

2002 01T 0352

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

PricewaterhouseCoopers Inc

DATE REC MAY 17 2002

IN THE MATTER OF a Court appointed
Receivership of Hickman Equipment (1985) Limited
("Hickman Equipment") pursuant to Rule 25 of the
Rules of the Supreme Court, 1986 under the
Judicature Act, R.S.N. 1990, c. J-4, as amended

DISTRIBUTION _____

ACTION _____

AND IN THE MATTER OF the *Bankruptcy and
Insolvency Act*, Chapter B-3 of the Revised
Statutes of Canada, 1985, as amended (the "BIA")

APPROVED _____

FILE _____

**ORDER ON INTERLOCUTORY APPLICATION
OF PRICEWATERHOUSECOOPERS INC. AS RECEIVER OF HICKMAN
EQUIPMENT(1985) LIMITED ("HICKMAN EQUIPMENT") DATED 6 May 2002**

BEFORE THE HONOURABLE MR. JUSTICE HALL

WHEREAS this matter having come on for hearing on the 6th day of May, 2002
and having been adjourned to 14 May 2002;

AND WHEREAS the parties listed in Schedule "A" to this Order having been
served with notice of this application in the manner ordered by this Court on
March 28, 2002;

AND WHEREAS the parties listed in Schedule "B" to this Order having appeared
and having been heard;

AND UPON reading the Affidavits of James Kirby, C.A., CIRP, Senior Vice
President of PricewaterhouseCoopers Inc., St. John's, Newfoundland and
Labrador, dated 1 May 2002 and 9 May 2002;

AND UPON reading the Receiver's Report and Attachments dated 1 May 2002
and also the Revised Attachments filed 14 May 2002;

Filed May 17/02 JP


IT IS THIS DAY ORDERED as follows:

1. The time for service of the Application herein be and it is hereby abridged and validated such that this Application is properly returnable today.
2. Service of the Application herein upon persons other than those persons listed in Schedule "A" be and is hereby dispensed with.
3. The Receiver's Report and Statement of Receipts and Disbursements dated 6 May 2002 is hereby accepted.
4. The Claims Plan of the Receiver, as attached as Schedule "C" to this Order (the "Claims Plan") is hereby approved.
5. The Investigation Plan-Phase One of the Receiver, as attached as Schedule "D" to this Order (the "Investigation Plan -Phase One") is hereby approved.
6. The Cost Allocation Plan of the Receiver as attached as Schedule "E" to this Order (the "Cost Allocation Plan") is hereby approved.
7. The Receiver be and is hereby authorized to carry out and implement, by all reasonable means, the processes and activities set out in the Claims Plan, the Investigation Plan -Phase One and the Cost Allocation Plan.
8. The Interlocutory Application of John Deere Limited dated 10 May 2002 shall be heard on 30 May 2002, 3 June 2002 and 4 June 2002, commencing each day at 10:00 am. John Deere Limited shall file and serve its memorandum or any supplementary materials on which it intends to rely in relation to this application by 21 May, 2002. Any other

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interested party shall file and serve its memorandum, or any materials on which it intends to rely, by 24 May, 2002.

9. The Interlocutory Application of **Wells Fargo Equipment Finance Company** dated 5 March 2002 shall be heard on 5 June 2002 at 10:00 am. Wells Fargo Equipment Finance Company shall file and serve its memorandum or any supplementary materials on which it intends to rely in relation to this application by 21 May, 2002. Any other interested party shall file and serve its memorandum, or any materials on which it intends to rely, by 31 May, 2002.
10. The Interlocutory Application of **MTC Leasing Inc.** dated 5 March, 2002 shall be heard on 6 June 2002 at 10:00 am. MTC Leasing Inc. shall file and serve its memorandum or any supplementary materials on which it intends to rely in relation to this application by 21 May, 2002. Any other interested party shall file and serve its memorandum, or any materials on which it intends to rely, by 31 May, 2002.
11. The Interlocutory Application of **Tramac Equipment Ltd.** dated 5 March 2002 shall be heard on 7 June 2002 at 10:00 am. Tramac Equipment Ltd. shall file and serve its memorandum, or any supplementary materials on which it intends to rely, in relation to this application by 21 May, 2002. Any other interested party shall file and serve its memorandum or any materials on which it intends to rely by 3 June, 2002.
12. The Interlocutory Application of **Fabtek Corporation** dated 1 March, 2002 is tentatively scheduled for 10 June 2002 at 10:00 am. Fabtek Corporation shall file and serve its memorandum or any supplementary materials on which it intends to rely in relation to this application by 21 May, 2002. Any other interested party shall file and serve its

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memorandum, or any materials on which it intends to rely, by 5 June, 2002.

13. June 13-14 shall be tentatively set aside for the determination of the 30-day goods claim of **Gillis Truckways Inc.** in accordance with s.81.1(1) of the BIA. Gillis Truckways Inc. shall file and serve its memorandum, or any supplementary materials on which it intends to rely, in relation to this application by 27 June 2002. Any other interested party shall file and serve its memorandum, or any materials on which it intends to rely, by 6 June, 2002.
14. The Receiver be and is hereby authorized and empowered at any time and from time to time to apply to this Court for advice and directions in the discharge of its power and duties hereunder.

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DATED this 16th day of May, 2002.

Ass't-Deputy Elaine Burt
REGISTRAR

Schedule "A"
Parties who have been Served



ABM Amro Bank Canada/ ABN Amro Leasing & Tramac Equipment Ltd.	Aubrey L. Bonnell, Q.C./ Brian Winsor Terence M. Dolan/John Salmas abonnell@curtisdawe.nf.ca tdolan@mccarthy.ca	722-7521 416-868-0673
Bombardier Capital Leasing & Culease Financial Services	J. Vernon French, Q.C.	754-2701
Caterpillar Equipment	Colin D. Grant	905-849-1023
Cedarrapids	Les Baumbach fbelzil@sharekreay.com	319-399-4760
CIBC	R. Wayne Myles gspencer@bensonmyles.com wmyles@bensonmyles.com	579-2647
CIBC Equipment Finance Ltd./CIT Financial Ltd./ Tyco Capital	Gregory W. Dickie gdkie@wob.nf.ca	722-9210
Craig Manufacturing Ltd. & International Union of Operating Engineers	V. Randell Earle, Q.C. rearle@odeearle.nf.ca	726-9600
Contact Funding Group Inc.	Mark G. Klar mark-k@chaiton.com	416-218-1831
Daimler Chrysler Financial Services/ Daimler Chrysler Capital Services/ Mercedes- Benz of Canada Inc.	Philip Buckingham/ Peter O'Flaherty Elaine Gray pjb@goodlaw.nf.ca elaine.gray@gowlings.com	722-4720 416-863-3527
Fabtek Corp.	Linc A. Rodgers Rhodie E. Mercer, Q.C. rmercer@mmvf.nf.ca linc.rodgers@blakes.com	416-863-2653 726-5705
Gillis Truckways Inc.	Edward J. Shortall	738-2965

lssh@nf.aibn.com



GE Capital	Harvey Chatton Frederic Scalabrinii	416-218-1849 905-319-4855
GMAC	Thomas R. Kendall, Q.C. <u>thomas.kendell@mcinnescooper.com</u>	722-1763
Group Holdings Ltd./ Hickman Equipment/ Hickman Leasing Ltd.	Griffith D. Roberts <u>rstack@coxhanson.ca</u> <u>groberts@coxhanson.ca</u>	726-2992
Ingersoll-Rand Canada Inc.	R. Barry Learmonth Jonathan Wigley <u>ldc@nfld.net</u> <u>jonathan.h.wigley@bakernet.com</u>	739-8151 416-863-6275
John Deere Ltd./ John Deere Credit Inc.	Neil L. Jacobs / Maureen Ryan <u>BugarestiDavidR@JohnDeere.com</u> <u>njacobs@smss.com</u>	722-4565
Deloitte & Touche Inc.	Jamie Smith/ Alan MacKinnon <u>amackinnon@deloitte.ca</u> <u>smithcoffey@nfld.net</u>	753-1344 576-8560
MTC Leasing Inc./ National Leasing Group Inc.	R. Paul Burgess <u>pburgess@mwhslaw.nf.com</u>	754-0915
Nobel's Lumberyard Ltd.	Michael Dровер	738-8534
ORIX Financial Services Canada Ltd.	Donald Yaeck	416-236-3010
Ontrac Equipment Ltd.	Gerlinde van Driel, Q.C./ Brad Truelove <u>brad.truelove@ontracinc.com</u> <u>gerlinde@vandriellaw.ca</u>	726-1813 905-670-9154
Goodman Associates	Paul G. Goodman	902-425-3777
Royal Bank of Canada	Thomas O. Boyne, Q.C. <u>tboyne@boyneclarke.ns.ca</u>	902-463-7500



753-5221

TD Asset Finance Corp.

D. Bradford L. Wicks
bwicks@wrmm.nf.net

United Rentals

Peter House
phouse@pattersonpalmer.ca

722-0483

Wells Fargo Equipment
Finance Co.

Richard Jones
jrlaw@istar.ca

416-361-6303

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Schedule "B"
Parties who have been heard

Frederick J. Constantine Anna M. Locke	Counsel for PricewaterhouseCoopers, Court Appointed Receiver
Carl Holm, Q.C.	Counsel for PricewaterhouseCoopers, Court Appointed Receiver
Gerlinde van Driel, Q.C.	Counsel for Ontrac Equipment Services Inc.
Tom Kendall, Q.C.	Counsel for General Motors Acceptance Corporation of Canada
John French	Counsel for Culease Financial Services, and for Bombardier Capital Ltd.
Bruce Grant & Neil Jacobs	Counsel for John Deere Limited and John Deere Credit Inc.
R. Barry Learmonth	Counsel for Ingersoll-Rand Canada Inc., and Agent for Jones Rogers, Counsel for Wells-Fargo Equipment Finance Company
Gregory Dickie	Counsel for CIT Financial Limited, and for CIBC Equipment Finance Ltd.
Paul Burgess	Counsel for MTC Leasing Inc., and for National Leasing Group Inc.
Tammy Drover	Counsel for TD Asset Finance Corp.
Geoffrey Spencer	Counsel for Canadian Imperial Bank of Commerce
Griffith Roberts	Counsel for Hickman Holdings Limited, and for Group Holdings Limited, and for Hickman Leasing Limited
Brian Winsor	Counsel for ABN AMRO Leasing, and for Tramac Equipment Ltd., and for Royal Bank of Canada
Philip Buckingham	Counsel for Daimler Chrysler Financial Services



Schedule "C" Claims Plan

Background

1. By order of this Honourable Court (the "Receivership Order") granted on the 13th day of March, 2002 and filed with the Court on the 14th day of March, 2002 it was ordered that PricewaterhouseCoopers Inc. ("PWC") be appointed Receiver of the Assets of Hickman Equipment (the "Receiver").
2. By a Receiving Order (the "Receiving Order") made on the 13th day of March, 2002, pursuant to the provisions of the BIA and filed with the Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency on the 14th day of March, 2002, Hickman Equipment was adjudged bankrupt and the Receiver was appointed as trustee of the estate of the bankrupt in bankruptcy (the "Trustee").
3. Capitalized terms used in this Claims Plan and not otherwise defined herein shall have the meaning ascribed to them in the Receivership Order.
4. Pursuant to the Receivership Order, and specifically paragraph 7 thereof, the Receiver was directed to take possession of the Assets of Hickman Equipment with power and authority to receive, preserve, protect and realize upon the Assets subject to the terms and in the manner authorized and set out in the Receivership Order.
5. Paragraph 10 of the Receivership Order provides:

[Signature]

"The Court orders that...the Receiver is hereby empowered... generally to do all things which may be reasonably necessary in order to facilitate the development of a plan and procedural structure...for the determination of the legal and equitable rights of all creditors and claimants including, without limitation:

- (e) to conduct such investigations and analyses of the Assets as may in its judgment be necessary or advisable to enable it to develop a plan for the determination of the rights and entitlement of creditors to the Assets or parts thereof and present such plan and to apply to this Court for any direction or directions with respect to the preparation, development or implementation of such plan, including the allocation of the costs of the entire process (the "Claims Plan")."

6. The Receiver has conducted the investigation and analysis which in its judgment was necessary to enable it to develop a plan for the determination of the rights and entitlement of creditors and claimants ("Claimants") to the Assets or parts thereof (the "Claims Plan"). The Claims Plan is set out herein and the Receiver seeks the authorization and direction of the Court to implement it.

Components of Claims Plan

7. To determine the rights and entitlements of Claimants, it is necessary to determine:

- (a) whether a Claimant has a valid, perfected and enforceable ownership or security interest in Assets; and

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(b) if a Claimant is found to have a valid, perfected and enforceable ownership or security interest in Assets, the priority of the Claimant's interests vis-à-vis other Claimants (determination of priority will require consideration of tracing issues and entitlements to proceeds).

8. PWC proposes a two-step-process utilizing the provisions of sections 81 and 81.1 and sections 128 and 135 of the BIA and section 68 of the PPSA to determine the interests of Claimants in Assets.

Assessment of Claims as Secured or Unsecured

9. Claims entitling Claimants to the return of property or the payment of monies by the Receiver may not rank on an equal basis. It is therefore necessary for the Receiver to consider, in an orderly manner, each Claim based upon evidence provided or to be provided by each Claimant and the Hickman records and to assess the merits of each Claim. The Claims to ownership, return and/or security will be reviewed by the Trustee, assisted by Patterson Palmer as counsel for the Trustee except for the Claims of the Canadian Imperial Bank of Commerce ("CIBC") and John Deere Limited and John Deere Credit Inc. (collectively "John Deere") in respect of which Claims the Trustee will be assisted by Merrick Holm (the "Trustee's Counsel").

10. On 27 March 2002, Patterson Palmer as Receiver's Counsel requested that all Claimants, of which it was aware, provide to it as concise an outline as possible


of their position with respect to their security over any of the Assets of Hickman Equipment, together with any background documents thought necessary to be considered, although it was recognized by Patterson Palmer that the outline requested would not be a complete articulation of the Claimant's legal position and would not in any way compromise or waive any legal rights which the Claimant might later assert. Claimants were also asked, but were not required to outline concerns with any other Claimant's security. Claimants were also invited to state their position on the issue of legal and equitable tracing. Claimants will have until May 17th, 2002, to supplement the information provided to the Trustee.

11. It is intended that Claims to security interests will be determined by the Trustee utilizing the provisions of the BIA and, in particular, sections 128 and 135. The Trustee proposes, with the assistance of the Trustee's Counsel, and after considering all information provided to it through the claims process, to make an initial determination on each Claim as to whether it is a valid claim including whether it is secured against an Asset of the estate of Hickman Equipment, and whether it has been properly perfected (the "Initial Opinion"). The Trustee will provide its Initial Opinion (which shall include the facts forming the basis of the opinion and the legal basis for the opinion) to each Claimant filing a claim in respect of an Asset(s) with a copy to any other claimant (an "Interested Claimant") who may have or who claims a competing ownership or security interest.

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12. The Initial Opinion will serve the purpose of outlining the Trustee's assessment of the facts and law believed applicable to the Claim, for review by all Interested Claimants, affording each Interested Claimant an understanding of the issues the Trustee considers applicable in the categorization of each Claim.

13. All Claimants and Interested Claimants receiving notice will have fifteen (15) days to submit a reply to the Initial Opinion should they wish to do so (the "Claimant's Reply"). The Claimant's Reply provides an opportunity for each Claimant or Interested Claimant to raise any additional issues it considers relevant for consideration by the Trustee in making a final determination with respect to each Claim (the "Final Determination").

14. The Trustee will issue the Final Determination of the Claim in question, either allowing it as a valid secured claim under section 135(4) of the BIA or disallowing it as a valid secured claim.

15. In accordance with the procedure in s. 135(4) of the BIA, Claimants whose claims have been disallowed will have a 30 day right of appeal from the Final Determination. Subject to this, the Final Determination shall be final and binding on such Claimants.

16. Where in its Final Determination the Trustee has allowed a claim as a valid secured claim it proposes to report its determination to the Court and request, on

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notice to Interested Claimants, an Order confirming its determination, after which the Trustee's Final Determination will be final and binding on all Claimants.

17. There may be Claims that the Trustee believes require determination by trial or some other legal process. In such cases the Trustee will seek directions pursuant to section 34(1) of the BIA. Issues to be tried may be dealt with by Arbitration as provided in paragraph 22 prior to categorization as secured or unsecured.

Claims to Ownership and 30-Day Goods

18. Any claims to ownership of Assets or to a right of return of 30-day goods are proposed to be dealt with by the Trustee pursuant to the procedures in s.81 and s.81.1 of the BIA. The procedures described in paragraphs 11-17 of this Claims Plan are intended to be followed prior to reaching a Final Determination in respect of ownership if the Claimant in question has not requested, prior to such determination, that the goods be physically returned to them for their disposal outside of the Realization Plan. The Trustee acknowledges that the claims that have been made for the ownership of Assets and for 30-day goods from Claimants that desire those Assets removed from the Receiver's Realization Plan require determination at the outset of the Claims Plan in order to determine what Assets will be dealt with under the Realization Plan. Accordingly, the Trustee shall make an Initial Determination on any claims to ownership of Assets or to a right of return of 30-day goods and notify the persons making such claims of their

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initial determination by 14 May, 2002 (which notice shall include a statement of the factual and legal basis on which the Trustee has made their Initial Determination). If a person claiming an ownership interest in Assets or claiming a right of return of 30-day goods is not satisfied with the Initial Determination made by the Trustee, such person shall be entitled to bring an application to the Court requesting that the Court make a Final Determination of the claim. Such application shall be commenced by 21 May, 2002. The Court shall hear and rule upon the claim as soon as possible thereafter.

Return of Assets

19. The Receiver recommends that for any Asset that is removed from the Realization Plan, the processes set out in paragraph 9 of the Realization Plan apply to any Assets removed.

Assessment of Priority of Secured Claims

20. Once the Trustee has determined a Claim is secured, there may remain the issue of determination of the priority of Claims to a particular Asset, or the proceeds arising therefrom, among or between Claimants who have been determined to be secured Claimants. The Receiver proposes that the order of priority of Claims to an Asset or to the proceeds arising therefrom be determined using the priority rules established by the *Personal Property Security Act*, S.N.1998, c.P-7.1 (the "PPSA") and other applicable law.



Schedule "D" Investigation Plan – Phase One

1. The Receivership Order:

- (a) empowers the Receiver to facilitate the development of a plan and procedural structure for the liquidating of the Assets and for the determination of the legal and equitable rights of all creditors and claimants (Receivership Order para. 10) and contemplates the Receiver undertaking investigations to:
 - (i) identify all Assets of Hickman Equipment of which PWC is the Receiver or which are vested in PWC as Trustee under the BIA (Receivership Order, para. 6);
 - (ii) 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 secured creditors; (Receivership Order, para. 9(d));
 - (iii) generate information for dissemination to assist creditors in the presentation of such legal and equitable tracing claims respecting Hickman Equipment or persons claiming through Hickman as they may be entitled to present; (Receivership Order, para.10(d));
 - (iv) assist in determining the rights and entitlement of creditors to the Assets; (Receivership Order, para.10(e));
 - (v) determine if the books and records of Hickman Equipment establish that monies or other property and assets of Hickman Equipment are properly accounted for; (Receivership Order; para.11);
 - (vi) determine whether there are any claims or potential claims by or against Hickman Equipment or any other person who has received monies, property, or assets of Hickman Equipment. (Receivership Order, para.11);
- (b) empowers the Receiver to have any present or any past officer, director, employee or shareholder of Hickman Equipment within the 24 months next preceding this Order attend by subpoena to be examined by the Receiver concerning the Assets or concerning the claims, security or property of any creditor or claimant and, with leave of the Court to be obtained by application *ex parte* in chambers, to examine any other



person concerning such person's dealings with the Assets or with Hickman Equipment. (Receivership Order, para.15)

2. The Receiver, employing as required the powers provided to it under the Receivership Order and any supplementary orders, proposes to conduct an investigation, Phase One of which will focus on alleged inventory shortfalls, excessive and uncollectible accounts receivable, related party transactions, inadequate cash receipts and excessive cash disbursements.
3. Phase One of the investigation is intended to identify issues and/or locate possible Assets which warrant further investigation and analysis. It is intended that this preliminary review would establish sufficient information to allow further decisions to be made on whether or not the Receiver or creditors pursue claims or cause further investigations to be conducted.
4. On completion of Phase One, estimated to take sixty days, a report of the Receiver's findings, and recommendations, if any, will be prepared and presented to the Court and provided to creditors. The report will identify, *inter alia*, those issues and areas which the Receiver believes warrant further investigation or action.
5. Initially, it is proposed to review transactions over \$50,000 or unusual transactions which come to the Receiver's attention. It is proposed that the initial review period would be for transactions occurring on or after January 1st, 2000.
6. The Receiver intends to utilize appropriate information compiled by or available from creditors or contained in reports or analyses prepared by the Monitor in order to expedite the process and minimize cost.
7. The Receiver expects, at the end of Phase One, to advise the Court whether there appear to have been in appropriate expenditures or other movements of funds which, upon approval of the Court, the Receiver should pursue, whether there has been any improper disposal of equipment which, upon approval of the Court the Receiver should further investigate and whether there is any information which the Receiver should provide to the RCMP.
8. Attached as Schedule "A" is a detailed outline of the principal elements of the proposed work plan for Phase One.
9. The Receiver expects that the cost of Phase One will be between \$125,000 and \$175,000. The Receiver proposes that these costs should be allocated in accordance with the proposal set out in Exhibit "D".



SCHEDULE "A"

Detailed Outline

1. Inventory

Purpose - To investigate and analyze Hickman equipment alleged to have been sold out of trust and other related inventory issues which resulted in the alleged inventory shortfall.

Proposed Investigation Procedures

1. 1 Double Financing of Equipment

We will perform the following:

- Review documents compiled by creditors and their counsel in support of their respective statements of claim (sample of 25 to 30 transactions);
- Compare the sales documents provided by creditors to the bills of lading and inventory records maintained by Hickman to verify actual purchases;
- Review Hickman sales records, financing records and bills of lading on-site at Mount Pearl and other locations that relate to equipment identified by the creditors and determine whether the equipment had been properly relieved from the inventory system;
- Search for and review any electronic information which might assist in this regard;

- Compare internal Hickman records to records (paper or electronic) provided by creditors and analyse the retail sales and other relevant agreements (sales, rental and lease) within the Hickman records to determine whether agreements are bona fide and/or fraudulent; and
- Analyze Hickman's inventory, lease, rental and sales records to determine if the inventory was misstated at February 6, 2002. This would also entail reviewing details of purchases/sales of used equipment, equipment transferred from Hickman leasing to Hickman Equipment, actual Hickman inventory to booked inventory, side agreements to lease/rental agreements and purchasing used equipment to facilitate sale of new equipment.

1.2 Related Specific Inventory Issues

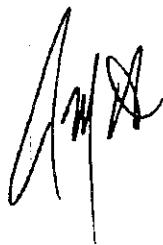
We will perform the following:

- Interview select former Hickman staff and examine Hickman records to identify sales, lease or rental agreements where side agreements, such as, agreements to include service at no additional cost where agreed. Additionally, identify where, if at all, such arrangements were unreported or misrepresented to creditors; and
- Analyze the purchase of used equipment by Hickman for cash and subsequent sale of new equipment to same Hickman customer.

2. Source and Use of Funds

Purpose - To investigate source and use of funds at Hickman.

Proposed Investigation Procedures



In general, we will perform the following:

- Review/analyze all amounts in excess of \$50,000 (for the period of January 1, 2000 to date) received and disbursed to creditors, related parties and other yet to be identified parties;
- Identify all sources of funds provided by lenders or other interested parties who provided funding to Hickman; and
- Trace the funds received to ascertain the usage of said funds i.e., were they disbursed to creditors, related parties and other yet to be identified parties.

2.1 Cash Flow Analysis

Specifically, we will:

- Review/analyze cash flows from equipment sales and, in particular, in respect of alleged sales of equipment out of trust;
- Review/analyze inter-company transfers of funds in excess of \$10,000 between Hickman and companies in the Hickman group and/or other unrelated companies;
- Review/analyze transactions within and out of Hickman's shareholder loan accounts; and
- Confirm receipt and use of approximately \$25,000,000 by Hickman resulting from sale of Hickman Rentals to United Rentals.

2.2 Vendor files and personal expenses



- Review/analyze Hickman vendor files to authenticate that all vendors listed as having received payments are bona fide and that payments are fully supported by documentation; and
- Conduct a high-level analysis of employee expense accounts to identify major fluctuations, if any.

2.3 Bonuses /Dividends /Redemption of Common Shares

- Review/analyze bonuses paid to Hickman shareholders and senior executives in 2000 and 2001 and any relevant prior years to determine which individuals received bonuses, amounts of those bonuses and support documentation and rationale to support the bonuses;
- Review/analyze dividends paid in 2000 or 2001 and in any relevant prior years to the Hickman group of companies which will include review of support documentation and rationale to support the payment of the dividends; and
- Review/analyze any share redemptions which occurred in 2000 or 2001 and any other relevant year, which will include review of support documentation and rationale for redemption of common shares.

3. Shredded Documents

Purpose - To investigate allegations that documents relevant to the issues subject of this proposed investigation were shredded, the nature of such documents, and the utility and ability to reconstruct or retrieve shredded documents from other sources.



It is alleged that 1100 to 1300 banker's boxes of records were destroyed in addition to ongoing shredding of current and older records.

3.1 Interviews and Document Review

- Conduct interviews of former Hickman employees and employees of external shredding companies to identify which records were shredded;
- Determine whether additional records were shredded by Hickman staff or others and the rationale for the shredding;
- Conduct an inventory of the remaining paper documents at Hickman;
- Compare results of above inquiries to the inventory of remaining paper documents to determine which documents have been shredded, and
- Determine whether the documents identified as shredded are otherwise available.

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21. Section 68 of the PPSA provides that issues of priority and entitlement to collateral between secured Claimants may, upon application, be brought before this Honourable Court for determination. The Receiver proposes that when all Interested Claimants to a priority dispute agree, a Referee may be appointed in accordance with Rule 43 of the *Rules of the Supreme Court, 1986*, to make the necessary inquiries with respect to priority and, on notice to all Interested Claimants, report to this Honourable Court. Such report shall include the factual and legal basis for the Referee's determination. Upon receipt of the report of the Referee, this Honourable Court may then, subject to the submissions of Interested Claimants (which submissions may relate to facts or law determined by the Referee) make such order with respect to priority, as it deems just, in accordance with r.43.03(3). If the Interested Claimants to the dispute cannot agree on the person to be appointed Referee, the Court, upon application, will appoint the Referee. There may be issues concerning priority an Interested Claimant believes require determination by trial or other legal process. Those disputes shall be determined in the manner set forth in the *Rules of the Supreme Court, 1986*.

Dispute Resolution

22. It is the submission and recommendation of the Receiver that:

(a) should matters require determination by the Court as a result of a referral by the Receiver of an issue to the Court pursuant to Rule 43(2) or as a



result of a desire of Claimants to challenge a report of the Receiver as Referee or by reason of a desire of a Claimant to appeal an allowance or disallowance made pursuant to the BIA, or as a result of a request for directions made pursuant to s.34 of the BIA; and

(b) should the Claimants interested in the matters consent;

the matter may be resolved by arbitration conducted pursuant to the provisions of the *Arbitration Act*, R.S.N. 1990, c. A-14. The decision of the Arbitrator shall be final and binding.

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Schedule "E"
Cost Allocation

The Receiver proposes that:

1. Costs relating to the Receivership (including any costs of the Trustee) up to the date of the Order approving the Claims Plan, the Realization Plan and the Investigation Plan and the approved costs of the Monitor, counsel to the Monitor and counsel to Hickman Equipment (1985) Ltd., the applicant in the CCAA Order dated 22 February 2002, form a first charge on all Assets (Assets are defined in the Receivership Order and include owned goods and 30-day goods) and are to be apportioned among the Assets in the same proportion as the proportion of the value of each asset bears to the total value of all Assets. Value for purposes of this paragraph shall be the value of the Assets as determined by the Receiver based on appraisals, subject to paragraph 5 herein. Where more than one person claims an interest in an asset, the costs charging that asset shall be proportionally charged against each person's interest.
2. Costs of implementing the first phase of the Investigation Plan shall also be apportioned as provided in paragraph 1.
3. Costs of the Receiver or Trustee in implementing the Claims Plan shall be apportioned as approved by the Court on the recommendation of the Receiver with notice to all Interested Parties.
4. Costs of the Receiver or the Trustee in respect of any further phases of the Investigation Plan or in respect of any proceedings resulting therefrom shall be apportioned as approved by the Court on the recommendation of the Receiver.
5. Costs of the Receiver or the Trustee in implementing the Realization Plan shall be apportioned as approved by the Court on the recommendation of the Receiver, with notice to all Interested Parties after completion of the realization process. In making its recommendation, the Receiver will adjust the allocation of costs to more equitably match assigned costs to actual realization proceeds. There may be indirect costs that are not allocable, except over all Assets.
6. Costs charged against an Asset to the date of its removal plus a reasonable allowance for any additional costs which may be charged against the Asset will be paid to the Receiver before a person may remove an Asset from the Receivership. Any person applying to remove an Asset will be responsible for all costs of storing or servicing the Asset from the date of the application. If it is subsequently determined that another claimant was entitled to the Asset or an interest therein, that claimant shall reimburse the original claimant for costs paid by it in respect to the interest which it is determined the other claimant has in the Asset.
7. Costs of the Receiver and Trustee not otherwise allocated in paragraphs 2 through 5 shall be apportioned by further application to Court.



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(Note: The Receiver has determined that the DIP Financing does not have priority over legal, valid and binding security interests, including, without limitation, interests in the nature of a floating charge. See Order dated Feb.7, 2002, paragraphs 14, 17, and 28 and Receivership Order dated 13 March, 2002, paragraph 28.)