Court File No. CV-14-10667-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. c. C.43 (as amended)

AND IN THE MATTER OF HANFENG EVERGREEN INC.

FACTUM OF THE RECEIVER
(Motion for Approval of Fees returnable November 20, 2017)

November 13, 2017

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PART I - INTRODUCTION

1. The Receiver delivers this factum in support of its motion to approve (a) the fees and disbursements of the Receiver and its counsel; and (b) the activities of the Receiver as set out in the Supplement to the First Report, its Fourth Report and its Fifth Report (all as defined below). This Court has previously approved the activities of the Receiver as set out in its First Report, its Second Report, the Supplement to its Second Report, and its Third Report (also as defined below).

2. As of the date of this factum, two related parties have responded to this motion: Xinduo Yu and his wife, Lei Li. Mr. Yu is the founder and former CEO of Hanfeng Evergreen Inc. ("**Hanfeng**" or the "**Company**") and is the legal representative of Hanfeng Slow-Release Fertilizer Co., Ltd. (the "**Chinese Subsidiary**"), the Company's wholly-owned subsidiary in China. Ms. Li is a former director and officer of Hanfeng. As described in more detail below, Mr. Yu and Ms. Li are defendants in an action commenced by the Receiver seeking damages of approximately $170,000,000 for, among other things, fraudulent misrepresentation and breach of fiduciary duty (the "**Receiver's Action**").

3. Ms. Li delivered an affidavit dated October 19, 2017 (the "**Li Affidavit**") in response to this motion and counsel to Mr. Yu and Ms. Li cross-examined representatives of the Receiver, Ernst & Young Inc. ("**EY**"), and its counsel, Stikeman Elliott LLP ("**Stikeman**"),

on their fee affidavits. Despite written request, as of the date of this factum counsel to Mr. Yu and Ms. Li has not provided the basis for their apparent objections to this motion.

4. The Receiver submits that the fees it has incurred in these receivership proceedings and the fees of its counsel are fair and reasonable. The Receiver was appointed by this Court to effect the Share Transfer Transaction (defined below) by which the Company would sell its shares in the Chinese Subsidiary for the approximate purchase price of $40,000,000. The process of closing an international transaction of this magnitude between a Canadian public company and a Chinese company would, on its own, be complex and require the Receiver to retain both Canadian and Chinese counsel to implement. However, these receivership proceedings have been greatly complicated by the failure of the contemplated purchaser to close the Share Transfer Transaction, which the Receiver attributes to the conduct of Mr. Yu and Ms. Li, as set out in the Receiver's Action.

5. The Receiver respectfully requests that this Court approve its fees and disbursements as well as those of its counsel, and approve its activities, with an award of costs against Mr. Yu and Ms. Li under Rule 39.02(4)(b) in respect of the cross-examinations, including time for preparation, attendance, and responding to questions.

6. Capitalized terms not defined herein have the meaning set out in the Fifth Report and the Supplement to the Fifth Report. All amounts are in Canadian dollars unless otherwise specified.

PART II - THE FACTS

7. On August 20, 2014, following an application by the Company, this Court issued orders:

(a) approving a share transfer agreement (the "**Share Transfer Agreement**") dated August 8, 2014 and the transaction contemplated therein (the "**Share Transfer Transaction**") providing for the sale of all the shares of the Chinese Subsidiary; and

(b) appointing EY as receiver and manager (the "**Receiver**") of the assets, undertakings and properties of the Company, pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**Appointment Order**").

Fifth Report of the Receiver dated July 11, 2017 at paras 1 to 3, Tab 2 of the Motion Record of the Receiver **["Fifth Report"]**

8. The First Report of the Receiver dated September 12, 2014 (the "**First Report**"), Second Report of the Receiver dated July 17, 2015 (the "**Second Report**"), Supplement to the Second Report of the Receiver dated July 22, 2015 (the "**Supplement to the Second Report**"), and the Third Report of the Receiver dated September 24, 2015 (the "**Third Report**") and the activities set out therein were each approved by prior orders of this Court.

Re: Hanfeng Evergreen Inc, Court File No. CV-14-10667-00CL, Order of Justice Hainey dated July 31, 2015 at para 7, Book of Authorities of the Receiver ("**BOA**") Tab 1 **["July 31 Order"]**

Re: Hanfeng Evergreen Inc, Court File No. CV-14-10667-00CL, Order of Justice Hainey dated October 5, 2015 at paras 2-3, BOA Tab 2 **["October 5 Order"]**

9. The activities of the Receiver and its counsel undertaken in these receivership proceedings, in particular subsequent to the date of the Third Report, are set out in detail in the Fourth Report of the Receiver dated April 4, 2017 (the "**Fourth Report**"), the Fifth Report of the Receiver dated July 11, 2017 (the "**Fifth Report**"), and the Supplement to the Fifth Report dated November 13, 2017 (the "**Supplement to the Fifth Report**").

10. The Fifth Report includes affidavits from representatives of EY, Stikeman, and the Receiver's Chinese counsel, and the Receiver has also filed a supplemental affidavit (collectively, the "**Fee Affidavits**"). The Fee Affidavits contain detailed accounts (redacted for privileged and confidential information) (the "**Invoices**") and provides summaries identifying the professionals who worked on the Receivership Proceedings.

A. General Background

11. The Receiver is seeking approval of its fees and those of its counsel in connection with the performance of their duties in the receivership proceedings in the following amounts:

(a) The Receiver in the amount of $641,067, plus HST and disbursements, for the period of August 2, 2014 to April 28, 2017;

(b) Stikeman in the amount of $407,952, plus HST and disbursements for the period of April 12, 2014 to May 5, 2017;

(c) Mayer Brown JSM ("**Mayer Brown**") in the amount of $228,774 (US$175,979.63) including value-added tax and disbursements for the period of November 10, 2014 to August 27, 2015; and

(d) Heilongjiang Honghui Law Firm ("**Honghui**") in the amount of $107,085 (US$82,372.90) including value-added tax and disbursements for the period of May 4, 2015 to May 31, 2017.

Fifth Report at para 48

12. The Appointment Order provides that:

> the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.
>
> *Re: Hanfeng Evergreen Inc,* Court File No. CV-14-10667-00CL, Order of Justice Matheson dated August 20, 2014 at para 18, Tab 3 of the Book of Authorities of the Receiver **["Appointment Order"]**

13. The rates of the Receiver and its counsel are at or below their standard rates in providing comparable services, with the caveat, as described in more detail below, that certain of the fees of Honghui were agreed to be flat rate.

Affidavit of Brent Beekenkamp sworn June 30, 2017 at para 6, Tab 2S of the Motion Record of the Receiver **["Beekenkamp Affidavit"]**

Affidavit of Brian Pukier sworn July 6, 2017 at para 8, Tab 2T of the Motion Record of the Receiver **["Pukier Affidavit"]**

Affidavit of Robert Terence Kwon Shien Tung sworn June 29, 2017 at para 5, Tab 2U of the Motion Record of the Receiver **["Tung Affidavit"]**

B. Activities of the Receiver and its Counsel

14. Over the course of the receivership proceedings, the Receiver has acted in a prudent and commercially reasonable manner to protect and realize on the assets of Hanfeng. The

primary activities of the Receiver during the period for which it seeks approval of its fees were:

(a) attempting to close the Share Transfer Transaction;

(b) attempting to preserve the Escrow Funds (as defined below);

(c) investigating the business and financial affairs of the purchaser and the Chinese Subsidiary;

(d) attempting to take control of the Chinese Subsidiary;

(e) defending the Chinese Litigation (as defined below); and

(f) prosecuting the Receiver's Action.

15. The activities of the Receiver up to September 24, 2015, the date of the Third Report, were approved by previous orders of this Court. These court-approved activities of the Receiver included: (a) the Share Transfer Transaction, (b) the Escrow Funds, (c) investigations into the purchaser and the Chinese Subsidiary and (d) attempts to control the Chinese Subsidiary. As set out in the table below, the aggregate amounts of fees and disbursements (before taxes) of the Receiver, its Chinese counsel and Stikeman associated with these court-approved activities are $767,406 and US$178,208 (for a total of approximately $998,937 in Canadian dollars as illustrated in the table below). These fees and disbursements include (i) amounts paid prior to September 20, 2015 as reflected in the statement of receipts and disbursements attached to the Third Report (the "**September 2015 R&D**")[1], and (ii) invoices related to these court-approved activities that were paid subsequently or remain outstanding as at the date of this factum.

Third Report of the Receiver dated September 24, 2015, Appendix "I": Receipts and Disbursements **["Third Report"]**

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[1] The September 2015 R&D reflects total professional fees and disbursements of $837,020, including: 1) Receiver's fees of $425,000; 2) legal and advisory fees in Canada and China of $217,725 and $149,458, respectively. In addition, subsequent professional fee payments as well as unpaid invoices in the aggregate amount of approximately $293,000 are related to the period prior to September 24, 2015, as reflected in the Fifth Report and the attached statement of receipts and disbursements. Accordingly, total professional fees and disbursements related to the Court-approved activities are $1.13 million. These fees and expenses include approximately $122,000 in Canadian dollars for services provided by other Canadian and Chinese advisors to the Receiver during this period.

CAD$	Court-approved Activities Through Sept. 24, 2015	Subsequent Activities For Court Approval (1)	Tax	Total
	Fees & Disbursements	Fees & Disbursements		Incl. Tax
Receiver	$ 503,450	$ 152,948	$ 85,332	$ 741,730
Stikeman	263,956	153,123	54,145	471,224
Mayer Brown (2)	214,272	-	14,502	228,774
Honghui (2)	17,259	87,425	2,400	107,085
Total	$ 998,937	$ 393,496	$156,379	$1,548,812

Notes: (1) The time period of these activities by professional is described earlier in this Factum. All of these fees and disbursements of the Receiver and Stikeman remain unpaid as at the date of this Report. (2) US dollar payments have been converted at CAD$1.30=US$1.00.

16. The Fourth Report, the Fifth Report, and the Supplement to the Fifth Report provide further updates with respect to the activities of the Receiver, including: (a) continued investigations; (b) further efforts to exercise control of the Chinese Subsidiary, (c) defending the Chinese litigation and (d) prosecuting the Receiver's Action. The Receiver is seeking approval of these activities (up to the date of the Fifth Report) in the present motion. The aggregate amounts of fees and disbursements (before taxes) associated with these activities that are the subject of the present motion are approximately $306,071 and US$67,250 (for a total of $393,496 as set out in the table above).

Fifth Report at para 58

Fifth Report, Appendix "R": Receipts and Disbursements

a) Appointment and Share Transfer Transaction

17. The Receiver was appointed on August 20, 2014 to complete the Share Transfer Transaction – an international deal involving the sale of all of the shares of the Chinese Subsidiary, a Chinese company, to a Chinese purchaser. Completing the Share Transfer Transaction was complicated by the international nature of the deal. To close the transaction the Receiver was required to obtain multiple regulatory approvals and take other related actions in China, including:

(a) approval from the City of Harbin Economic Cooperation Promotion Bureau (the "**HECPB Approval**");

(b) updating the business license of the Chinese Subsidiary (the "**Business License Registration**") by the Harbin Administration of Industry and Commerce which, since the time of the Third Report, was merged with other agencies and is now named the City of Harbin Market Supervision and Administration Bureau ("**Harbin MSAB**");

(c) tax clearance in respect of the Share Transfer Transaction from local tax authorities; and

(d) approval of the State Administration of Foreign Exchange ("**SAFE Approval**") with respect to remittance of the purchase price proceeds from China to Canada.

Second Report of the Receiver dated July 17, 2015 at paras 18 to 21 and 24 **["Second Report"]**

18. The purchase price of the Share Transfer Transaction was RMB 198 million (approximately $40,000,000) to be paid in the following manner:

(a) 5% deposit of RMB 12.4 million due August 19, 2014 (the "**Deposit**");

(b) 15% interim payment of RMB 37.2 million due September 3, 2014 (the "**Interim Payment**"); and

(c) the balance of RMB 148.8 million due 10 days after closing.

Second Report at para 17

19. After receiving the Deposit on August 28, 2014, the purchaser, defined below as New Pengcheng, failed to make the Interim Payment on time. The purchaser claimed this was for regulatory reasons with respect to SAFE Approval. As a result, after numerous discussions with Mr. Yu and negotiation with the purchaser, the Receiver authorized Mr. Yu, on behalf of the Receiver, to enter into an escrow agreement (the "**Escrow Agreement**") with the purchaser for the payment of the Interim Payment on February 16, 2017 to Minsheng Bank (the "**Escrow Bank**").

Second Report at paras 31 to 33

20. Again, the purchaser failed to make payment on time. The Receiver entered into a further agreement with the purchaser for the remittance of the Interim Payment in three installments on April 3, 17 and 30, 2015. The Purchaser only made two of the three payments for a total of RMB 10 million to the Escrow Bank (the "**Escrow Funds**"). The remainder of the Interim Payment in the amount of RMB 27 million was due on April 30, 2015, but was never deposited.

Second Report at para 35

21. During this time, the Receiver became aware of a number of issues with respect to the identity of the purchaser, which raised concerns about the ability and intent of the purchaser to close the Share Purchase Transaction. In particular, the Receiver discovered that, immediately prior to the execution of the Share Transfer Agreement, the name of the counterparty to the Share Transfer Transaction was changed from "Heilongjiang Pengcheng Fertilizer Co. Ltd." ("**HLJ Pengcheng**") to the Chinese language translation of "Harbin Pengcheng Fertilizer Co. Ltd." ("**New Pengcheng**").

Second Report at para 40 to 41

22. HLJ Pengcheng is a well-established company, whereas New Pengcheng appears to be a shell company with no operations that was registered on August 4, 2014 (four days prior to the signing of the Share Transfer Agreement) and with very limited publicly available information.

Second Report at para 41(d)

23. The Receiver's other efforts to advance the Share Transfer Transaction included:

(a) working with counsel to prepare various documents in connection with regulatory approvals; and

(b) appointing Mr. Guan Liu ("**Mr. Guan**"), a lawyer at Honghui, as a director of the Chinese Subsidiary to fill the vacancy in the Chinese Subsidiary's board in order to execute certain documents.

Fourth Report of the Receiver dated April 4, 2017 at paras 41 to 42 **["Fourth Report"]**

24. As a result of the failure of New Pengcheng to complete the Interim Payment and the above-noted concerns regarding the identity of the purchaser, the Receiver stopped taking further steps to obtain the necessary regulatory approvals for the Share Transfer Transaction and the transaction did not close.

Fifth Report at para 18

25. The unforeseen difficulties requiring the negotiation of the Escrow Agreement, the subsequent escrow funding agreement and investigation into the identity of New Pengcheng and its relationship with HJL Pengcheng or Mr. Yu caused the Receiver and its counsel to incur significant time and expense.

b) Attempt to preserve Escrow Funds

26. As described in the Third Report, the Receiver was informed by Mayer Brown that starting the week of July 13, 2015, New Pengcheng had repeatedly contacted the Escrow Bank requesting the Escrow Bank return the Escrow Funds to New Pengcheng.

Third Report at para 20

27. On July 28, 2015, the Escrow Bank notified the parties to the Escrow Agreement, including the Receiver, that the Escrow Agreement was to be terminated effective August 4, 2015. The notice did not, however, provide details as to how the Escrow Funds would be released. Article 8.5 of the Escrow Agreement provides that "on the termination date for the escrow, the Escrow Bank shall deal with the balance of the escrow amount in accordance with the instructions in the written notice jointly issued by the buyer and the seller".

Third Report at para 22
Fourth Report at para 32

28. By letter dated August 5, 2015, The Receiver informed the Escrow Bank and New Pengcheng that it would not consent to the designation of a successor account under the Escrow Agreement or release of the Escrow Funds back to New Pengcheng. The Receiver also instructed Mr. Yu that he was not to authorize or cause any change to the Escrow Funds without written instructions from the Receiver.

Third Report at para 23(b)

Fourth Report at para 33

29. Despite the Receiver's clear instructions to Mr. Yu and the Escrow Bank, the Receiver's Chinese counsel learned that Mr. Yu had provided written consent on behalf of Hanfeng (which he was not authorized to do) to the Escrow Bank, resulting in the Escrow Funds being released back to New Pengcheng in August 2015.

Fourth Report at para 34

30. As with the attempts to close the Share Transfer Transaction, the difficulties encountered by the Receiver in dealing with the Escrow Bank in an effort to preserve the Escrow Funds resulted in increased time spent by the Receiver and its counsel in these Receivership Proceedings.

c) Attempts to take control of Chinese Subsidiary

31. The Chinese Subsidiary is managed by a group of individuals under Mr. Yu's supervision (the "**Local Management Team**"). Although Mr. Yu advised on several occasions that the Chinese Subsidiary had been dormant since around April 2014, the Receiver became increasingly concerned about the status of the assets of the Chinese Subsidiary (the "**Heilongjiang Assets**") due to:

(a) the Chinese Subsidiary incurring significantly more disbursements than what would be expected for a dormant manufacturing facility;

(b) the absence of any meaningful cooperation from Mr. Yu, Ms. Li and the Local Management Team (as described further below) and their continued refusal to provide detailed supporting information for the disbursements;

(c) financial and operational information received by the Receiver being inadequate and inconsistent with explanations and supporting collaborative information; and

(d) the discovery of lawsuits related to undisclosed loans of the Chinese Subsidiary that were concealed from the Company and Receiver and subsequent settlements entered into by the Chinese Subsidiary without the Receiver's knowledge or agreement. Under these settlements, the Chinese Subsidiary is obligated to pay to China Industrial Bank ("**Industrial Bank**") approximately RMB 161 million in principal and interest (approximately $32 million) (the "**Industrial Bank Settlements**").

Second Report at para 50

Third Report at para 30

32. In order to preserve the Heilongjiang Assets, in June 2015, the Receiver undertook to reorganize the board and management of the Chinese Subsidiary by appointing:

(a) Mr. Hong Rong-Kai ("**Mr. Hong**") as the legal representative and a director of the Chinese Subsidiary to replace Mr. Yu; and

(b) an associate of Mr. Hong as a director to replace the third director.

Third Report at para 31

33. On July 24 and 31, 2015, following an application by the Receiver, this Court issued two Orders (collectively, the "**Clarification Orders**"), which, among other things:

(a) confirmed the Receiver's power and authority to exercise the shareholder rights of Hanfeng with respect to the Chinese Subsidiary, including the replacement of Mr. Yu with Mr. Hong as the legal representative and a director of the Chinese Subsidiary;

(b) authorized the Receiver to take any necessary steps to assert its ownership of, and effect control over, the Chinese Subsidiary;

(c) required Mr. Yu to provide unfettered access for Mr. Hong and his designates to the Chinese Subsidiary's offices and facilities and to the Chinese Subsidiary's books and financial records;

(d) required Mr. Yu to surrender the chops and certain other business and legal documents of the Chinese Subsidiary to Mr. Hong and the Receiver;

(e) required Mr. Yu to provide full and timely cooperation to the Receiver with respect to the above tasks; and

(f) prohibited Mr. Yu, without the Receiver's approval, from executing any agreement with respect to the Chinese Subsidiary or causing it to make any payments.

Fifth Report at para 5

34. Despite the Clarification Orders and repeated demands by the Receiver and its representatives, Mr. Yu and the Local Management Team have refused to provide cooperation, including:

(a) refusing to sign/seal certain documents necessary for a submission to register Mr. Hong as the legal representative and director of the Chinese Subsidiary and refusing to surrender the chops, bank tokens or other business documents;

(b) failing to provide financial information and records of the Chinese Subsidiary; and

(c) refusing to accommodate access to the Chinese Subsidiary's facility; in particular, security denied Mr. Hong and Mr. Guan entry to the Chinese Subsidiary's facility during the weeks of July 27, 2015 and June 6, 2016.

Fourth Report at para 42

35. In November 2015, the Receiver applied to the Harbin Intermediate People's Court in Heilongjiang Province, China (the "**Harbin Intermediate Court**") in order to address the non-cooperation of Mr. Yu and the Local Management Team. However, the Harbin Intermediate Court was not prepared to hear the Receiver's application despite reviewing the Appointment Order and Clarification Orders issued by this Court.

Fourth Report at paras 44 to 45

36. Mr. Yu's failure to cooperate and disregard of the Clarification Orders resulted in the Receiver and its counsel spending significant time and effort attempting to gain control of the Chinese Subsidiary.

d) Defending the Chinese Litigation

37. On or about August 3, 2015, New Pengcheng commenced an action against Hanfeng, the Chinese Subsidiary, Mr. Yu and EY in its personal capacity in the Harbin Intermediate Court (the "**Chinese Litigation**"), seeking, among other things, the return of the Deposit. The Receiver defended the action.

> Fifth Report at paras 38 to 43
>
> Supplement to the Fifth Report of the Receiver dated November 10, 2017 at para 7 **[Supplement to the Fifth Report]**

38. At first instance, the Harbin Court found in favour of New Pengcheng and ordered the Deposit, plus interest, be returned by Hanfeng to New Pengcheng. The Receiver appealed the decision of the Harbin Intermediate Court to the Heilongjiang Provincial People's High Court (the "**Heilongjiang Provincial Court**").

> Supplement to the Fifth Report at paras 8 and 9

39. The Heilongjiang Provincial Court released its decision dated September 18, 2017, granting the appeal by the Receiver and overturning certain parts of the Harbin Intermediate Court's decision, including, among other things, the return of the Deposit to New Pengcheng.

> Supplement to the Fifth Report at para 10

e) Prosecuting the Receiver's Action

40. On March 22, 2016, the Receiver commenced the Receiver's Action in this Court, naming Mr. Yu and Ms. Li as defendants. Among other things, the Amended Statement of Claim alleges that:

(a) Mr. Yu breached his fiduciary duties to Hanfeng and the Chinese Subsidiary by taking out a series of loans on behalf of the Chinese Subsidiary, which proceeds he converted for his own use or otherwise improperly dissipated from the Chinese Subsidiary;

(b) Ms. Li knowingly assisted Mr. Yu in his breach of fiduciary duties owed to Hanfeng and the Chinese Subsidiary and that Hanfeng has suffered harm as a result of

Ms. Li's knowing assistance of Mr. Yu's breach of fiduciary duty and is entitled to damages and/or restitution; and

(c) Mr. Yu and Ms. Li fraudulently represented the true identity and corporate history of New Pengcheng.

Fifth Report at para 24

41. In the Receiver's Action, the Receiver claims restitution or damages in the total amount of Canadian currency sufficient to purchase RMB 865,600,000 (approximately $173,000,000), and other relief. Currently, the Receiver's Action is the primary asset of Hanfeng other than the remaining balance of the Deposit as the Chinese Subsidiary is likely insolvent with no residual value for its shareholder, Hanfeng, in a liquidation.

Fifth Report at para 25

Supplement to the Fifth Report at para 25

C. Activities of Chinese Counsel

42. The Receiver and Stikeman have been broadly involved with all aspects of the Receivership Proceedings. Counsel from Mayer Brown and Honghui were engaged by the Receiver to perform more specialized roles in the receivership proceedings.

a) Mayer Brown

43. The Receiver engaged Mayer Brown to assist in closing the Share Transfer Transaction, and to provide advice and services navigating the complex regulatory scheme in China after issues arose with respect to New Pengcheng's failure to make the Interim Payment in accordance with the Share Transfer Agreement. Mayer Brown also provided services with respect to:

(a) negotiating the Escrow Agreement;

(b) discussions with the Escrow Bank

(c) assisting the Receiver in its efforts to preserve the Escrow Funds;

(d) obtaining information with respect to the purchaser;

(e) applying to change the directors and legal representative of the Chinese Subsidiary;

(f) obtaining information relating to the Chinese Subsidiary's indebtedness; and

(g) providing information in respect of the Chinese Litigation.

Tung Affidavit
Second Report at para 40
Third Report at para 20 - 26

44. Mayer Brown's assistance was necessary for the Receiver to understand the Chinese regulatory scheme when engaging in extensive and intense negotiations with New Pengcheng and Mr. Yu in order to advance the Share Transfer Transaction. Mayer Brown was also critical in the process of establishing the Escrow Account, and assisted with the Receiver's attempts to defend the Escrow Funds

b) Honghui

45. The Receiver initially engaged Honghui on an hourly basis to assist the Receiver to exercise more control over certain documents required in the local regulatory process in Harbin after the Receiver experienced various issues with the purchaser. As described earlier, the Receiver appointed Mr. Guan as a director of the Chinese Subsidiary to execute certain documents in connection with the Share Transfer Transaction. Honghui's assistance was also important in the investigations into New Pengcheng and the status of the Chinese Subsidiary. Subsequently, Honghui assisted with the Receciver's attempts to gain control of the Chinese Subsidiary, including the replacement of Mr. Yu as legal representative of the Chinese Subsidiary.

Third Report at para 30-33
Fourth Report at paras 41-46

46. When the Chinese Litigation was commenced, it became apparent to the Receiver that it would require more significant services from Honghui in respect of legal proceedings

and other matters in Harbin. Accordingly, the Receiver entered into a fee for service contract with Honghui to (a) defend the Chinese Litigation starting on October 30, 2015, and (b) seek the court endorsement of the Receiver's authority to replace the legal representative of the Chinese Subsidiary. The contract provides for RMB 500,000 (approximately $100,000)[2] in total fees, including:

(a) an up-front payment of RMB 320,000 (approximately $64,000);

(b) a success fee of RMB 30,000 (approximately $6,000) payable when the legal representative replacement is completed; and

(c) another success fee of RMB150,000 (approximately $30,000) conditional upon the outcome of the Chinese Litigation.

Supplement to Fifth Report at paras 12

47. For the period which the Receiver is seeking approval of fees, Honghui engaged in numerous discussions with local authorities, banks and courts with respect to the Chinese Subsidiary. Honghhui acted for the Receiver in the Harbin Intermediate Court trial and then in the appeal to the Heilongjiang Provincial Court. The value of Honghui's advice was reflected in the eventual success in the Chinese Litigation.

D. Next Steps in the Receivership Proceedings

48. The Receiver intends to continue prosecuting the Receiver's action and to complete the claims process contemplated by the Order of Justice Wilton-Siegel dated September 23, 2014 (the "**Claims Procedure Order**").

49. At the outset of these proceedings, Hanfeng was believed to be solvent. Accordingly, the Receiver anticipated that upon closing of the Share Transfer Transaction it would seek an order for the distribution of the sale proceeds – first to satisfy all of the Company's proven outstanding indebtedness and then paying any residual value to Hanfeng's shareholders.

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[2] Converted at RMB5.00 = CAD$1.00

50. In order to assess any non-equity claims against Hanfeng and satisfy any outstanding debts, the Receiver sought, and obtained, the Claims Procedure Order.

51. The Receiver has received 17 non-equity claims with a total face value of $4,307,663 (including two claims filed by Mr. Yu and a company controlled by him for a total amount of $2,451,613.83) and one late non-equity claim for $173.32. The Receiver has responded to each of the claims but disputed claims have not yet been adjudicated due to the uncertainty caused by the failure of the Share Transfer Transaction to close and the resulting Chinese Litigation.

52. As set out in the Supplement to the Fifth Report, with the issuance of a final judgment in the Chinese Litigation, the Receiver now intends to move forward with the resolution of disputed claims with the Honourable Mr. Frank Newbould as claims officer.

PART III - ISSUES

53. The issues in this motion are as follows:

(a) Should the Court approve the fees and disbursements of the Receiver and its counsel incurred in performing their duties in these receivership proceedings?

(b) Should the Court approve the Supplement to the First Report, the Fourth Report and the Fifth Report and the activities of the Receiver as set out therein?

PART IV - LAW AND ARGUMENT

A. The fees and disbursements of the Receiver and its counsel should be approved

54. The fees and disbursements incurred by the Receiver, Stikeman, Mayer Brown and Honghui, as set out in the Fee Affidavits, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Orders issued in these receivership proceedings.

55. The general standard of review for a Court in reviewing the accounts of a court-appointed receiver is "whether the amount claimed for remuneration and disbursements incurred in carrying out the receivership are 'fair and reasonable'".

> *Re Confectionately Yours Inc.* (2002), 36 CBR (4th) 200 at para 42, BOA Tab 4 **["*Confectionately Yours*"]**.

56. It is not necessary for the Court to examine "dockets, hours, explanations or disbursements, line by line". Rather, a court can "consider all the relevant factors, and … award costs (or fees) in a more holistic manner." This approach has been affirmed by the Ontario Court of Appeal, which has stated that "the focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took."

> *Re Nortel Networks Corporation et al*, 2017 ONSC 673 at para 15, BOA Tab 5 **["*Nortel*"]** quoting *Bank of Nova Scotia v. Diemer*, 2014 ONSC 365 at para 19, aff'd 2014 ONCA 851

57. This Court has considered a non-exhaustive list of factors in determining whether a Court officer's fees are fair and reasonable:

(a) The nature, extent and value of the assets handled;

(b) The complications and difficulties encountered;

(c) The degree of assistance provided by the company, its officers or employees;

(d) The time spent;

(e) The receiver's knowledge, experience and skill;

(f) The diligence and thoroughness displayed;

(g) The responsibilities assumed;

(h) The results of the receiver's efforts; and

(i) The cost of comparable services when performed in a prudent and economical manner.

> *Nortel*, supra note 10 at para 14, quoting *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, quoting *Belyea v. Federal Business Development Bank*, 1983 CarswellNB 27 at para 9

Canadian Imperial Bank of Commerce v. Urbancorp (Leslieville) Developments Inc., 2017 ONSC 4205 at para 36, BOA Tab 6

58. These factors have also been endorsed by the Ontario Court of Appeal.

Confectionately Yours, supra note 8, at para. 51

Bank of Nova Scotia v. Diemer, 2014 ONCA 851, BOA Tab 7

59. The Receiver's motion for fee approval was first served on July 11, 2017. Other than Mr. Yu and Ms. Li, no party has delivered an objection or response to the motion. Based on its review of the Li Affidavit, delivered over 3 months after the service of the Receiver's motion record, the Receiver does not consider the contents of the Li Affidavit to be relevant to the motion for fee approval. As of the date of this factum and the passage of now 4 months since the service of the motion record, and despite a specific request made by the Receiver's counsel in a letter dated November 3, 2017 following the cross-examinations of representatives of EY and Stikeman, Mr. Yu and Ms. Li have still not provided any written explanation of their grounds for objection to the approval of the fees of the Receiver and its counsel.

60. A review of the above factors supports the submission that the remuneration of the Receiver and its counsel is fair and reasonable and the accounts should be approved:

(a) *The nature, extent and value of the assets handled*: The nature of the Company's assets has changed over the course of the receivership proceedings. At the outset, the primary asset of Hanfeng was believed to be the shares held in the Chinese Subsidiary, and the expectation that those shares would be sold at a purchase price of approximately $40,000,000. However, as it became apparent that the Share Transfer Transaction would not close, the primary assets of Hanfeng became the Deposit and the Receiver's Action.

The Receiver, acting reasonably, was required to expend significant time and effort to protect or attempt to realize on the Company's assets. Specifically:

(i) Attempting to close the Share Transfer Transaction involved obtaining Canadian and Chinese legal advice with respect to regulatory approvals and other steps, including, the HECPB Approval, Business License Registration and SAFE Approval and extensive issues related to New Pengcheng;

(ii) The Receiver's attempts to gain control of the Chinese Subsidiary required multiple Court attendances to obtain orders for the cooperation of Mr. Yu with the receivership proceedings and extensive efforts in China to have Mr. Yu replaced as legal representative;

(iii) Obtaining and attempting to keep the Escrow Funds at the Escrow Bank required the Receiver to engage in negotiations and extensive correspondence with New Pengcheng, Mr. Yu and the Escrow Bank;

(iv) The Deposit became the subject of the Chinese Litigation, which the Receiver has successfully defended; and

(v) The Receiver is currently pursuing the Receiver's Action in order to realize on the primary asset remaining in the estate.

(b) *The complications and difficulties encountered*: The Receiver has faced significant complications and difficulties caused by New Pengcheng and Mr. Yu. The investigation into the identity of the purchaser, failure of the Share Transfer Transaction to close, release of funds from the Escrow Account by the Escrow Bank and Chinese Litigation each increased the cost of the receivership proceedings;

(c) *The degree of assistance provided by the company, its officers or employees:* The Receiver has faced significant difficulty obtaining information in respect of the Chinese Subsidiary and gaining control of the Chinese Subsidiary as a result of the lack of cooperation of Mr. Yu and the Local Management Team. This has resulted in significant additional expense with respect to the Receiver's attempts to replace Mr. Yu as legal representative, including the Receiver appearing twice to obtain the Clarification Orders which Mr. Yu has ignored, and the costs associated with the Receiver's Action;

(d) *The time spent:* The Receiver and its counsel have identified the individual professionals who have performed the work along with their position, hourly rate, total fees and hours billed. The time spent was necessary in order to address the significant issues caused by the actions of Mr. Yu;

(e) *The Receiver's knowledge, experience and skill:* the Receiver and its counsel have significant knowledge, experience and skill in complex restructuring matters;

(f) *Diligence and thoroughness displayed*: The Receiver's reports and Invoices attached to the Fee Affidavits are evidence of the diligence and thoroughness displayed by the Receiver and its counsel. The majority of the expenses for which the Receiver now seeks approval were incurred undertaking the activities set out in the First Report, the Second Report and the Third Report, each of which, including the activities set out therein, has been approved by prior orders of this Court;

(g) *The responsibilities assumed*: As is evidenced from the Receiver's reports and Fee Affidavits, the Receiver, with the assistance of its counsel, has carried out extensive activities and assumed important responsibilities throughout these receivership proceedings;

(h) *The results of the Receiver's efforts*: While the Share Transfer Transaction did not close as a result of circumstances beyond the Receiver's control, the Receiver has successfully defended the Chinese Litigation and commenced the Receiver's Action against Ms. Li and Mr. Yu. These actions have preserved the remaining assets of Hanfeng; and

(i) *The cost of comparable services when performed in a prudent and economical manner*: The professional fees charged on this file were at or below the standard hourly rates of the Receiver and its counsel. The average rate of the Receiver was $397.36 and Stikeman was $652.64. These rates are comparable to those of counsel in similar insolvency proceedings.

July 31 Order at para 7

October 5 Order at paras 2-3

Beekenkamp Affidavit

Supplemental Affidavit of Brent Beekenkamp sworn October 30, 2017

Pukier Affidavit

Tung Affidavit

Affidavit of Guan Liu sworn June 23, 2017

B. The Reports and activities of the Receiver and its counsel should be approved

61. The Court, in the context of proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, has recognized that:

> there are good policy and practical reasons for the court to approve of [Court Officer's] activities and providing a level of protection for [Court Officer's] during the [insolvency] process…
>
> Specifically, Court approval:
>
> (a) allows the [Court Officer] to move forward with the next steps in the [insolvency] proceedings;
>
> (b) brings the [Court Officer's] activities before the Court;
>
> (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified,
>
> (d) enables the Court to satisfy itself that the [Court Officer]'s activities have been conducted in prudent and diligent manners;
>
> (e) provides protection for the [Court Officer] not otherwise provided by the [applicable statute]; and
>
> (f) protects the creditors from the delay and distribution that would be caused by:
>
> (i) re-litigation of steps taken to date, and
>
> (ii) potential indemnity claims by the [Court Officer]
>
> *Target Canada Co. (Re),* 2015 ONSC 7574 at paras. 22-23, BOA Tab 8

The Receiver submits that these reasons are equally applicable in the context of a receivership.

62. The standard for reviewing a Receiver's decisions was addressed by Justice Ground in *Re: Bakemates International Inc.* where he held that:

> [18] The court should accept that a court-appointed receiver has acted properly unless there is strong evidence to the contrary. In *Royal Bank v. Soundair Corp.*, *supra*, Galligan J.A. stated:
>
>> "When a court appoints a receiver to use its commercial expertise to sell an airline, it is inescapable that it intends to rely upon the receiver's expertise and not upon its own. Therefore, the court must place a great deal of confidence in the actions taken and in the opinions formed by the receiver. It should also assume that the receiver is acting properly unless the contrary is clearly shown. The second observation is that the court should be reluctant to second-guess, with the benefit of hindsight, the considered business decisions made by its receiver".
>
> [19] Similarly, *Skyepharma, supra*, Farley J. stated at paragraph 7:
>
>> "Provided a receiver has acted reasonably, prudently and not arbitrarily, a court should not sit as in an appeal from a receiver's decision, reviewed in detail every element of the procedure by which the receiver made the decision (so long as that procedure fits with the authorized process specified by the court if a specific order to that affect has been issued). To do so would be futile and duplicative. It would emasculate the role of the receiver and make it almost inevitable that the final negotiation of every sale would take place on the motion for approval
>
>> *Bakemates International Inc., Re*, 2003 CanLII 41385 at paras 18 to 19, BOA Tab 9

63. In the context of evaluating the fairness and reasonableness of a receiver's fees, the Court in *EnerNorth Industries Inc. ("**EnerNorth**")* made the following observations concerning the approach to be taken evaluating a receiver's activities:

> While the court determines the reasonableness of the fees, courts are ill-equipped and should be reluctant to second-guess the considered business decisions made by a receiver, whose conduct is to be reviewed in the light of the specific mandate given to the receiver by the Court.
>
>> *EnerNorth Industries Inc*. 2007 CarswellOnt 7322 at para 15, BOA Tab 10

64. Quoting the decision of the Court of Appeal in *Ravelston Corp.*, the Court in *EnerNorth* further observed that:

> … While the specific decision Richter had to make was an unusual one, it was not essentially different from many decisions receivers must make. Receivers will often have to make difficult business choices that require a careful cost/benefit analysis and the weighing of competing, if not an irreconcilable interests…, That, of course, does not mean that all stakeholders must be equally satisfied with the course of conduct chosen by the receiver. If the receiver's decision is within the broad bounds of reasonableness, and if it proceeds fairly, having considered the interests of all stakeholders, the Court will support the receiver's decision. (emphasis added in the *EnerNorth* decision)

EnerNorth at para. 15 quoting *Ravelston Corp.* [2005] O.J. No. 5351 (Ont. C.A.) at para 40

65. In the case at bar, the primary actions undertaken by the Receiver for which it seeks approval are the defence of the Chinese Litigation and the commencement of the Receiver's Action.

66. Upon its appointment, the Receiver was charged with protecting and realizing on the assets of Hanfeng. As noted above, as a result of the actions of Mr. Yu, Hanfeng's only significant assets remaining are:

(a) the Deposit, which was jeopardized by the Chinese Litigation; and

(b) a *chose in action* against Mr. Yu and Ms. Li, which could only be realized on by commencing the Receiver's Action.

67. The Receiver exercised its business judgment and acted reasonably and in good faith with a view to maximizing realizations for the stakeholders of Hanfeng in defending the Chinese Litigation and commencing the Receiver's Action. Accordingly, it is entitled to have its actions approved by this Court.

C. Conclusion

68. In conclusion, the Receiver had a right and a duty to attempt to preserve and realize on the property of Hanfeng. The Receiver has undertaken this obligation in a manner that was consistent with the orders of this Court, reasonable in the circumstances and commercially prudent.

69. The fees of the Receiver and its counsel in undertaking these tasks were at standard rates, comparable to the rates charged by other professionals for the provision of similar services and were fair and reasonable in the circumstances. Accordingly, the Receiver and its counsel's fees and disbursements, and the Receiver's activities should be approved.

PART V - ORDER REQUESTED

70. For the foregoing reasons, it is respectfully submitted that it is appropriate for this Court to grant an Order for the following relief:

(a) approving the Supplement to the First Report of the Receiver dated September 22, 2014 and the activities of the Receiver described therein;

(b) approving the Fourth Report and the activities of the Receiver described therein;

(c) approving the Fifth Report and the activities of the Receiver described therein;

(d) approving the fees and disbursements of the Receiver and its counsel;

(e) awarding costs to the Receiver in an amount to be determined in respect of the cross-examinations of representatives of EY and Stikeman; and

(f) such other relief as counsel may request and this Court may grant.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of November, 2017.

Stikeman Elliott LLP

Lawyers For the Receiver,
Ernst & Young Inc.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Re: Hanfeng Evergreen Inc,* Court File No. CV-14-10667-00CL, Order of Justice Hainey dated July 31, 2015

2. *Re: Hanfeng Evergreen Inc,* Court File No. CV-14-10667-00CL, Order of Justice Hainey dated October 5, 2015

3. *Re: Hanfeng Evergreen Inc,* Court File No. CV-14-10667-00CL, Order of Justice Matheson dated August 20, 2014

4. *Re Confectionately Yours Inc.* (2002), 36 CBR (4th) 200

5. *Re Nortel Networks Corporation et al*, 2017 ONSC 673

6. *Canadian Imperial Bank of Commerce v. Urbancorp (Leslieville) Developments Inc.*, 2017 ONSC 4205

7. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851

8. *Target Canada Co. (Re),* 2015 ONSC 7574

9. *Bakemates International Inc., Re*, 2003 CanLII 41385

10. *EnerNorth Industries Inc*. 2007 CarswellOnt 7322

SCHEDULE "B"
RELEVANT STATUTES

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. c. C.43 (as amended)

Court File No. CV-14-10667-00CL

AND IN THE MATTER OF HANFENG EVERGREEN INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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(RETURNABLE NOVEMBER 20, 2017)

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