

2003 No. 01 H 0004  
**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
COURT OF APPEAL**

**BETWEEN:**

**Wells Fargo Equipment Finance Company** **Appellant**

**AND:**

**General Motors Acceptance Corporation** **First Respondent**

**AND:**

**John Deere Limited and John Deere  
Credit Inc.** **Second Respondent**

**AND:**

**CIBC Equipment Finance Limited** **Third Respondent**

**AND:**

**Hickman Leasing Ltd.** **Fourth Respondent**

**AND:**

**Canadian Imperial Bank of Commerce** **Fifth Respondent**

**AND:**

**PricewaterhouseCoopers Inc., as Trustee  
in Bankruptcy and Receiver of Hickman  
Equipment (1985) Limited** **Sixth Respondent**

**NOTICE OF APPEAL**

**TAKE NOTICE** that the Appellant appeals from the order or decision of the Honourable Justice Hall dated the 3 day of January, 2003 in proceedings in the Supreme Court of Newfoundland and Labrador, Trial Division, bearing No. 2002 01 T 0352 and entitled:

**IN THE MATTER OF the Application  
of Wells Fargo Equipment Finance Company  
for possession of two pieces of equipment in  
the possession of Hickman Equipment  
(1985) Limited**

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

**AND THAT** the grounds of the proposed appeal are:

1. **THAT** Justice Hall erred in concluding that the perfection of the security interests of the equipment leases held by the Appellant were not properly transitioned under the provisions of the Personal Property Security Act ("PPSA"), and that the Appellant has therefore lost whatever priority over the equipment it may have held by reason of the pre-PPSA registrations;
2. **THAT** Justice Hall erred in concluding that the omission by the Appellant in its financing statements of March 21 and March 22 2000 of the required particulars of the Prior Law registrations under Regulation 26 of the Personal Property Security Regulations is seriously misleading and is not capable of being cured under s.44 of the PPSA; and
3. Such further and other grounds as counsel for the Appellant may advise and this Honourable Court may permit.

**AND THAT** the Appellant files this Notice of Appeal for the purpose of preserving its right to appeal.

**AND THAT** the Appellant does not presently intend to apply to proceed with the proposed appeal until the application in the Trial Division has been completed.

**DATED AT** St. John's, Newfoundland and Labrador, this 13 day of January, 2003.

*Richard B. Jones*  
\_\_\_\_\_  
Richard B. Jones  
Jones, Rogers LLP  
Solicitors for the Appellant

**ADDRESS FOR SERVICE:**

c/o Learmonth, Dunne & Clarke  
22 Church Hill  
P.O. Box 700  
St. John's, NL  
A1C 5L4

To: **McInnes, Cooper**

Solicitors for General Motors Acceptance Corporation  
P.O. Box 5939  
5<sup>th</sup> Floor, Baine Johnston Centre  
10 Fort William Place  
St. John's, NL, A1C 5X4

**Attention: Thomas R. Kendall, Q.C.**

**Stewart McKelvey Stirling Scales**

Solicitors for John Deere Limited and John Deere Credit Inc.

P.O. Box 5038  
11<sup>th</sup> Floor, Cabot Place  
100 New Gower Street  
St. John's, NL, A1C 5V3

**Attention: Michael Harrington, Q.C. and Maureen Ryan**

**White, Ottenheimer & Baker**

Solicitors for CIBC Equipment Finance Limited

P.O. Box 5457  
6<sup>th</sup> Floor, Baine Johnston Centre  
10 Fort William Place  
St. John's, NL, A1C 5W4

**Attention: Gregory W. Dickie**

**Cox, Hanson, O'Reilly, Matheson**

Solicitors for Hickman Leasing Ltd.

4<sup>th</sup> Floor, Scotia Centre  
235 Water Street  
St. John's, NL, A1C 1B6

**Attention: Griffith D. Roberts**

Benson Myles  
Solicitors for Canadian Imperial Bank of Commerce  
P.O. Box 1538  
9<sup>th</sup> Floor, Atlantic Place  
215 Water Street  
St. John's, NL, A1C 5N8  
Attention: Geoffrey L. Spencer

Patterson Palmer  
Solicitors for PricewaterhouseCoopers Inc.  
Suite 1000, 235 Water Street  
P.O. Box 610  
St. John's, NL, A1C 5L3  
Attention: Frederick J. Constantine

*Learmouth, Dunne & Clarke  
Barristers, Solicitors & Notaries*

R. BARRY LEARMONTH, Q.C.  
PAUL M. DUNNE  
W. JOHN CLARKE  
JOSEPH F. BOULDS

22 CHURCH HILL  
P.O. BOX 700  
ST. JOHN'S, NF, CANADA  
A1C 5L4  
TEL (709) 739-8525  
FAX (709) 739-9151  
Email: [dec@nfld.net](mailto:dec@nfld.net)

January 13, 2003

Supreme Court of Newfoundland and Labrador  
Court of Appeal  
297 Duckworth Street  
St. John's, NL  
A1C 5M3

**Attention: Deputy Registrar**

**Re: In the Supreme Court of Newfoundland  
and Labrador  
Court of Appeal  
Wells Fargo Equipment Finance Company – Appellant  
General Motors Acceptance Corporation – First Respondent  
John Deere Limited and John Deere Credit Inc. – Second  
Respondent  
CIBC Equipment Finance Limited – Third Respondent  
Hickman Leasing Ltd. – Fourth Respondent  
Canadian Imperial Bank of Commerce – Fifth Respondent  
PricewaterhouseCoopers Inc., as Trustee in Bankruptcy  
and Receiver of Hickman Equipment (1985) Limited – Sixth  
Respondent**

---

Dear Mesdames:

With reference to the above, I enclose the following:

1. Original and 3 copies of a Notice of Appeal.
2. 4 copies of the Decision of Justice Hall dated January 3, 2003.
3. Our cheque in the amount of \$60.00.

I have not requested a transcript of the proceeding in the Trial Division, because, to date, no oral evidence has been given.

*Learmonth, Dunne & Clarke*

When serving a copy of the Notice of Appeal, I will provide each party with a copy of this letter. If there is any objection which cannot be resolved with respect to my not having requested a transcript of the proceeding in the Trial Division, I will apply for directions.

I trust that this is satisfactory, and request that the Notice of Appeal be filed today.

Yours very truly,

**Learmonth, Dunne & Clarke**

Per: *R. Barry Learmonth*  
**R. Barry Learmonth**

RBL/sm