000;
- (ix) this Drill was rented by HEL to a contractor in May 2000;
- (x) ABN AMRO Leasing wire transferred \$1,219,000 to the account of HEL at the CIBC on September 5, 2000 to pay, *inter alia*, for this Drill; United Rentals is shown in ABN AMRO documents as the Customer;
- (xi) six (6) Drills were supplied by Ingersoll Rand to HEL - four (4) pursuant to rental agreements dated April 12, 2000; two (2) pursuant to conditional sale contracts made May 12, 2000;
- (xii) five (5) of these Drills were invoiced to ABN AMRO Leasing by HEL on invoices dated April 19, 2000 and May 10, 2000 (ABN has provided copies of these invoices to the Receiver's counsel; to date, copies of these invoices have not been located in HEL's records);
- (xiii) ABN AMRO Leasing wire transferred \$2,271,250 to the account of HEL at the CIBC on May 23, 2000 to pay, *inter alia*, for these five (5) Drills; United Rentals is shown in ABN AMRO documents as the Customer;

- (xiv) one (1) Drill was invoiced to ABN AMRO Leasing by HEL on an invoice dated May 16, 2000; ABN has provided Receiver's counsel with a copy of this invoice;
- (xv) ABN AMRO Leasing wire transferred \$454,250 to the account of HEL at the CIBC on May 26, 2000 to pay for this Drill; United Rentals is shown as the Customer.

(b) Based on information provided by Ingersoll Rand or its counsel, I verily believe that:

- (i) amounts owed to Ingersoll Rand were not paid to it from the proceeds of sale;
- (ii) payments due to Ingersoll Rand under Conditional Sale and/or Rental Agreements continued to be made to it by HEL up to December 2001;
- (iii) Ingersoll Rand continues to be owed monies in respect of each of the Drills.

(c) All of the Drills other than the Drill referred to in paragraph 6 continued to be rented to HEL by United Rentals up to December 2001. The Drill referred to in paragraph 6 was re-sold to HEL by United Rental pursuant to a Rental Purchase Agreement made in early 2001 for the sum of \$369,000. At this date, PWC has not determined or been advised if the \$369,000 has been paid to United Rentals or ABN AMRO.

#### Registrations - Pre and Post PPSA

14. PWC has not caused searches to be done in respect of the Equipment by its counsel, Merrick Holm.

#### Joint Management

15. Pursuant to the terms of an agreement made as at February 1, 1999, HEL sold its "Hickman Rent-Alls" division to United Rentals. It was a term of the Purchase and Sale Agreement that on closing, HEL would deliver consulting agreements between Mr. Hubert Hunt and Mr. William Parsons and United Rentals.

16. By Consulting Agreements made effective on February 1, 1999 between United Rentals, Mr. Hubert Hunt and Mr. William Parsons, true copies of which are attached as Exhibits "C" and "D", were engaged as Consultants.

17. Some principal terms of the Consulting Agreements were:

- (a) The Agreements, unless earlier terminated, were effective February 1, 1999, terminated on January 31, 2001, and were renewable at both parties' options upon

mutually agreeable terms (PWC does not know at this time when the agreements terminated or if either of them were renewed);

- (b) The Consultants were to devote reasonable time (approximately 40 hours per week), attention and efforts to promote and further the business and service of the company; services to be provided on a non-exclusive basis;
- (c) The Consultants were to be paid their proper expenses;
- (d) The Consultants' duties were generally to advise on and assist in the transition period following acquisition of the "Hickman Rent-Alls" business, as well as the marketing and development of the company's business and the service identified in Schedule "A" of the Agreement;
- (e) Services identified in:
  - (i) Mr. Hunt's Consulting Agreement, were:  
"responsibility for profit and loss of all branches within the designated area, all personnel and development and management of budget for the designated area"; and in
  - (ii) Mr. Parsons' Consulting Agreement, were:  
"...responsibility for co-ordination and management of the sales force including in-house sales and outside sales in the designated area."
- (f) Mr. Hunt's Consulting Agreement provided for a fee of \$50,000 per annum and a bonus based on an increase in budgeted EBITDA for the business in the designated area, all in accordance with the policies of United Rentals as may be in effect from time to time;
- (g) Mr. Parsons' Consulting Agreement provided for a fee of \$25,000 per annum and a bonus based on the increase in sales and rental revenue in the designated area, all in accordance with the policies of United as may be in effect from time to time.

18. Minutes of HEL shareholders' and directors' meetings indicate that during relevant periods Hubert Hunt was a Director and Secretary of HEL. Attached and marked Exhibit "E" to this my Affidavit are true copies of memoranda and e-mails obtained from the records of HEL concerning the offices and responsibilities of Messrs. Hunt and Parsons during relevant periods.

19. All Rental Out Contracts with United Rentals are indicated to have been ordered by Mr. William Parsons.

**Detailed Information**

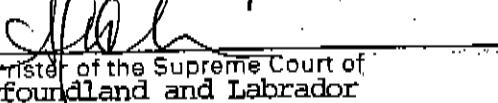
20. Attached as Exhibit "F" to this my Affidavit is detailed information concerning the Equipment, which I am advised and verily believe was assembled by Receiver's counsel from materials provided by CIT, Ingersoll Rand, ABN AMRO, United Rentals, and PWC personnel.
21. PWC's counsel, Carl Holm, advises that he does not have sufficient information to permit him to give PWC a definitive opinion on PWC's interest or the interest of others in the Equipment.
22. This Affidavit is given in support of an Application by PWC for directions.

SWORN TO at St. John's, in the )  
Province of Newfoundland and )  
Labrador, this 26<sup>th</sup> day of )  
February, A.D. 2003, before me, )  
\_\_\_\_\_  
A Barrister of the Supreme Court )  
of Newfoundland and Labrador )

  
\_\_\_\_\_  
JAMES KIRBY

(201051v2)

No. 2003 OLT 0352  
This is Exhibit "A" referred to in the  
affidavit of James Kirby  
sworn before me this 20<sup>th</sup> day of  
February, 2003.

  
A Barrister of the Supreme Court of  
Newfoundland and Labrador



23 LORING DRIVE  
HAPPY VALLEY-GOOSE B, NF A0  
709-897-7368

Job Site  
SIL

Customer  
H

HICKMAN EQUIP (1985) LTD.

ST. JOHNS  
ST. JOHNS, NF A1N

CF: 709-368-9660 J#: 709-368-9660

HICKMAN EQUIP (1985) LTD. (M/P)

P.O. BOX 820  
MOUNT PEARL, NF A1N 3C8

GST# 87583 9425

Page: 1  
4 WEEK BILLING INVOICE  
\*\* COPY \*\*

Customer: 209511  
Invoice #: 18428932-001  
Invoice date: 5/19/01  
Date out: 5/18/01 7:00 AM  
Billed thru: 5/25/01

Job Loc.: ST. JOHNS, ST. JOHNS  
Job No.: 1 - HICKMAN EQUIP (1  
P.O. #: BILL PARSONS  
Ordered By: BILL PARSONS  
Written By: BILL PARSONS  
Salesperson: BILL PARSONS  
Terms: Net 30 Days

PLEASE REMIT PAYMENT TO:  
UNITED RENTALS OF CANADA, INC.  
1269 TOPSAIL ROAD  
MOUNT PEARL, NF A1N 3C9

QTY	Equipment #	Min	Day	Week	4 Week	Amount
1	EXCAVATOR 90000#-99999#	*	1243.16	1243.16	4972.66	14918.00
109451	Make: JOHN DEERE Model: 450LC Ser #: FF0450X090166					
HR OUT: 2210.00	HR IN: TOTAL: 2210.00					
1	EXCAVATOR 90000#-99999#	*	1243.16	1243.16	4972.66	14918.00
109452	Make: JOHN DEERE Model: 450LC Ser #: FF0450X090410					
HR OUT: 1499.00	HR IN: TOTAL: 1499.00					
1	EXCAVATOR 90000#-99999#	*	1243.16	1243.16	4972.66	14918.00
109453	Make: JOHN DEERE Model: 450LC Ser #: FF0450X090411					
HR OUT: 1416.00	HR IN: TOTAL: 1416.00					
1	OFF ROAD DUMP 25YRD	*	1243.16	1243.16	4972.66	14918.00
110790	Make: TEREX Model: TA 35 Ser #: A7761066					
HR OUT: 1989.00	HR IN: TOTAL: 1989.00					
1	OFF ROAD DUMP 25YRD	*	1243.16	1243.16	4972.66	14918.00
110642	Make: TEREX Model: TA 35 Ser #: A7761096					
HR OUT: 2254.00	HR IN: TOTAL: 2254.00					
1	OFF ROAD DUMP 25YRD	*	1243.16	1243.16	4972.66	14918.00
110799	Make: TEREX Model: TA 35 Ser #: A7761065					
HR OUT: 1672.00	HR IN: TOTAL: 1672.00					
1	OFF ROAD DUMP 25YRD	*	1243.16	1243.16	4972.66	14918.00
209234	Make: TEREX Model: TA35 Ser #: A7761111					
HR OUT: 897.00	HR IN: TOTAL: 897.00					
1	OFF ROAD DUMP 25YRD	*	1243.16	1243.16	4972.66	14918.00
209235	Make: TEREX Model: TA35 Ser #: A7761112					
HR OUT: 898.00	HR IN: TOTAL: 898.00					
1	OFF ROAD DUMP 25YRD	*	1243.16	1243.16	4972.66	14918.00
110641	Make: TEREX Model: TA 35 Ser #: A7761062					
HR OUT: 1889.00	HR IN: TOTAL: 1889.00					
1	OFF ROAD DUMP 25YRD	*	1243.16	1243.16	4972.66	14918.00
110643	Make: TEREX Model: TA 35 Ser #: A7761095					
HR OUT: 1635.00	HR IN: TOTAL: 1635.00					
1	OFF ROAD DUMP 25YRD	*	1243.16	1243.16	4972.66	14918.00
110644	Make: TEREX Model: TA 35 Ser #: A7761064					
HR OUT: 1889.00	HR IN: TOTAL: 1889.00					
1	OFF ROAD DUMP 25YRD	*	1243.16	1243.16	4972.66	14918.00
110645	Make: TEREX Model: TA 35 Ser #: A7761062					
HR OUT: 1981.00	HR IN: TOTAL: 1981.00					
1	OFF ROAD DUMP 25YRD	*	1243.16	1243.16	4972.66	14918.00
110646	Make: TEREX Model: TA 35 Ser #: A7761061					
HR OUT: 1788.00	HR IN: TOTAL: 1788.00					
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
109042	Make: INGER RAND Model: ECM590 Ser #: R11116EF					
HR OUT: 2647.80	HR IN: TOTAL: 2647.80					
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
110639	Make: INGER RAND Model: ECM590 Ser #: R11185CG					
HR OUT: 2377.00	HR IN: TOTAL: 2377.00					

CONTINUED

\*ENVIRONMENTAL CHARGE: The items indicated above are subject to an environmental charge which is designed to recover the company's direct and indirect costs for the recycling, managing and disposing of waste products, hazardous materials, and other environmental related items. This is not a government-regulated charge.

OPTIONAL RENTAL PROTECTION PLAN: THE RENTAL PROTECTION PLAN IS NOT INSURANCE. Upon acceptance of Optional Rental Protection Plan, the Customer agrees to pay a charge based on the rental items or equipment Customer wants covered by the Rental Protection Plan. In return, as set out on the back side, United agrees to waive certain claims for accidental damage to equipment occurring during normal and general use. Customer remains liable for all damages and losses not covered under the Rental Protection Plan provisions in the Terms and Conditions in back page, including customer's residence. Customer accepts.

READ BEFORE SIGNING: United hereby agrees to Customer the Equipment (as defined in the Terms and Conditions on the reverse side), and Customer hereby accepts all TERMS AND CONDITIONS listed in this rental agreement, including the Terms and Conditions set forth on the reverse side, which the undersigned has read and understood. REMINDERS: (1) Hand Signs: Not include in the rental. (2) All rental items or equipment covered by the optional rental protection plan are covered equipment. (3) Customer pays for all time the equipment is out, including weekends, Sundays and Holidays. (4) This rental agreement supersedes all prior purchase orders or terms and conditions contained in any of Customer's agreements or forms. (5) Customer assumes all risk and responsibility for all damages and losses not covered under the Rental Protection Plan provisions in the Terms and Conditions in back page, including customer's residence. Customer accepts.

CUSTOMER SIGNATURE:

DATE

NAME PRINTED

DELIVERED BY



23 LORING DRIVE  
HAPPY VALLEY-GOOSE B., NF A0  
709-897-7368

Job Site

Customer

HICKMAN EQUIP (1985) LTD.  
ST. JOHNS  
ST. JOHNS NF A1N  
C#: 709-368-9660 J#: 709-368-9660

HICKMAN EQUIP (1985) LTD. (M/P)  
P.O. BOX 300  
MOUNT PEARL, NF A1N 3C8

GST# 87583 9425

# 4 WEEK BILLING INVOICE

Page: 2  
\*\* COPY \*\*

Customer: 709-911  
Invoice #: 16428932-001  
Invoice date: 6/19/01  
Date out: 5/26/01 7:00 AM  
Billed thru: 6/25/01

Job Loc.: ST. JOHNS, ST. JOHNS  
Job No.: 1 - HICKMAN EQUIP (1  
P.O. #: BILL PARSONS  
Ordered by: BILL PARSONS  
Written by: CYCLET BILL  
Salesperson: 39  
Terms: NET 30 DAYS

PLEASE REMIT PAYMENT TO:  
UNITED RENTALS OF CANADA, INC.  
1269 TOPSAIL ROAD  
MOUNT PEARL, NF A1N 3C9

Qty	Equipment #	Min	Day	Week	4 Weeks	Amount
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
	110637 Make: INGER RAND Model: ECM590 Ser #: R11205EG	HR OUT: 1249.00 HR IN: TOTAL: 1249.00				
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
	203920 Make: INGER RAND Model: ECM590 Ser #: R11245EH	HR OUT: 829.00 HR IN: TOTAL: 829.00				
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
	203931 Make: INGER RAND Model: ECM590 Ser #: R11246EH	HR OUT: 829.00 HR IN: TOTAL: 829.00				
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
	203934 Make: INGER RAND Model: ECM590 Ser #: R11247EH	HR OUT: 459.00 HR IN: TOTAL: 459.00				
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
	109007 Make: INGER RAND Model: ECM590 Ser #: R11189CG	HR OUT: 1999.00 HR IN: TOTAL: 1999.00				
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
	110638 Make: INGER RAND Model: ECM590 Ser #: R11206EG	HR OUT: 1840.00 HR IN: TOTAL: 1840.00				
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
	110640 Make: INGER RAND Model: ECM590 Ser #: R11189CG	HR OUT: 1298.00 HR IN: TOTAL: 1298.00				
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
	203909 Make: INGER RAND Model: ECM590 Ser #: R11237DH	HR OUT: 1224.00 HR IN: TOTAL: 1224.00				
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
	206861 Make: INGER RAND Model: ECM590 Ser #: R11241EH	HR OUT: 692.00 HR IN: TOTAL: 692.00				
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
	203905 Make: INGER RAND Model: ECM590 Ser #: R11224AP	HR OUT: 834.00 HR IN: TOTAL: 834.00				
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
	205198 Make: INGER RAND Model: ECM590 Ser #: R11212GG	HR OUT: 989.00 HR IN: TOTAL: 989.00				
1	TRACK DRILL, HYDR 3.5"-4.5"*	988.16	988.16	3952.66	11858.00	11858.00
	108975 Make: INGER RAND Model: ECM590 Ser #: R11209FG	HR OUT: 1947.00 HR IN: TOTAL: 1947.00				
1	OFFICE TRAILER 40 FT	41.66	41.66	166.66	500.00	500.00
	145392 Make: FREUHAUF Model: DV-165 Ser #: 2H8V043705017315					
1	OFFICE TRAILER 40 FT	41.66	41.66	166.66	500.00	500.00
	145393 Make: FREUHAUF Model: AQ-2693 Ser #: 2T92079316A013198					
	RENTAL MONTH= 28 DAYS					

RATES ARE BASED ON UP TO MAX OF 300 HRS.

TERMS ARE NET 30 DAYS FROM INVOICE DATE.  
ALL MOVEMENTS, REPAIRS, AND MAINTENANCE  
ARE THE RESPONSIBILITY HICKMAN EQUIPMENT.

Sub-total: 360946.00

CONTINUED

**ENVIRONMENTAL CHARGE:** The terms indicated above are subject to an environmental charge of \$1.00 per hour for each hour the equipment is used to recover the company's direct and indirect expenses for the handling, storage and disposal of waste products, hazardous materials, and related administrative costs. This is not a government imposed charge.

**OPTIONAL RENTAL PROTECTION PLAN: THE RENTAL PROTECTION PLAN IS NOT INSURANCE.** Upon acceptance the Optional Rental Protection Plan, the Customer agrees to pay a charge equal to such covered equipment, occurring during normal and normal use. Customer remains liable for all damages and losses due to theft listed under the Rental Protection Plan provisions in the Terms and Conditions on back page, including Customer's negligence. **Customer Accepts:** **Customer Declines:**

**REAS FOR RENTING:** United rental leases to the Customer the equipment (as defined in the Terms and Conditions on the reverse side) of the equipment, for the purpose of Customer's normal use. **TERMS AND CONDITIONS:** (1) The rental agreement, including the terms and conditions set forth on the reverse side, which the United rental has read and understands. REMINDERS: (1) Rent does not include fuel or delivery. (2) United rental is responsible for all other purchase, rental, or terms and conditions contained in any of Customer's agreements, contracts, or documents, for all costs and expenses of all damages and losses, including fuel charges. Details of the above, as well as other obligations and responsibilities are contained in the **TERMS AND CONDITIONS** ON REVERSE. THE INDIVIDUAL SIGNING BELOW EQUIPMENT IN GOOD WORKING ORDER AND, (3) IS FULLY FAMILIAR WITH ITS OPERATION AND USE.

(2) ACKNOWLEDGES RECEIPT OF THE

(3) ON BEHALF OF CUSTOMER, (4) AGREES TO ALL OF THE TERMS AND CONDITIONS ON REVERSE SIDE OF THIS RENTAL AGREEMENT. (5) ACKNOWLEDGES RECEIPT OF THE

X

CUSTOMER SIGNATURE

DATE

NAME PRINTED

DELIVERED BY

DATE



**Carl Holm**

**From:** Janis Byrne [jbyrne@pennecon.com]  
**Sent:** February 25, 2003 10:02 AM  
**To:** Carl Holm  
**Subject:** RE: Hickman Equipment

Carl,

I have now spoken to Bob Noseworthy, who has reviewed the list of equipment previously forwarded by you ("the Equipment"), and the particular questions posed in your email. Bob has advised as follows:

At all times, RDN rented the equipment from Hickman Equipment (1985) Limited ("Hickman"). No formal Lease was entered into; Hickman sent invoices for the rental amounts, and RDN made payment to Hickman. All of the Equipment was used in Labrador. Hickman also had a site in Labrador, with its own trailers set up, so the Equipment was stored and secured by Hickman during the off season. RDN was not responsible for securing the Equipment in the off season.

All Equipment was returned to Hickman by Dec. 2, 2001; some pieces were returned before then. RDN has not used any of the Equipment since December 2001.

If you require a breakdown for each of the 27 pieces of equipment, that will require more time.

Kind Regards,  
Janis Byrne

-----Original Message-----

From: Carl Holm [mailto:cholm@merrickholm.com]  
Sent: Tuesday, February 18, 2003 5:46 PM  
To: Janice Byrne (E-mail)  
Cc: Jim Kirby (E-mail); Greg Gosse (E-mail)  
Subject: Hickman Equipment

No 2003 OIT 0352  
This is Exhibit B referred to in the  
affidavit of James Kirby  
sworn before me this 26th day of  
February 2003  
CJH  
A Barrister of the Supreme Court of  
Newfoundland and Labrador

Janice;

Thank you for taking time to speak to me this afternoon. I am going to fax you some schedules prepared by Greg Gosse of PWC the Receiver of Hickman in respect of a number of 450 Excavators, Terex TA 35 Trucks, and IR 590 Drills.

On the last page you will see serial #'s for an additional excavator and a number of additional drills.

All of the equipment listed had been sold by Hickman Equipment (HEL) to United Rentals, leased by UR back to HEL and then leased by HEL to end users such as RDN.

As you will appreciate there are a mass of HEL documents, the documents do not appear in all cases to be complete or accurate so you should not assume the completeness or accuracy of the info contained in the schedules.

I am attempting as best I can, to develop an accurate history for the 27 pieces of equipment you will see referred to in the lists to today's date.

Can you let me know what the lease and /or other arrangements were with RDN in respect of the various pieces it had. What changes were there if any in arrangements. Who did RDN consider it was leasing from. What happened to the equipment being leased in the off season. Who secured it for the winter and oversaw it during the winter, if anyone.

Has RDN had any of the equipment subsequent to December 2001, if yes who has it had the equipment from and on what terms.

I hope my queries aren't to confusing . As noted simply stated I am trying to get a history of each piece from the time RDN first had any dealings in respect of any of them up to the present date.

Thank you for your assistance.

With Best Regards

Carl Holm

I am as noted trying to get an understanding re possession under lease and otherwise

Carl A. Holm, Q.C.  
Merrick Holm  
902-482-7001

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> by e-mail to the sender. Thank you.

>  
>

Received 02/25/2003 12:32PM in 05:36 on line [1] for RECEPTION \* Pg 3/18  
 02/25/2003 14:03 FAX 7221428 PWC FAS

003/018

SENT BY: Xerox Telecopier 7021 : 5-6-98 : 9:39AM : CHALKER GREEN ROWE

709 368 0403;# 2  
 From HUBERT HUNT  
 APR. 19, 2002

No. 2002 OH 0352  
 This is Exhibit "C" referred to in the  
 affidavit of James Kirby  
 sworn before me this 20<sup>th</sup> day of  
 February, 2003

HUBERT W. HUNT

*Hubert W. Hunt*

### CONSULTING AGREEMENT

A Barrister of the Supreme Court of Newfoundland and Labrador

This Agreement between UNITED RENTALS OF CANADA, INC. ("United" or the "Company"), an Ontario corporation, and HUBERT W. HUNT ("Consultant") is hereby entered into and made effective on and as of February 1, 1999. It cancels and supersedes all prior agreements with respect to the subject matter hereof.

#### Recitals:

The Company and its affiliates (collectively, the "Company") proposes to engage in the business of acquiring, operating and financing companies which rent, operate, finance, maintain or otherwise deal in or with equipment or similar assets, and may in the future engage in other businesses which the Company deems to be related to the foregoing. All such businesses, including the "Hickman Rent-Alls" business which the Company purchased from Hickman Equipment (1986) Limited ("Hickman Equipment"), are collectively referred to herein as the "Business".

The Company acknowledges that the Consultant is an employee of Hickman Equipment.

Consultant is or will be retained by the Company in a confidential relationship wherein Consultant, in the course of his consultancy with the Company, will become familiar with and aware of information as to the specific manner of doing business and the potential acquisition candidates and customers of the Company and its affiliates and future plans with respect thereto, all of which will be established and maintained at great expense to the Company; this information is a trade secret and constitutes the valuable goodwill of the Company.

Consultant recognizes that the Company's business is dependent upon a number of trade secrets, including the identity of customers and potential acquisition candidates, the analysis of such candidates and financial data of the Company. The protection of these trade secrets is of critical importance to the Company.

The Company will sustain great loss and damage if during the periods hereinafter set forth after the termination of Consultant's consultancy, for whatever reason, Consultant should violate the provisions of this Agreement. Further, monetary damages for such losses would be extremely difficult to measure.

**NOW, THEREFORE,** in consideration of the mutual promises, terms, covenants and conditions set forth herein and the performance of each, it is hereby agreed as follows:

#### 1. Engagement

(a). This Agreement, unless earlier terminated, will terminate on January 31, 2001 and is renewable at both parties' option upon mutually agreeable terms. The Company may terminate this Agreement.

CHALKER GREEN ROWE CONSULTANTS

Received 02/25/2003 12:32PM in 05:36 on line [1] for RECEPTION \* Pg 4/18  
 02/25/2003 14:04 FAX 7221428 PWC FAS

004/018

SENT BY: Xerox Telecopier 7021 : 5-6-89 : 9:40AM : CHALKER GREEN ROWE→

709 368 0409;# 3

2

HUBERT W. HUNT

(i) in the event of a breach of this Agreement, upon written notice to the Consultant without payment of any further amounts to the Consultant, or

(ii) for any other reason, by giving 30 days written notice and the payment of the fee payable to the Consultant under section 2 for the balance of the term.

(b) The parties agree that this is not an employment agreement and that the Consultant is not an employee but an independent contractor who has contracted to provide services to the Company.

(c) During his consultancy, Consultant shall devote reasonable time (approximately 40 hours per week), attention and efforts to promote and further the business and services of the Company. It is understood that the Services (as defined below) are provided on a non-exclusive basis, subject to the non-compete provisions contained herein. Consultant agrees to advise Company of any other persons or companies for whom he provides services during the term of this Agreement.

(d) Consultant's duties and responsibilities will generally include advising on and assisting in the transition period following the acquisition of the "Hickman Rent-Alls" business as well as the marketing and development of the Company's Business and the services set forth in Schedule A (the "Services").

2. Fee, etc. The fee payable to Consultant shall be \$60,000 per annum payable monthly in arrears. The payment of the fee shall be subject to any statutory withholdings and other general obligations.

The Company shall reimburse Consultant for properly documented expenses which are incurred by Consultant on behalf of the Company in accordance with Company policies in effect from time to time, all in accordance with Company policies.

Consultant shall be entitled to a bonus based on an increase in budgeted EBITDA for the Business in the designated area, all in accordance with the policies of United as may be in effect from time to time.

Consultant understands and agrees that Consultant shall be responsible for all taxes, applicable insurance, including medical, worker's compensation and liability.

3. Confidentiality.

During and at all times after Consultant's consultancy the Consultant shall keep secret and retain in strictest confidence, and shall not use for the benefit of himself or others, all data and information relating to the Business ("Confidential Information"), including without limitation, know-how, trade secrets, customer lists, supplier lists, details of contracts, pricing policies, operational methods, marketing plans or strategies, bidding information, practices, policies or procedures, product development techniques or plans, and technical processes; provided,

CONFIDENTIAL - ATTORNEY-CLIENT

Received 02/25/2003 12:32PM in 05:36 on line [1] for RECEPTION \* Pg 5/18  
 02/25/2003 14:04 FAX 7221428 PWC FAS

005/018

SENT BY: Xerox Telecopier 7021 : 6-6-98 : 8:40AM : CHALKER GREEN ROWE

709 388 0403: # 4

3

HUBERT W. HUNT

however, that the term "Confidential Information" shall not include information that (i) is or becomes generally available to the public other than as a result of disclosure by the Consultant, or (ii) is general knowledge in the equipment rental, sales or leasing business and not specifically related to the Business.

4. Non-Compete Provisions.

- (a) The Consultant acknowledges that: (i) United is and will be engaged in the Business; (ii) the Consultant is intimately familiar with the Business; (iii) the Business is currently conducted principally in the Province of Newfoundland (the "Territory") and United intends to continue the Business in the Territory and, by acquisition or otherwise, intends to expand the Business into other geographic areas within the Territory where it is not presently conducted; (iv) the Consultant has access to trade secrets of, and confidential information concerning, the Business; (v) the agreements and covenants contained herein are essential to protect the Business and the goodwill of the Company; and (vi) the Consultant has the means to support himself other than by engaging in a business or providing services to a business substantially similar to the Business and the provisions of this section will not impair such ability.
- (b) During the term of this Agreement and for a period of 24 months from the date hereof (the "Restricted Period"), the Consultant shall not anywhere in the Territory, directly or indirectly, acting individually or as the owner, shareholder, partner, or employee of any entity, (i) engage in the operation of any equipment rental, sales, leasing or product distribution business similar to and/or related to and/or competitive with the Business; (ii) enter the employ of, or render any personal services to or for the benefit of, or assist in or facilitate the solicitation of customers for, or receive remuneration in the form of salary, commissions or otherwise from, any business engaged in such activities; or (iii) receive or purchase a financial interest in, make a loan to, or make a gift in support of, any such business in any capacity, including, without limitation, as a sole proprietor, partner, shareholder, officer, director, principal, agent, trustee or lender; provided, however, that the Consultant may own, directly or indirectly, solely as an investment, securities of any business traded on any securities exchange, provided the Consultant is not a controlling person of, or a member of a group which controls, such business and further provided that the Consultant does not, in the aggregate, directly or indirectly, own 2% or more of any class of securities of such business. Notwithstanding the foregoing, United acknowledges that the Consultant will continue to be employed by Hickman which is engaged in the sale, lease, rental and service of heavy construction, forestry, mining and rock drilling equipment and party and special events goods, which activities will not be in breach of this section.
- (c) All time periods in this Agreement shall be computed by excluding from such computation any time during which Consultant is in violation of any provision of this Agreement and any time during which there is pending in any court of competent jurisdiction any action (including any appeal from any final judgment) brought by any person, whether or not a party to this Agreement, in which action the Company

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seeks to enforce the agreements and covenants in this Agreement or in which any person contests the validity of such agreements and covenants or their enforceability or seeks to avoid their performance or enforcement; for greater certainty, if such action is unsuccessful as against the Consultant, such time shall not be excluded from the computation of time periods within this Agreement.

- (d). Consultant understands that the provisions of this Agreement have been carefully designed to restrict his activities to the minimum extent which is consistent with law and the Company's requirements. Consultant has carefully considered these restrictions and Consultant confirms that they will not unduly restrict Consultant's ability to obtain a livelihood. Consultant has heretofore engaged in businesses other than the Business. Before signing this Agreement, Consultant has had the opportunity to discuss this Agreement and all of its terms with his attorney.
- (e). Since monetary damages will be inadequate and the Company will be irreparably damaged if the provisions of this Agreement are not specifically enforced, the Company shall be entitled, among other remedies to:
  - (i) an injunction restraining any violation of this Agreement (without any bond or other security being required) by Consultant and by any person or entity to whom Consultant provides or proposes to provide any services in violation of this Agreement, and
  - (ii) require Consultant to hold in a constructive trust, account for and pay over to the Company all compensation and other benefits which Consultant shall derive as a result of any action or omission which is a violation of any provision of this Agreement.
- (f). If any provision contained in this Agreement is determined to be void, illegal or unenforceable, in whole or in part, then the other provisions contained herein shall remain in full force and effect as if the provision which was determined to be void, illegal or unenforceable had not been contained herein.
- 5. Return of Company Property. All products, records, designs, patents, plans, manuals, "field guides", memoranda, lists and other property which pertain to the Business and delivered to Consultant by or on behalf of the Company or by its customers (including, but not limited to, customers obtained for the Company by Consultant), and all records compiled by the Consultant which pertain to the Business (whether or not confidential) shall be and remain the property of the Company and be subject at all times to its discretion and control. Likewise, all correspondence with customers or representatives, reports, records, charts, advertising materials, and any data which pertain to the Business and collected by Consultant, or by or on behalf of the Company or its representatives (whether or not confidential) shall be delivered promptly to the Company without request by it upon termination of Consultant's consultancy.

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6. **Inventions.** Consultant shall disclose promptly to the Company any and all conceptions and ideas for inventions, improvements and valuable discoveries, whether patentable or not, which are conceived or made by Consultant solely or jointly with another during the period of consultancy or within one (1) year thereafter and which are related to the business or activities of the Company or which Consultant conceives as a result of his consultancy by the Company, and Consultant hereby assigns and agrees to assign all of his interests therein to the Company or its nominee. Whenever requested to do so by the Company, Consultant shall execute any and all applications, assignments or other instruments that the Company shall deem necessary to apply for and obtain Letters Patent of the United States, Canada or any foreign country or to otherwise protect the Company's interest therein. These obligations shall continue beyond the termination of consultancy with respect to inventions, improvements and valuable discoveries, whether patentable or not, conceived, made or acquired by Consultant during the period of consultancy or within one (1) year thereafter, and shall be binding upon Consultant's assigns, executors, administrators and other legal representatives.

7. **Cooperation In Proceedings.** During and after the termination of Consultant's consultancy, Consultant will for reasonable compensation consistent with his compensation from the Company cooperate fully and at reasonable times with the Company and its subsidiaries in all litigations and regulatory proceedings on which the Company or any subsidiary seeks Consultant's assistance and as to which Consultant has any knowledge or involvement. Without limiting the generality of the foregoing, Consultant will be available to testify at such litigations and other proceedings, and will cooperate with counsel to the Company in preparing materials and offering advice in such litigations and other proceedings. Except as required by law and then only upon reasonable prior written notice to the Company, Consultant will not in any way cooperate or assist any person or entity in any matter which is adverse to the Company or to any person who was at any time an officer or director of the Company.

8. **No Disparagement.** The Consultant shall not, in any way or to any person or entity or governmental or regulatory body or agency, denigrate or derogate the Company or any of its subsidiaries, or any officer, director or employee, or any product or service or procedure of any such company whether or not such statements shall be true and are based on acts or omissions which are learned by the Consultant from and after the date hereof or on acts or omissions which occur from and after the date hereof, or otherwise. A statement shall be deemed denigrating or derogatory to any person or entity if it adversely affects the regard or esteem in which such person or entity is held by investors, lenders or licensing, rating, or regulatory entities. Without limiting the generality of the foregoing, the Consultant shall not, directly or indirectly in any way in respect of any such company or any such directors or officers, communicate with, or take any action which is adverse to the position of any such company (except in conjunction with enforcing his rights hereunder) with any person, entity or governmental or regulatory body or agency who or which has dealings or prospective dealings with any such company or jurisdiction or prospective jurisdiction over any such company. This paragraph does not apply to the extent that testimony is required by legal process, provided that the Company has received not less than five days prior written notice of such proposed testimony.

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HUBERT W. HUNT

## 9. Miscellaneous.

- (a). **Complete Agreement.** There are no oral representations, understandings or agreements with the Company or any of its officers, directors or representative covering the same subject matter as this Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between the Company and Consultant and of all the terms of this Agreement, it cancels and supersedes all prior agreements with respect to the subject matter hereof, and it cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous oral or written agreements. This written Agreement may not be later modified except by a further writing signed by the Company and Consultant, and no term of this Agreement may be waived except by writing signed by the party waiving the benefit of such terms.
- (b). **No Waiver.** No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term condition or covenant contained herein.
- (c). **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties thereto and their respective heirs, successors and assigns. Notwithstanding the foregoing, the Company may assign this Agreement only to a person or entity who or which directly or indirectly succeeds to all or any substantial part of the Company's assets or business.
- (d). **Notice.** Whenever any notice is required hereunder, it shall be given in writing addressed as follows:

To the Company:      United Rentals (North America), Inc.  
 Four Greenwich Office Park  
 Greenwich, Connecticut 06830  
 Attention: Bradley S. Jacobs, Chief Executive Officer  
 Sandra E. Walwood, Vice President and  
 Corporate Controller

Consultant:      Hubert W. Hunt  
 88 Belieview Cr.  
 St. John's, Newfoundland  
 A1E 5T7

Notice shall be deemed given and effective (a) five business days after the deposit in the U.S. or Canadian mail of a writing addressed as above and sent first class mail, certified, return receipt requested; (b) one (1) business day after delivered to a nationally recognized air courier for next day delivery service, or (c) upon personal delivery. Either party may change the address for notice by notifying the other party of such change in accordance with this paragraph.

- (e). **Severability; Headings.** If any portion of this agreement is held invalid or inoperative, the other portions of this agreement shall be deemed valid and operative, and so far as it is reasonable and possible, effect shall be given to the

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**HUBERT W. HUNT**

Intent manifested by the portion held invalid or inoperative. The paragraph headings herein are for reference purposes only and not intended in any way to describe, interpret, define or limit the extent or intent of this Agreement or any part hereof.

(f) Governing Law, Resolution of Disputes, Service of Process. This Agreement shall in all respects be construed according to the laws of the Province of Newfoundland and the laws of Canada applicable thereto.

[execution page follows]

ENVIRONMENTAL CONSULTANT

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## SCHEDULE A

## The Services

responsibility for: profit and loss of all branches within the designated area, all personnel and development and management of budget for the designated area.

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This is Exhibit "D" referred to in the affidavit of James Kirby sworn before me this 26th day of February 2003.

WILLIAM E. PARSONS

WILLIAM E. PARSONS  
A Barrister of the Supreme Court of Newfoundland and Labrador

## CONSULTING AGREEMENT

This Agreement between UNITED RENTALS OF CANADA, INC. ("United" or the "Company"), an Ontario corporation, and WILLIAM E. PARSONS ("Consultant") is hereby entered into and made effective on 1 February 1, 1999. It cancels and supersedes all prior agreements with respect to the subject matter hereof.

## Recitals:

The Company and its affiliates (collectively, the "Company") proposes to engage in the business of acquiring, operating and financing companies which rent, operate, finance, maintain or otherwise deal in or with equipment or similar assets, and may in the future engage in other businesses which the Company deems to be related to the foregoing. All such businesses, including the "Hickman Rent-Alls" business which the Company purchased from Hickman Equipment (1985) Limited ("Hickman Equipment"), are collectively referred to herein as the "Business".

The Company acknowledges that the Consultant is an employee of Hickman Equipment.

Consultant is or will be retained by the Company in a confidential relationship wherein Consultant, in the course of his consultancy with the Company, will become familiar with and aware of information as to the specific manner of doing business and the potential acquisition candidates and customers of the Company and its affiliates and future plans with respect thereto, all of which will be established and maintained at great expense to the Company; this information is a trade secret and constitutes the valuable goodwill of the Company.

Consultant recognizes that the Company's business is dependent upon a number of trade secrets, including the list of customers and potential acquisition candidates, the analysis of such candidates and financial data of the Company. The protection of these trade secrets is of critical importance to the Company.

The Company will sustain great loss and damage if during the periods hereinafter set forth after the termination of Consultant's consultancy, for whatever reason, Consultant should violate the provisions of this Agreement. Further, monetary damages for such losses would be extremely difficult to measure.

NOW, THEREFORE, in consideration of the mutual promises, terms, covenants and conditions set forth herein and the performance of each, it is hereby agreed as follows:

## 1. Engagement

(a) This Agreement, unless earlier terminated, will terminate on January 31, 2001 and is renewable at both parties' option upon mutually agreeable terms. The Company may terminate this Agreement

CONFIDENTIAL AND ATTORNEY-CLIENT

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## WILLIAM E. PARSONS

- (i) in the event of a breach of this Agreement, upon written notice to the Consultant without payment of any further amounts to the Consultant; or
- (ii) for any other reason, by giving 30 days written notice and the payment of the fee payable to the Consultant under section 2 for the balance of the term.
- (b). The parties agree that this is not an employment agreement and that the Consultant is not an employee but an independent contractor who has contracted to provide services to the Company.
- (c). During his consultancy, Consultant shall devote reasonable time (approximately 40 hours per week), attention and efforts to promote and further the business and services of the Company. It is understood that the Services (as defined below) are provided on a non-exclusive basis, subject to the non-compete provisions contained herein. Consultant agrees to advise Company of any other persons or companies for whom he provides services during the term of this Agreement.
- (d). Consultant's duties and responsibilities will generally include advising on and assisting in the transition period following the acquisition of the "Hickman Rent-Alls" business as well as the marketing and development of the Company's Business and the services set forth in Schedule A (the "Services").

2. ~~Fee~~ <sup>Fee</sup> The fee payable to Consultant shall be \$25,000 per annum payable monthly in arrears. The payment of the fee shall be subject to any statutory withholdings and other general obligations.

The Company shall reimburse Consultant for properly documented expenses which are incurred by Consultant on behalf of the Company in accordance with Company policies in effect from time to time, all in accordance with Company policies.

Consultant shall be entitled to a bonus based on the increase in sales and rental revenue in the designated area, all in accordance with the policies of United as may be in effect from time to time.

Consultant understands and agrees that Consultant shall be responsible for all taxes, applicable insurance, including medical, worker's compensation and liability.

3. Confidentiality

During and at all times after Consultant's consultancy the Consultant shall keep secret and retain in strictest confidence, and shall not use for the benefit of himself or others, all data and information relating to the Business ("Confidential Information"), including without limitation, know-how, trade secrets, customer lists, supplier lists, details of contracts, pricing policies, operational methods, marketing plans or strategies, bidding information, practices, policies or procedures, product development techniques or plans, and technical processes; provided,

on upon written notice to Consultant.

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however, that the term "Confidential Information" shall not include information that (i) is or becomes generally available to the public other than as a result of disclosure by the Consultant, or (ii) is general knowledge in the equipment rental, sales or leasing business and not specifically related to the Business.

#### 4. Non-Compete Provisions.

- (a). The Consultant acknowledges that (i) United is and will be engaged in the Business; (ii) the Consultant is intimately familiar with the Business; (iii) the Business is currently conducted principally in the Province of Newfoundland (the "Territory") and United intends to continue the Business in the Territory and, by acquisition or otherwise, intends to expand the Business into other geographic areas within the Territory where it is not presently conducted; (iv) the Consultant has access to trade secrets of, and confidential information concerning, the Business; (v) the agreements and covenants contained herein are essential to protect the Business and the goodwill of the Company; and (vi) the Consultant has the means to support himself other than by engaging in a business or providing services to a business substantially similar to the Business and the provisions of this section will not impair such ability.
- (b). During the term of this Agreement and for a period of 24 months from the date hereof (the "Restricted Period"), the Consultant shall not anywhere in the Territory, directly or indirectly, acting individually or as the owner, shareholder, partner, or employee of any entity, (i) engage in the operation of any equipment rental, sales, leasing or product distribution business similar to and/or related to and/or competitive with the Business; (ii) enter the employ of, or render any personal services to or for the benefit of, or assist in or facilitate the solicitation of customers for, or receive remuneration in the form of salary, commissions or otherwise from, any business engaged in such activities; or (iii) receive or purchase a financial interest in, make a loan to, or make a gift in support of, any such business in any capacity, including, without limitation, as a sole proprietor, partner, shareholder, officer, director, principal, agent, trustee or lender; provided, however, that the Consultant may own, directly or indirectly, solely as an investment, securities of any business traded on any securities exchange, provided the Consultant is not a controlling person of, or a member of a group which controls, such business and further provided that the Consultant does not, in the aggregate, directly or indirectly, own 2% or more of any class of securities of such business. Notwithstanding the foregoing, United acknowledges that the Consultant will continue to be employed by Hickman which is engaged in the sale, lease, rental and service of heavy construction, forestry, mining and rock drilling equipment and party and special events goods, which activities will not be in breach of this section.
- (c). All time periods in this Agreement shall be computed by excluding from such computation any time during which Consultant is in violation of any provision of this Agreement and any time during which there is pending in any court of competent jurisdiction any action (including any appeal from any final judgment) brought by any person, whether or not a party to this Agreement, in which action the Company

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seeks to enforce the agreements and covenants in this Agreement or in which any person contests the validity of such agreements; and covenants or their enforceability or seeks to avoid their performance or enforcement; for greater certainty, if such action is unsuccessful as against the Consultant, such time shall not be excluded from the computation of time periods within this Agreement.

- (d). Consultant understands that the provisions of this Agreement have been carefully designed to restrict his activities to the minimum extent which is consistent with law and the Company's requirements. Consultant has carefully considered these restrictions and Consultant confirms that they will not unduly restrict Consultant's ability to obtain a livelihood. Consultant has heretofore engaged in businesses other than the Business. Before signing this Agreement, Consultant has had the opportunity to discuss this Agreement and all of its terms with his attorney.
- (e). Since monetary damages will be inadequate and the Company will be irreparably damaged if the provisions of this Agreement are not specifically enforced, the Company shall be entitled, among other remedies to:
  - (i) an injunction restraining any violation of this Agreement (without any bond or other security being required) by Consultant and by any person or entity to whom Consultant provides or proposes to provide any services in violation of this Agreement, and
  - (ii) require Consultant to hold in a constructive trust, account for and pay over to the Company all compensation and other benefits which Consultant shall derive as a result of any action or omission which is a violation of any provision of this Agreement.
- (f). If any provision contained in this Agreement is determined to be void, illegal or unenforceable, in whole or in part, then the other provisions contained herein shall remain in full force and effect as if the provision which was determined to be void, illegal or unenforceable had not been contained herein.

5. **Return of Company Property.** All products, records, designs, patents, plans, manuals, "field guides", memoranda, lists and other property which pertain to the Business and delivered to Consultant by or on behalf of the Company or by its customers (including, but not limited to, customers obtained for the Company by Consultant), and all records compiled by the Consultant which pertain to the Business (whether or not confidential) shall be and remain the property of the Company and be subject at all times to its discretion and control. Likewise, all correspondence with customers or representatives, reports, records, charts, advertising materials, and any data which pertain to the Business and collected by Consultant, or by or on behalf of the Company or its representatives (whether or not confidential) shall be delivered promptly to the Company without request by it upon termination of Consultant's consultancy.

6. **Inventions.** Consultant shall disclose promptly to the Company any and all conceptions and ideas for inventions, improvements and valuable discoveries, whether patentable or not, which are conceived or made by Consultant solely or jointly with another during the period

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## WILLIAM E. PARSONS

of consultancy or within one (1) year thereafter and which are related to the business or activities of the Company or which Consultant conceives as a result of his consultancy by the Company, and Consultant hereby assigns and agrees to assign all of his interests therein to the Company or its nominee. Whenever requested to do so by the Company, Consultant shall execute any and all applications, assignments or other instruments that the Company shall deem necessary to apply for and obtain Letters Patent of the United States, Canada or any foreign country or to otherwise protect the Company's interest therein. These obligations shall continue beyond the termination of consultancy with respect to inventions, improvements and valuable discoveries, whether patentable or not, conceived, made or acquired by Consultant during the period of consultancy or within one (1) year thereafter, and shall be binding upon Consultant's assigns, executors, administrators and other legal representatives.

7. **Cooperation in Proceedings.** During and after the termination of Consultant's consultancy, Consultant will for reasonable compensation consistent with his compensation from the Company cooperate fully and at reasonable times with the Company and its subsidiaries in all litigations and regulatory proceedings on which the Company or any subsidiary seeks Consultant's assistance and as to which Consultant has any knowledge or involvement. Without limiting the generality of the foregoing, Consultant will be available to testify at such litigations and other proceedings, and will cooperate with counsel to the Company in preparing materials and offering advice in such litigations and other proceedings. Except as required by law and then only upon reasonable prior written notice to the Company, Consultant will not in any way cooperate or assist any person or entity in any matter which is adverse to the Company or to any person who was at any time an officer or director of the Company.

8. **No Disparagement.** The Consultant shall not, in any way or to any person or entity or governmental or regulatory body or agency, disparage or derogate the Company or any of its subsidiaries, or any officer, director or employee, or any product or service or procedure of any such company whether or not such statements shall be true and are based on acts or omissions which are learned by the Consultant from and after the date hereof or on acts or omissions which occur from and after the date hereof, or otherwise. A statement shall be deemed disparaging or derogatory to any person or entity if it adversely affects the regard or esteem in which such person or entity is held by investors, lenders or licensing, rating, or regulatory entities. Without limiting the generality of the foregoing, the Consultant shall not, directly or indirectly in any way in respect of any such company or any such directors or officers, communicate with, or take any action which is adverse to the position of any such company (except in conjunction with enforcing his rights hereunder) with any person, entity or governmental or regulatory body or agency who or which has dealings or prospective dealings with any such company or jurisdiction or prospective jurisdiction over any such company. This paragraph does not apply to the extent that testimony is required by legal process, provided that the Company has received not less than five days prior written notice of such proposed testimony.

9. **Miscellaneous.**

(a). **Complete Agreement.** There are no oral representations, understandings or agreements with the Company or any of its officers, directors or representative

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## WILLIAM E. PARSONS

covering the same subject matter as this Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between the Company and Consultant and of all the terms of this Agreement, it cancels and supersedes all prior agreements with respect to the subject matter hereof, and it cannot be varied, contradicted or supplemented by evidence of any prior, or contemporaneous oral or written agreements. This written Agreement may not be later modified except by a further writing signed by the Company and Consultant, and no term of this Agreement may be waived except by writing signed by the party waiving the benefit of such terms.

- (b). **No Waiver.** No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term condition or covenant contained herein.
- (c). **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties thereto and their respective heirs, successors and assigns. Notwithstanding the foregoing, the Company may assign this Agreement only to a person or entity who or which directly or indirectly succeeds to all or any substantial part of the Company's assets or business.
- (d). **Notice.** Whenever any notice is required hereunder, it shall be given in writing addressed as follows:

• **Company:** United Rentals (North America), Inc.  
Four Greenwich Office Park  
Greenwich, Connecticut 06830  
Attention: Bradley S. Jacobs, Chief Executive Officer  
Sandra E. Wallwood, Vice President and  
Corporate Controller

**Consultant:** William E. Parsons  
P.O. Box 373  
Paradise, Newfoundland  
A1L 1E3

Notice shall be deemed given and effective (a) five business days after the deposit in the U.S. or Canadian mail of a writing addressed as above and sent first class mail, certified, return receipt requested, (b) one (1) business day after delivered to a nationally recognized air courier for next day delivery service, or (c) upon personal delivery. Either party may change the address for notice by notifying the other party of such change in accordance with this paragraph.

- (e). **Severability; Headings.** If any portion of this agreement is held invalid or inoperative, the other portions of this agreement shall be deemed valid and enforceable, and so far as it is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The paragraph headings herein are for reference purposes only and not intended in any way to describe, interpret, define or limit the extent or intent of this Agreement or any part hereof.

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## WILLIAM E. PARSONS

(f). Settling Laws Resolution of Disputes: Service of Process. This Agreement shall in all respects be construed according to the laws of the Province of Newfoundland and the laws of Canada applicable thereto.

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## SCHEDULE A

## The Services

responsibility for co-ordination and management of the sales force including in-house sales and outside sales in the designated area.

ENCLOSURE FROM LANDIN CONSULTANT

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# THE HICKMAN

## GROUP OF COMPANIES

- Hickman Holdings Limited
- Group Holdings Limited
- Hickman Motors Limited
- Hickman Building Centres
- Hickman Equipment (1985) Limited
- Hickman Saturn SAAB Leases
- Prox. Fire and Industrial Limited
- Budget Rent-A-Car
- Hickman Rent-Alls Limited
- Celebration Rent-Alls
- Hickman Leasing Limited
- BodyWorks Limited
- Canada Water Treatment Limited
- Newfoundland Water Treatment Limited

March 3, 1999

On behalf of the Shareholders and the Board of Directors of Hickman Equipment (1985) Limited I am pleased to announce the following appointments:

**Bill Parsons** **Vice President of Operations and Sales**

**John King** **Regional Sales Manager - St. John's**

**Roy Greening** **Regional Sales Manager - Central and Western**

I am sure that I speak for all of you in offering them our congratulations and know that we wish them well in their new positions and that they will have our full cooperation and support.

  
 Howard J. Hickman  
 President

No. 2002 017 0352

This is Exhibit "E" referred to in the  
 affidavit of James Kirby  
 sworn before me this 20th day of  
February, 2003.

  
 A Barrister of the Supreme Court of  
 Newfoundland and Labrador

P.O. Box 6340, Station "A", St. John's, Newfoundland Canada A1B 3N7  
 Telephone (709) 726-6990 Fax (709) 726-4003

02/25/2003 Received 02/25/2003 12:32PM in 05:36 on line [1] for RECEPTION \* Pg. 12/18  
 14:06 FAX 7221428 PWC FAS

012/018

RECEIVED: 4/20/02 11:46; ->HUBERT HUNT HOMES; #240; PAGE 3  
 APR. 20. 2002 9:54AM ONTRAC NFLD

NO. 298 P.3

Bill Parsons  
 Vice President Operations and Sales.

To be responsible for the day to day operations of the Company and in particular but not necessarily limited to the following functions:

Human resources management and ensuring that morale is high and that we are considered to be an excellent employer.

Management of the Company's asset base and the generation of a satisfactory return on assets employed.

To recommend appropriate expense strategies based upon changing business conditions.

Effective management of the Company's accounts receivable function to ensure that we are obtaining our objective of days outstanding and that appropriate credit policies and procedures are in place.

To be responsible for ensuring that the Company's product support strategic plan generates the required absorption and product support coverage ratios to recession proof the business.

Perform equipment sales market research; develop and implement sales and marketing plans.

Acquire and understand customer requirements and needs; identify and solve customer problems.

Develop, manage and maintain customer expectations.

To ensure that the Company achieves an equipment sales gross margin as agreed upon in the Company's annual strategic plan.

The effective management of the Used Equipment remarketing department to ensure that used equipment becomes a profit centre and that the Company's used inventory is kept within the guidelines of the Company's strategic plan.

To ensure that the Company achieves the market share as outlined in the Company's strategic plan.

The following people report to the Vice President Operations and Sales:

John King	Bob Ruby	Roy Greening
Edward Head	Ron Scott	Paul Connors
Noel Murphy	Harold Whiffen	Ann Williams

Received 02/25/2003 12:32PM in 05:36 on line [1] for RECEPTION \* Pg 17/18  
02/25/2003 14:07 FAX 7221428 PWC FAS

017/018

# Hickman Equipment (1985) Limited

Hickman Equipment (1985)  
Limited  
P O Box #20  
1258 Topsail Road  
Mount Pearl, NF A1N 9C8

Phone: 709-386-9880  
Fax: 709-386-1140

## Memorandum

*To: All Managers*  
*From: Hubert Hunt*  
*Date: July/8/99*  
*Subject: Vice President Operations*

As you are all aware on March 3/99 Bill Parsons was appointed as Vice President of Operations and Sales. At the same Roy Greening and John King were appointed as Regional Sales Managers. Since March 3 we have been extremely busy with significant transition issues respecting the sale of Hickman Rent Alls to United. Because of this the lines have become blurred as to Bill's responsibilities and mine.

Please be advised that effective immediately all of the General Management activities previously being performed by myself is now Bill's responsibility. It is now extremely important that all department and Branch managers work with Bill on all issues previously handled by myself.

I will now be concentrating my efforts on the development of the Company's long term strategic planning and new growth opportunities as well as acting as a consultant to United Rentals. Bill has full responsibility for the day to day management of the Company, achieving projected financial objectives and is accountable to the shareholders of the Company.

Received 02/25/2003 12:32PM in 05:36 on line [1] for RECEPTION \* Pg 16/18  
02/25/2003 14:07 FAX 7221428 PWC FAS

016/018

FW: Management Appointments



From: John King  
To: Hubert Hunt  
Cc:  
Subject: FW: Management Appointments  
Sent: 4/19/02 8:52 AM

Importance: Normal

—Original Message—

From: Howard Hickman  
Sent: Wednesday, July 11, 2001 12:38 PM  
To: ALL LOCATIONS  
Cc: Albert Hickman (E-mail); Matthew Hickman  
Subject: Management Appointments

Effective immediately I am pleased to announce the following management appointments:

HUBERT HUNT	EXECUTIVE VICE PRESIDENT
BILL PARSONS	VICE PRESIDENT & GENERAL MANAGER
JOHN KING	ASSISTANT GENERAL MANAGER
EDWARD HEAD	INSIDE SALES MANAGER

I am sure we wish them all the best in their new positions as we go forward to meet the challenges ahead

Howard J. Hickman  
Hickman Equipment  
Mt Pearl, NF  
e-mail hhickman@hickmanequipment.com

.../read.asp?command=open&obj=0000000065CC99E0CED5D31198F60090274F06EC07004574/17/02

**DETAILED INFORMATION  
ASSEMBLED BY COUNSEL  
TO PRICEWATERHOUSECOOPERS INC. ("PWC")**

John Deere 450LC Excavators

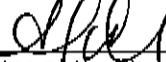
1. The following is the information as determined by PWC to date in respect of the Excavators:

(a) JD Model 450LC, Serial #FF0450X090166

(i) Purchased By:  
From:

(ii) Sold by: HEL  
To: ABN AMRO  
HEL Invoice #000280  
Purchase Order #496882  
08/09/1999  
\$466,000

(NOTE: copy of invoice provided by ABN)

\_\_\_\_\_  
No. 200301T0352  
This is Exhibit "E" referred to in the  
affidavit of James Kirby  
sworn before me this 17th day of  
February, 2003  
  
\_\_\_\_\_  
A Barrister of the Supreme Court of  
Newfoundland and Labrador

(iii) Leased by: Hickman Rent-Alls (United Rentals)

To: HEL  
at Job Site Coastal, Cartwright, NL

Contract #4009356  
Contract Date: 7/22/99  
Date Out: 7/19/99

@ \$19,500 for 4 week periods

(NOTE: 1. Series of Rental Invoices up to 11/17/99

2. Copies of Rental Out Contracts provided by United Rentals)

(iv) Leased by: Hickman Rent-Alls (United Rentals)

To: HEL  
at Job Site Coastal, Cartwright, NL

Invoice #10385166-001  
Invoice Date: 6/15/00

Date Out: 5/26/00

@ \$19,500 for 4 week periods

(Note: 1. Series of Rental Invoices up to 11/10/00

2. Copies of Rental Out Contracts provided by United Rentals)

(v) Leased by: United Rentals

To: HEL  
at - not identified  
Invoice #18428932-001  
Invoice Date: 6/19/01

Date Out: 5/28/01

(Invoice is for all 29 Units)

(Note: 1. Series of Rental Invoices up to December 2001  
2. Copies of Rental Out Contracts & Invoices provided by United Rentals

(vi) Other Documents and Information

Schedules Entitled Labrador Rents for months August, September, October, November, December 2001 show 3 Excavators rented @ \$10,500 per month to mid November.

(b) John Deere 450 LC, Serial #FF0450X090410

(i) Purchased by:

From:

When:

(ii) Sold by: HEL

To: Hickman Leasing Limited

HEL Invoice #R11105 - 06/28/99 - \$435,834.88

(Note: 1 of 3 450's invoiced to HLL, copy of invoice from HEL files)

(iii) Sold by: HEL

To: ABN AMRO

HEL Invoice #000263

Purchase Order 496886 - 08/09/1999 - \$466,000

(Note: copy of Invoices provided by ABN)

(iv) Leased by: Hickman Rent-Alls (United Rentals)

To: HEL

At: Job Site - St. John's

Contract #4009225

Contract Date: 7/22/99

Date Out: 7/19/99

@ \$19,500 for 4 week periods

(Note: 1. Series of Rental Invoices up to 11/25/99

2. Copies of Rental Out Contracts & Invoices provided by United Rentals)

(v) Leased by: Hickman Rent-Alls (United Rentals)

To: HEL

at Job Site - Coastal Cartwright, NL

Invoice #10385081-001

Invoice Date: 6/15/00

Date Out: 5/26/00

(Note: Series of Invoices through November 24, 2000)

(vi) Leased by: United Rentals  
To: HEL  
at Job Site - Coastal Cartwright, NL  
Invoice #10385081-001  
Invoice Date: 6/15/00  
Date Out: 5/26/00  
(Note: Series of Invoices through November 24, 2000)

(vii) Other Documentary Information:

Registered Owner at NL Registry of Motor Vehicles is HEL  
Purchase Order issued by: HEL to United Rentals  
June 2000 for rental of John Deere 450LC  
Serial #FF0450X090410

Lease Agreement between  
HEL as Lessor, and RDM Construction as Lessee - May 24, 2000 -  
of John Deere 450 LC  
Serial #FF0450X090410 @ \$10,500 per month  
Term begins May 24, 2000 - no end date

Schedules Entitled Labrador Rents for Months August, September,  
October, November, December 2001 showing 3 Excavators rented @  
\$10,500 per month through mid November.

(c) John Deere 450 LC - Serial #FF0450X09411

(i) Purchased by: HEL  
From: John Deere Limited  
Unknown

(ii) Sold by: HEL  
To: ABN AMRO  
HEL Invoice #000264  
Purchase Order #496895 - 08/09/1999 - \$466,000  
(Note: Copies of Invoice provided by ABN)

(iii) Leased by: Hickman Rentals (United Rentals)  
To: HEL  
at St. John's  
Contract #4009133  
Contract Date: 7/22/99  
Date Out: 7/19/99 @ \$19,500 for 4 week periods

Note: 1. Series of Rental Invoices through 11/17/99  
2. Copies of Rental Out Contract and Invoices

(iv) Leased by: Hickman Rentals (United Rentals)  
 To: HEL  
 at Coastal Cartwright  
 Invoice #10384981-001  
 Invoice Date: 6/15/00  
 Date Out: 5/26/00 @ \$19,500 for 4 weeks  
 Note: 1. Service of Invoices through 11/24/00  
 2. Copies of Invoices provided by United Rentals

(v) Leased by: Hickman Rent-Alls (United Rentals)  
 To: HEL  
 at Coastal Cartwright  
 Invoice #10384981-001  
 Invoice Date: 6/15/00  
 Date Out: 5/26/00 @ \$19,500 per 4 weeks  
 Note: 1. Service of Invoices through 11/24/00  
 2. Copies of Invoices provided by United Rentals

(vi) Leased by: United Rentals  
 To: HEL  
 at Coastal Cartwright  
 Invoice #10384981-001  
 Invoice Date: 6/15/00  
 Date Out: 5/26/00 @ \$19,500 per 4 weeks  
 Note: 1. Service of Invoices through 11/24/00  
 2. Copies of Invoices provided by United Rentals

(vii) Other Documentary Information

Registered Owner at NL Registry of Motor Vehicles is HEL  
 Purchase Order 55180 issued by HEL to United Rentals  
 June 28, 2000 for Rental of Serial #FF0450X090411

Schedules Entitled Labrador Rents for Months August, September, October, November, December 2001 showing 3 Excavators rented @ \$10,500 per month through mid November.

### Terex Trucks

2. Copies of Conditional Sales Contracts for each of the Terex Model TA35 Trucks referred to in paragraph 3(b) of the Affidavit were provided by CIT.
3. Following are some particulars from the Conditional Sales Contracts:

	<u>Serial #</u>	<u>Date</u>	<u>Amount</u>
(a)	A7761066	1999/06/03	\$329,995.40
(b)	A7761096	1999/07/28	337,644.30
(c)	A7761112	1999/09/02	325,212.40

(d)	A7761082	1999/06/25	334,007.80
(e)	A7761095	1999/07/28	337,644.30
(f)	A7761064	1999/06/09	334,688.80
(g)	A7761062	1999/06/09	334,688.80
(h)	A7761061	1999/06/09	334,688.80
(i)	A7761065	1999/06/03	329,995.40
(j)	A7761111	1999/09/02	325,212.40

4. United Rentals has provided copies of Purchase Orders for rental of 8 of the 10 Terex Trucks and Rental Out Contracts and Invoices for each of the 10 Terex Model TA35 Trucks referred to in paragraph 3(b).

5. Following are some particulars from the Purchaser Orders issued by HEL to United Rentals:

	<u>Serial #</u>	<u>Pur/O#</u>	<u>Date</u>	<u>Start Date</u>	<u>Term</u>	<u>Amount</u>
(d)	A7761066	48174	7/23/99	July 26/99	5 months	\$19,500.
(e)	A7761096	48177	7/23/99	July 26/99	5 months	19,500.
(f)	A7761065	48175	7/23/99	July 26/99	5 months	19,500.
(g)	A7761082	48173	7/23/99	July 12/99	5 months	19,500.
(h)	A7761095	48176	7/23/99	July 26/99	5 months	19,500.
(i)	A7761064	48180	7/23/99	July 12/99	5 months	19,500.
(j)	A7761062	48179	7/23/99	July 12/99	5 months	19,500.
(k)	A7761061	48178	7/23/99	July 12/99	5 months	19,500.

6. Following are some particulars from United Rental Out Contracts and Invoices of 1999 and 2000:

	<u>Serial #</u>	<u>Contract Date</u>	<u>Date Out</u>	<u>Invoice to</u>	<u>Job Location</u>	<u>Amount</u>
(a)	A7761066	7/27/99	7/26/99	11/17/99	South Coast	\$19,500.
			5/24/00	10/12/00	Paradise River	19,500.
(b)	A7761096	7/26/99	7/26/99	11/17/99	St. John's	19,500.
			5/15/00	11/21/00	Coastal/Cartwright	19,500.
(c)	A7761065	7/27/99	7/26/99	11/17/99	St. John's	19,500.
			5/24/00	10/11/00	Paradise River	19,500.
(d)	A7761082	7/26/99	7/12/99	11/17/99	St. John's	19,500.
			5/15/00	11/24/00	Coastal/Cartwright	19,500.
(e)	A7761095	7/26/99	7/26/99	11/17/99	St. John's	19,500.
			5/15/00	11/21/00	Coastal/Cartwright	19,500.
(f)	A7761064	7/26/99	7/12/99	11/17/99	St. John's	19,500.
			5/15/00	9/20/00	Coastal/Cartwright	19,500.
(g)	A7761062	7/26/99	7/12/99	11/17/99	St. John's	19,500.
			5/15/00	11/21/99	Coastal/Cartwright	19,500.
(h)	A7761061	7/26/99	7/12/99	11/17/99	St. John's	19,500.
			5/15/00	11/24/00	Coastal/Cartwright	19,500.
(i)	A7761111	6/15/00	5/26/00	11/24/00	Paradise	19,500.
(j)	A7761112	6/15/00	5/26/00	11/24/00	Paradise	19,500.

7. All 10 Terex Trucks were rented to HEL by United Rentals for the period May 28, 2001 to December 4, 2001.
8. The Terex Trucks or some of them were re-rented by HEL. Following are particulars of some re-rent contracts located in HEL files:

<u>Serial #</u>	<u>Lease</u>	<u>Date</u>	<u>Term</u>	<u>Amount</u>
A7761065	RDN	July 26/99	Open	\$11,500.
	RDN	May 26/00	Open	11,500.
A776112	RDN	May 29/00	Open	11,500.
A7761082	RDN	June 6/00	Open	11,500.
A7761062	RDN	June 6/00	Open	11,500.
A7761061	RDN	June 7/00	Open	11,500.
A7761064	RDN	July 1/99	Open	11,500.
	RDN	June 2/00	Open	11,500.
A7761095	RDN	June 9/00	Open	11,500.

9. A schedule entitled Labrador Rents for the months of August 2001 to December 2001 believed to relate to rentals by HEL to RDN refers to 10 Terex Trucks.
10. ABN AMRO has provided copies of HEL invoices to it for each of the 10 Terex Model TA35 Trucks referred to in paragraph 3(b) of the Affidavit.
11. Following are some particulars from the Invoices:

	<u>Serial #</u>	<u>Date</u>	<u>P/O</u>	<u>Invoice #</u>	<u>Amount</u>
(a)	A7761066	08/09/99	496838	000273	\$336,000.
(b)	A7761096	08/09/99	496852	000276	336,000.
(c)	A7761065	08/09/99	496842	000274	336,000.
(d)	A7761082	08/09/99	496834	000281	336,000.
(e)	A7761095	08/09/99	496847	000275	336,000.
(f)	A7761064	08/09/99	496856	000279	336,000.
(g)	A7761062	08/09/99	496876	000278	336,000.
(h)	A7761061	08/09/99	496858	000277	336,000.
(i)	A7761111	04/03/00	U50246	000472	336,000.
(j)	A7761112	04/03/00	U50246	000473	336,000.

12. CIT has advised that payments continued to be made on account of the conditional Sales Contracts up until December of 2001.
13. Based on inquiries made of the NL Registry of Motor Vehicles, it has been determined that all 10 Terex Trucks were registered in the name of HEL in 2001.

#### Ingersoll Rand Drills

14. Ingersoll Rand provided information in respect of each of the IR Model: ECM 590 Drills referred to in paragraph 3(c) of the Affidavit. The Drills were supplied by Ingersoll Rand

to HEL pursuant to the terms of Equipment Rental Agreements and/or Conditional Sales Agreements.

15. Ingersoll Rand has advised it did not become aware of sales by HEL to 3<sup>rd</sup> parties of any of the IR ECM 590 Drills until after December 31, 2001.
16. United Rentals has provided copies of Rental Purchase Orders issued by HEL to United Rentals for rental of a number of the Drills. Some particulars from the Purchase Orders provided are as follows:

<u>Serial #</u>	<u>Pur.Order</u>	<u>Date</u>	<u>Start Date</u>	<u>Term</u>	<u>Amount</u>
1185CG	48145	July 12/99	7/12/99	5 months	\$15,500.
10205EG	48148	—	7/20/99	5 months	15,500.
11206EG	48147	July 20/99	7/20/99	5 months	15,500.
11183CG	48146	July 20/99	7/20/99	5 months	15,500.

17. Following are some particulars from United Rentals Rental Out Contracts and/or Invoices for the years 1999 and 2000 as provided by United Rentals:

<u>Serial #</u>	<u>Pur.Order#</u>	<u>Contract</u>	<u>Date</u>	<u>Invoiced</u>	<u>Job</u>	<u>Rent</u>
		<u>Date</u>	<u>Out</u>	<u>To</u>	<u>Location</u>	
11185CG	48145	7/26/99	7/12/99	11/17/99	St.John's	\$15,500.
	1	5/15/00	5/26/00	11/10/00	Paradise River	15,500.
11205E8	48148	7/26/99	7/20/99	11/17/99	St.John's	15,500.
	1	6/17/00	5/29/00	11/13/00	Coastal/Cartwright	15,000.
11206EG	48147	7/26/99	7/20/99	11/17/99	St.John's	15,000.
	1	6/17/00	5/29/00	11/22/00	Paradise River	15,000.
11183CG	48146	7/26/99	7/20/99	11/17/99	St.John's	15,000.
	1	6/17/00	5/29/00	11/22/00	Coastal/Cartwright	15,000.
11245EH	55140	7/08/00	6/19/00	11/21/00	John's	15,000.
11246EH	55141	7/08/00	6/19/00	11/21/00	—	15,000.
11247EE	55142	7/08/00	6/19/00	11/21/00	—	15,000.
1112GG	1	6/15/00	5/26/00	6/23/00	Paradise	15,000.
11115EF	55129	7/12/00	6/13/00	9/22/00	Badger	13,500.

18. ABN AMRO has provided copies of invoices issued in its name in respect of each of the IR ECM 590 Drills. The Invoices are on HEL invoice forms.
19. Following are some particulars from the Invoices:

	<u>Invoice #</u>	<u>Serial #</u>	<u>Date</u>	<u>Pur./Order</u>	<u>Amount</u>
(a)	000265	R11115EF	08/09/99	496733	\$388,000.
(b)	000266	R11116EF	08/09/99	496772	388,000.
(c)	000267	R11206EG	08/09/99	496780	388,000.
(d)	000268	R11205EG	08/09/99	496793	388,000.
(e)	000269	R11183CG	08/09/99	496810	388,000.
(f)	000270	R11185CG	08/09/99	496815	388,000.
(g)	000271	R11209FG	08/09/99	496822	388,000.

(h)	000272	R11189CG	08/09/99	496826	388,000.
(i)	000471	R11212GG	04/03/00	U50246	388,000.
(j)	000487	R11237DH	04/19/00	U50246	395,000.
(k)	000486	R11224AH	04/19/00	U50246	395,000.
(l)	000506	R11245EH	05/10/00	--	395,000.
(m)	000507	R11246EH	05/10/00	--	395,000.
(n)	000508	R11247EH	05/10/00	--	395,000.
(o)	000519	R11241EH	05/16/00	U50268	395,000.

20. All of the IR 590 Drills, other than Serial #1115EF, were rented to HEL by United Rentals for the period May 28, 2001 to December 4, 2001. United Rentals has provided a copy of a Rental Purchase for the Rental Purchase of Serial #1115EF by HEL from United Rentals, particulars of which are as follows:

Pur.Order#	Contract Date	Date Out	Purchase Price	Terms
59946	3/07/01	2/01/01	\$369,000.	5 payments of \$13,000 final payment of \$304,000.

21. The IR 590 Drills, or some of them, were re-rented by HEL. Following are particulars of re-rent contracts located in HEL files:

Serial #	Lessee	Date Issued	Term	Rent
11212GG	RDN	May 26/00	June 15/00 ??	\$12,900.
11212GG	S.M.Const.	June 28/00	Open	15,500.

Note: Purchase Order #55171 issued by HEL to United Rentals June 28/00.

11212GG      Machinery Movement Control issued by HEL to move unit to Bonne Bay Contractors June 1, 2001

11246EH	Johnson Const.	06/19/00	Open	14,000.
11246EH	Johnson Const.	06/01/01	Open	14,000.

Note: Purchase Order #56207 issued by HEL to Ingersoll Rand, July 26, 2000, for Rental of this Unit.

Purchase Order #55141 issued by HEL to United Rentals, June 19, 2000, for one (1) month rental of this Unit.

11245EH	Johnson Const.	06/19/00	Open	14,000.
11245EH	Johnson Const.	06/04/01	Open	14,000.

Note: Purchase Order #55140 issued by HEL to United Rentals, June 19, 2000, for one (1) month rental of this Unit.

Purchase Order #56205 issued by HEL to Ingersoll Rand, July 26, 2000, for rental of this Unit.

11247EH	Johnson Const.	06/19/00	Open	14,000.
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Note: Purchase Order #55142 issued by HEL to United Rentals, June 19, 2000, for one (1) month rental of this Unit.

Purchase Order #56208 issued by HEL to Ingersoll Rand, July 26, 2000, for rental of this Unit.

11241EH	--	--	--	--
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Note: Purchase Order #56206 issued by HEL to Ingersoll Rand, July 26, 2000, for rental of this Unit.

22. A schedule entitled "Labrador Rents for the months of August 2001 to December 2001" believed to relate to rentals by HEL to RDN reference 4 Drills.
23. Ingersoll Rand has advised that payments continued to be made on account of the Drills up to December 2001..

#### Registrations

24. While complete searches have not been done, it is believed CIT registered conditional sales contracts under pre-PPSA legislation in respect of all Terex Trucks, Ingersoll Rand registered some of its security under pre-PPSA legislation, ABN AMRO registered a security interest in some but not all of the Equipment under pre-PPSA legislation, some security was transitioned or filed under the PPSA, United Rentals registered a financing statement in respect of 29 pieces of the Equipment in February 2002.

(201274)

<b>SUMMARY OF CURRENT DOCUMENT</b>	
<b>Name of Issuing Party or Person</b>	PricewaterhouseCoopers Inc., in its capacities as Receiver and Trustee of Hickman Equipment (1985) Limited
<b>Date of Document:</b>	<b>26 February 2003</b>
<b>Summary of Order/Relief Sought or statement of purpose in Filing:</b>	Directions concerning PWC's interest in 29 pieces of Equipment which had been rented to it by United Rentals (Canada) Limited
<b>Court Sub-File Number</b>	7:54

2002 01T 0352

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

**IN THE MATTER OF** the *Companies' Creditors Arrangement Act*,  
Chapter C-36 of the Revised Statutes of Canada, 1985, as amended

**AND IN THE MATTER OF** the plan of compromise or arrangement of Hickman Equipment (1985) Limited

**AND IN THE MATTER OF** Rule 25 of the *Rules of the Supreme Court*, 1986 under the *Judicature Act*, R.S.N. 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

**AND**

District of Newfoundland

Court No. 9733  
Estate No. 100813

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF HICKMAN EQUIPMENT (1985) LIMITED**, carrying on business at 1269 Topsail Road, in the City of Mt. Pearl, in the Province of Newfoundland and Labrador

**MEMORANDUM OF FACT AND LAW**

The Applicant has been asked by United Rentals to confirm it has no interest in the Equipment which is the subject of this Application.

**Kirby Affidavit, paragraph 6**

2. Documents examined to date appear to indicate:

- (a) the Equipment was sold to HEL under Conditional Sales and/or Rental Agreements;
- (b) most Equipment was sold to HEL in 1999 before the PPSA came into effect;
- (c) the Equipment was sold by HEL to ABN AMRO or to United Rentals with ABN AMRO providing financing;
- (d) the largest part of the Equipment was sold by HEL to ABN AMRO or to United Rentals before the PPSA came into effect;
- (e) much of the Equipment was leased to 3<sup>rd</sup> parties by HEL before it was sold to ABN AMRO or United Rentals;
- (f) much of the Equipment had been re-rented to HEL by United Rentals before it was sold to United Rentals or ABN AMRO by HEL;
- (g) at the time of sale, some of the same persons were senior personnel of HEL and United Rentals;
- (h) the terms on which Equipment was rented and re-rented do not *prima facie* make commercial sense;
- (i) during the course of the various transactions, the location of the Equipment and possession of the Equipment may never have changed.

**Kirby Affidavit**

3. The *Bills of Sale Act*, c.B-3, of the Revised Statutes of Newfoundland 1990, provided:

5(1) A sale or mortgage that is not accompanied by immediate delivery and an actual and continued change of possession of the chattels sold or mortgaged is, unless the sale or mortgage is evidenced by a registered bill of sale, void as against a creditor and as against a subsequent purchaser or mortgagee claiming

from or under the grantor in good faith for valuable consideration without notice, whose conveyance or mortgage has been registered or is valid without registration.

(2) The sale or mortgage takes effect as against a creditor and the subsequent purchaser or mortgagee only from the time of its registration.

14. A sale or mortgage or bill of sale that under this Act is void or has stopped being valid as against a creditor or purchaser or mortgagee is not, because the grantee has subsequently taken possession of the chattels sold or mortgaged, valid as against a person who became a creditor, purchaser or mortgagee before the grantee took possession.

2.(e) Creditor means a creditor of the grantor, whether an execution creditor or not, who becomes a creditor before the registration of the bill of sale or of a renewal statement and for purposes of enforcing the rights of creditors but not otherwise, includes a creditor suing on behalf of himself or herself and other creditors, an assignee for the general benefit of creditors, a trustee under the Bankruptcy Act...without regard to the time when the creditor so suing becomes a creditor or when the assignee, trustee or liquidator is appointed.

(my underlining)

2.(v) "sale"...does not include:

...  
(ii) a transfer or sale in the ordinary course of a trade or calling.

4. The *Conditional Sales Act*, Revised Statutes of Newfoundland 1990, c.28, provides:

4. Where possession of goods has been delivered to a buyer under a conditional sale, a provision contained in it whereby the property in the goods remains in the seller is, unless this Act is complied with, void as against a creditor and as against a subsequent purchaser or mortgagee claiming from or under the buyer in good faith for valuable consideration without notice and the buyer shall, notwithstanding the provision, be considered as against such a person to be the owner of the goods.

9. Where a seller of goods expressly or impliedly consents that the buyer may sell them in the ordinary course of business and the buyer so sells the goods, the property in the goods passes to the purchaser from the buyer, notwithstanding the other provisions of this Act.

5. The *Personal Property Security Act*, Statutes of Newfoundland and Labrador, provides:

s.2(y) Lease for a term of more than 1 year includes:

(i)...

(ii) subject to subsection (4), a lease initially for 1 year or less than 1 year of the lessee with the consent of the lessor retains uninterrupted, or substantially uninterrupted possession of the leased goods for a period in excess of 1 year after the date the lessee just acquired possession of the goods.

...

2(ll) "sale of goods without a change of possession" means a sale of goods that is not accompanied by an immediate delivery of an actual, apparent and continued change of possession of the goods sold, but does not include a sale of goods in the ordinary course of business of the seller,

...

2(rr) "security interest" means

(i) ...

(ii) the interest

A. ...

B. a lessor under a lease for a term of more than one year

C. ...

D. a buyer under a sale of goods without a change of possession

4. (2) Subject to sections 5 and 56, this Act applies to:

(a) ...

(b) to a lease for a term of more than one year,

(c) ...

(d) to a sale without a change of possession.

6. It is the Applicant's submission that facts known to date suggest there may be, *inter alia*, the following issues:

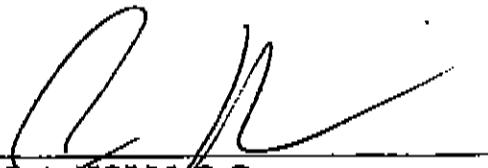
(a) Were sales of any of the Equipment void against creditors of HEL and against the Applicant in its capacity as Trustee in Bankruptcy?

(b) Were sales of the Equipment sales in the ordinary course of business as contemplated by the *Conditional Sales Act*, *Bills of Sale Act* or *PPSA*?

(c) Did the rental of the Equipment by United Rentals to HEL constitute a lease of goods for a term of more than one year to which the provisions of the PPSA apply?

7. The Applicant, being mindful of concerns the Court and/or creditors may have concerning its mandate and authority and costs which may be incurred in pursuing its mandate, seeks the advice and direction of this Honourable Court as to how it should proceed, if at all, in respect of this matter.

DATED at Halifax, in the Province of Nova Scotia, this 26<sup>th</sup> day of February, 2003.



**CARL A. HOLM, Q.C.**

Solicitor for PricewaterhouseCoopers Inc.,  
in its capacities as Receiver and Trustee of  
Hickman Equipment (1985) Limited  
whose address for service is:

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or

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215 Water Street, Suite 802  
St. John's, NL A1C 6C9

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