Q.B. No. 1461 of 2009

CANADA)
PROVINCE OF SASKATCHEWAN)

IN THE QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED (the "*CCAA*")

IN THE MATTER OF A PROPOSED PLAN OF ARRANGEMENT FOR THE CREDITORS OF BIG SKY FARMS INC., DRYCAST SYSTEMS INC. and BIG SKY MANAGEMENT CONSULTING CORP.

AND

SHAFER COMMODITIES INC.

APPLICANT

AFFIDAVIT OF JANICE LYNNE LEISHMAN
(Re: Application for Post Application Trade Creditor's Charge and Payment of Pre-Filing Debt)

I, JANICE LYNNE LEISHMAN, of the Town of Morden, in the Province of Manitoba, MAKE OATH AND SAY THAT:

1. I am the President of the Applicant, Shafer Commodities Inc. ("**Shafer**"), and in that capacity I have been involved in the commercial relationship between Shafer and the Respondents, Big Sky Farms Inc., Drycast Systems Inc. and Big Sky Management Consulting Corp. (the "**Debtor Companies**"), such that I have personal knowledge of the matters herein deposed to, except where stated to be on information and belief and where so stated do I verily believe the same to be true.

2. I make this affidavit in support of an application for the following relief:

(a) a post-application trade creditors' charge in favour of Shafer (the "**Shafer PATC**") for feed components delivered to the Debtor Companies subsequent to the granting of the Initial Order;

(b) an order directing the Debtor Companies to pay Shafer forthwith the amount of $1,060,880.71 representing the value of feed components delivered during the thirty (30) day period prior to the Initial Order; and

(c) further, or in the alternative to (b) above, an order directing the Debtor Companies to pay Shafer forthwith the amount of $383,212.30 for feed components delivered during the period of October 29, 2009 – November 9, 2009.

I. BACKGROUND INFORMATION

3. Shafer is a body corporate incorporated pursuant to the laws of the Province of British Columbia and is extra-provincially registered to operate in the Province of Saskatchewan.

4. Shafer services the agricultural commodities industry by sourcing and supplying feed ingredients such as grains, protein by-products, etc. for all sectors of the feed industry.

5. At any given time, Shafer deals with a number of different commodities. Shafer handles a variety of ingredients used in feed rations including hog feed. In addition, Shafer also handles many of the grains and feed stocks used by ethanol plants, bio-fuel plants, distilleries, and fertilizer operations.

6. Shafer is distinct from the local producer of feed grain in that the local producer is limited to the particular crop, or crops, that it has grown. The local producer is also restricted by the amount of feed that it can provide. In order to service the Debtor Companies' feed demand the grain of hundreds of producers is required, and the service that Shafer provides is to locate mass amounts of a particular type and quality of feed using its network of suppliers

to deliver the product to the end user within the specific time constraints that are dictated by the animals feed requirements.

7. Shafer's logistical ability to supply vast amounts of feed in a timely and efficient manner utilizing its extensive network of suppliers is critical to the continued operation and economic preservation of the Debtor Companies' business.

II. RELATIONSHIP WITH THE DEBTOR COMPANIES

8. The business relationship between Shafer and the Debtor Companies began in and around March of 2008. Since that time Shafer's total sales of feed components to the Debtor Companies equals approximately $5,606,933.78 CDN, or 26,199.027 metric tonnes ("**MT**").

9. Shafer is currently owed $1,060,880.71 (the "**Outstanding Indebtedness**") for feed components delivered to the Debtor Companies from October 13, 2009 to November 9, 2009, being the day prior to the granting of the Order of the Honourable Justice N.G. Gabrielson on November 10, 2009, (the "**Initial Order**").

10. In the months leading up to the Initial Order, the tonnage of feed ordered by the Debtor Companies increased considerably. For example, the following is a summary of the total tonnage of feed components, and the corresponding dollar value of same, delivered to the Debtor Companies for the months of May, June, and July of 2009:

(a)	May, 2009	100.044 MT ($19,008.00)
(b)	June, 2009	268.919 MT ($51,095.00)
(c)	July, 2009	654.436 MT ($127,164.00)

11. The sales of feed components to the Debtor Companies increased significantly for the months of August, September, October and November:

(a) August, 2009 3421.158 MT ($554,213.00)

(b) September, 2009 3886.688 MT ($621,285.00)

(c) October, 2009 5200.524 MT ($1,080,739.00)

(d) To November 24, 2009 4460.387 MT ($1,002,451.00)

12. Over the course of the relationship with the Debtor Companies, Shafer has primarily supplied Distillers Dried Grain ("**DDG**") and Soybean meal ("**SBM**") (collectively the "**Critical Feed Components**") to the Debtor Companies. As further explained below, I am aware that these feed components are critical nutritional ingredients to the overall hog ration and health of the livestock.

13. Shafer has also supplied the Debtor Companies with feed corn from time to time.

14. Shafer has delivered the Critical Feed Components and corn to a total of eighteen (18) of the Debtor Companies' barns located throughout rural Saskatchewan and rural Manitoba as follows:

(a) Rama, Saskatchewan;

(b) Ogema, Saskatchewan;

(c) Boissevain, Manitoba;

(d) Treherne, Manitoba;

(e) Melita, Manitoba;

(f) Porcupine Plain, Saskatchewan;

(g) Goodeve, Saskatchewan;

(h) Broderick, Saskatchewan;

(i) Insinger, Saskatchewan;

(j) Kelvington, Saskatchewan;

(k) Rosthern, Saskatchewan;

(l) Arborfield, Saskatchewan (Pasquia);

(m) Plenty, Saskatchewan;

(n) Shaunavon, Saskatchewan;

(o) Strasbourg, Saskatchewan

(p) Sturgis, Saskatchewan;

(q) Theodore, Saskatchewan; and

(r) Unity, Saskatchewan.

(the "**Locations**")

III. FEED SUPPLY CONTRACTS

15. Typically, bulk commodities are sold to end users, such as the Debtor Companies, in truckload lots. The end users engage a specialized computer application to ascertain which commodities, given prevailing market conditions, will provide the lowest cost ration while meeting the dietary requirements of a particular animal. There are forty (40) components which must be taken into consideration when determining a hog ration. In addition, the feed ration differs for boars, sows, pregnant sows, piglets, weanlings, feeders, and market hogs.

16. Depending on the particular animal, certain commodities are more difficult to replace with another commodity, even when the market price fluctuates, because they contain nutrients vital to the health of the animal. For hog producers such as the Debtor Companies, SBM is always used to some

extent because of its amino acid content which is of critical importance as it fosters the growth of the hogs.

17. Other factors such as availability of a particular commodity, timeliness of delivery, and quality assurance are also taken into account when an end user purchases feed commodities.

18. Once the end user determines the least cost ration for the feed supply in question, it contacts a commodity trader who then enters the marketplace to purchase the required amount of the commodity and arranges for its delivery over a specified time period. Feed contracts may cover a one week term, or as long as one year, and allow the end user to hedge the market by locking in a specific price. As further explained below, historically Shafer has negotiated longer term feed supply contracts with the Debtor Companies; however, in light of Shafer's current exposure and these *CCAA* proceedings it is no longer prepared to do so on the current interim basis unless the Shafer PATC charge is granted.

A. Distillers Dried Grain

19. As noted above, Shafer has delivered more than 26,199.027 MT of the Critical Feed Components since March of 2008. This number is comprised of 22,596.711 MT of DGG at a value of $4,282,353.00.

20. DDG is a specialized type of feed that is a by-product of the dry mill ethanol production process, which uses only the starch portion of the corn. The remaining ingredients, nutrients, protein, fat, minerals and vitamins are concentrated into DDG.

21. DDG is a superior feed component for the hog industry because of its high protein (approximately 29%) and fat content (approximately 9%) as compared to similar priced feed sources, such as canola meal. Essentially, DDG is a concentrate of certain elements in corn that have a high nutritional value for the animals.

22. Prior to March of 2008, the Debtor Companies were not using DDG as a feed source. Shafer introduced DDG to the Debtor Companies in and around the spring of 2008, and after conducting the appropriate tests they began to use DDG as one of their main feed ingredients.

23. I am aware that Shafer is currently the exclusive supplier of DDG to the Debtor Companies, and understand that Shafer has always been the primary supplier of this product to the Debtor Companies.

24. The location of the feed supplier in proximity to the barns is a significant factor in determining the overall cost of the feed. All commodities that Shafer supplies to the Debtor Companies are sold on a delivered basis. This means that Shafer contracts the freight and delivers directly to the Debtor Companies' barns.

25. Because the price that the Debtor Companies' pay for a metric tonne of feed purchased from Shafer includes trucking, not only is Shafer supplying feed but it is supplying trucking – both of which have been identified in the affidavits sworn by Canute Tagseth in support of these proceedings to be critical supplies to the on-going operations of the Debtor Companies.

26. The Outstanding Indebtedness that the Debtor Companies owe to Shafer relate to critical feed supplies and critical transportation services. Moreover, the type of feed that Shafer supplies, because of its nutritional value, is critical to the health of the animals.

27. All feed is transported by truck and trailer from the supplier to the hog barns. Trucking is the only viable means of transportation because the barns are located in remote areas that do not have access to a rail line. Moreover, many of the suppliers do not have easy access to a rail line.

28. Because Shafer is delivering different types of ingredients to the various Locations as required it is impossible to accurately predict what will be required by any given location for any specific period of time. Numerous truck

loads are delivered to various of the locations on a daily basis depending upon need.

B. Corn

29. Of the three feed components Shafer has supplied to the Debtor Companies, corn represents the smallest volume of overall sales, being 811.178 MT at a value of $132,222.00, since March of 2008.

C. Soybean Meal (SBM)

30. Since March of 2008, Shafer has delivered more than 2,791.138 MT of SBM at a value of $1,192,358.00. Shafer purchases all of its SBM from non-local sources as Western Canada currently does not have an SBM crushing plant.

31. Shafer has been advised by Casey Smit, President and CEO of the Debtor Companies, and I do verily believe the same to be true, that SBM is a "must" inclusion in the feed ration for the Debtor Companies' hogs. It is an irreplaceable feed component in the hog ration because of its nutritional content (including amino acids) as well as its digestibility and palatability. Mr. Smit further advised that Shafer is currently the exclusive supplier of SBM to the Debtor Companies.

32. Because of Shafer's strong relationship with the Debtor Companies and the necessity of having SBM in the hog feed ration, Mr. Smit has specifically asked Shafer to continue to supply the Debtor Companies with SBM, and other feed components, despite the *CCAA* proceedings. Shafer is prepared to continue to supply the Critical Feed Components and trucking of same, as well as other feed components, provided the Shafer PATC charge is granted in an amount sufficient to adequately provide for payment.

33. I understand that previously the Debtor Companies were also purchasing SBM from an American supplier, but that this supplier has since refused to continue to supply SBM citing an unacceptable credit risk. In addition, I am aware that other feed suppliers in the industry will not supply feed to the

Debtor Companies due to the credit risk that the Debtor Companies' pose. Accordingly, if Shafer's supply of SBM is interrupted there will be no other viable source to provide this particular ingredient on a timely basis.

IV. CURRENT AND FUTURE FEED SUPPLY

34. On or about October 15, 2009, Shafer agreed to deliver a total of 8,050 MT of DDG to the Debtor Companies during November and December at a total value of $1,381,550.00. As of November 24, 2009 Shafer delivered 3686.17 MT of DDG. This leaves a further 4363.83 MT of DDG to be delivered prior to the end of December.

35. Because Shafer provides an on-going supply of the Critical Feed Components to the various Locations, it also monitors the amount of feed used, and needed, by the Debtor Companies. Shafer is aware that the Debtor Companies will require a further 1300 MT of DDG at a total value of $256,000.00, to meet the demand until the end of December. Meetings have been scheduled for early this week with Mark Oldfield, buying agent for the Debtor Companies, to arrange for supply of this additional feed.

36. The price for the November/December delivery of DDG that was secured in mid October, 2009, being $171.62/MT, is approximately $13.00/MT lower than the current market price. If the Debtor Companies had to purchase, and was able to purchase, enough DDG from another supplier, at current prices to supply them to the end of December, there would be a significant increased cost to the Debtor Companies with no corresponding benefit.

37. In addition to having to pay a higher price, if the Debtor Companies were required to find another source of the Critical Feed Components, the hogs would be put at risk, which in turn would deleteriously affect operations and ultimately the value of the security held by the secured parties. If Shafer refused to continue to provide the Critical Feed Components, the Debtor Companies would have to respond quickly in order to meet the very significant demand for feed that this large company has given its size. Given

the vast number of hogs, the Debtor Companies' feed stocks deplete quickly, and any delays could result in significant damage to the livestock which would compromise the interests of all stakeholders including secured parties and unsecured creditors.

38. I am aware that many suppliers of feed will not provide credit to the Debtor Companies under the current circumstances; therefore, I am of the belief that it would be difficult to find a supplier, or suppliers, that could supply the vast quantity of feed that is required in a short period of time. This is further complicated by the Christmas season. Even if the Debtor Companies could secure another supplier, because of their current situation they would be forced to pay a premium for the feed supply, which in turn negatively affects value of the livestock and the on-going operations.

39. With respect to SBM, Shafer delivered 288 MT of SBM, at value of $132,590.00 to the Debtor Companies for the week ending November 27, 2009. Approximately an additional 336 MT were contracted for delivery during November 30, 2009 - December 11, 2009, at a total value of $152,522.00.

40. Based on assurances from the Monitor and the Debtor Companies that Shafer would be paid in full for feed components delivered post-Initial Order, Shafer has continued to supply feed, albeit on different terms and with some hesitation. Previously, Shafer negotiated feed supply contracts with the Debtor Companies for lengthier terms. However, in light of the current proceedings, Shafer is no longer prepared to accept such a credit risk, and is currently being paid on a weekly basis.

41. The interim practice that had been established is that Shafer submits its Statement of Account to the Debtor Companies on Wednesday for the feed delivered in the previous week, and if payment is not received by way of wire transfer on close of business Friday feed shipments are stopped. This interim practice is not acceptable on an ongoing basis and had been adopted out of a

desire on the part of Shafer to ensure that the hogs are not compromised pending the resolution of more adequate long term financial arrangements, and it is the need to put such arrangements in place that prompted this application

42. It is financially more favourable for an end user of feed, such as the Debtor Companies, to be in a position to negotiate long term feed contracts as this permits companies to hedge risk and lock-in favourable market prices for a long term supply. To do this, however, an end user requires credit. Because of Shafer's current exposure to the Debtor Companies it is no longer prepared to negotiate long term contracts, with the result that the Debtor Companies have to pay feed prices, which are potentially higher, than those which could otherwise be achieved. It is in the best interests of the Debtor Companies that Shafer be granted the PATC charge is seeks, as it will permit Shafer to re-commence negotiation of the long term contracts.

43. On Friday, November 27, 2009, the Debtor Companies paid Shafer $375,614.07 for feed components delivered from November 16 – November 24, 2009. On Friday, December 4, 2009 Shafer received payment from the Debtor Companies in the amount of $279,722.82 for feed delivered from November 24 – December 2, 2009. Accordingly, Shafer is exposed on an on-going basis for $275,000.00 - $400,000.00, or nearly $1,500,000.00 inclusive of pre-filing debt.

44. Shafer does not have the financial wherewithal to continue to provide this level of credit to the Debtor Companies. As an unsecured creditor, Shafer is aware of the risk that it might not get compensated for all or a significant portion of the deliveries made prior to the Initial Order. Shafer is of the view that the best opportunity for all of the stakeholders including the unsecured creditors to maximize recovery is to allow the *CCAA* proceedings to run their course such that a controlled restructuring, or winding up, of the Debtor Companies may occur. This can only happen if the Debtor Companies have

a stable supply of Critical Feed Components. Shafer is committed to provide this source of feed provided it is granted a charge on the property of the Debtor Companies in accordance with the draft Order filed.

45. If this Honourable Court determines that Shafer is not a critical supplier and should not be granted the benefit of a charge on the assets, property, and undertaking of the Debtor Companies, in light of Shafer's current level of exposure it will be unable to continue to supply Critical Feed Components on the current interim basis..

46. I am aware of the risk that at some point in these *CCAA* proceedings a creditor of the Debtor Companies could apply to lift the stay of proceedings. I am concerned that if such an application is successful, Shafer will suffer a further loss in the range of $200,000.00 - $400,000.00, which loss would have a potentially crippling affect on the company if Shafer is not sufficiently protected with a PATC.

47. Shafer has considered implementing a cash-on-delivery ("COD") system; however, the logistics of the delivery of the feed makes this impossible to administer. In particular, I note COD is not viable for, *inter alia*, the following reasons:

(a) Because of the overall volume of feed there can be upwards of 150 truck loads per month being delivered to 18 different locations throughout Manitoba and Saskatchewan; and

(b) The delivery trucks travel as far as 800 miles (1287 kilometers) en route from the supplier to the barn, which makes it difficult to determine when the particular shipments will arrive.

48. This past fall Shafer began noticing significant delays in payments being made by the Debtor Companies. This prompted Shafer to monitor it accounts receivable vis-à-vis the Debtor Companies more closely. Because of the large amounts of feed being shipped on a weekly basis, Shafer stayed in

close contact with the Debtor Companies, and in particular Canute Tagseth.

49. We had many discussions with Mr. Tagseth about the Outstanding Indebtedness, some as late as November 9, 2009, and several assurances were made by him. Based on this, it was our understanding and expectation that Shafer would be paid in full in due course.

50. In addition, we discussed with Mr. Tagseth the Federal government's Hog Industry Loan Loss Reserve Fund, how it would affect the industry, and the prospects for improvement in hog futures. At no time during our many conversations in September and October were we advised that the Debtor Companies were considering making an application for a *CCAA* Initial Order. Had we known this we would have made the difficult decision to cease supplying Critical Feed Components to the Debtor Companies. One of the reasons we elected as a company to continue to supply feed in light of our exposure is because we were aware of the consequences that would be visited upon the Debtor Companies without feed.

51. I am aware that affidavits filed in support of a *CCAA* filing were being sworn on October 29, 2009, such that the Debtor Companies clearly knew the application for the Initial Order was imminent no later than that date and it had obviously previously instructed their professional advisors to prepare the necessary documentation sometime prior to that date. Given the complexity of the operations and the materials that have been filed I am of the belief that a decision to proceed with the application for the Initial Order was made at a time significantly prior to the date at which the Affidavits were sworn. Notwithstanding that state of affairs Shafer was not advised of same despite the fact that we were requested to ship, and in fact did ship, a total of $383,212.30 worth of Critical Feed Components between October 29, 2009 and the date of the Initial Order.

52. I am of the view that to ask Shafer to continue to supply large volumes of Critical Feed Components and trucking services to the Debtor Companies at

a time when they were aware payment would not be forthcoming because of the pending application for the Initial Order was inequitable.

53. I am aware that Big Sky Trailers and Leased Operator Trucks (as defined in the Initial Order) have been paid all or a portion of the pre-filing indebtedness owed to them by the Debtor Companies. I am further aware that Local Area Grain Farmers who are participating in the Grain Delivery Incentive Program are being offered a premium for their grain by the Debtor Companies. Shafer has not been offered these opportunities despite the fact that it provides feed components and trucking services that are critical to the on-going operations of the Debtor Companies.

54. I make this affidavit in support of an application for the following relief:

(a) a post-application trade creditors' charge in favour of Shafer for feed components delivered to the Debtor Companies subsequent to the granting of the Initial Order in accordance with the draft Order filed;

(b) an order directing the Debtor Companies to pay Shafer forthwith the amount of $1,060,880.71 representing the value of feed components delivered during the thirty (30) day period prior to the Initial Order; and

(c) further, or in the alternative to (b) above, an order directing the Debtor Companies to pay Shafer forthwith the amount of $383,212.30 for feed components delivered during the period of October 29, 2009 – November 9, 2009.

SWORN BEFORE me at the Town of Morden, in the Province of Manitoba, this 7 day of December, 2009.	))))	JANICE LYNNE LEISHMAN

A NOTARY PUBLIC in and for the Province of Manitoba
My appointment expires N/A