

**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.

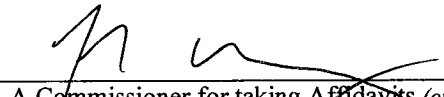
**AFFIDAVIT OF MONICA PALKO
(Sworn February 5, 2018)**

I, Monica Palko, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am a legal assistant with the law firm of Stikeman Elliott LLP ("**Stikeman**"), and, as such, I have knowledge of the matters hereinafter deposed to except where stated to be on information and belief, and where so stated, I verily believe it to be true.
2. On November 8, 2017, David Liu, Chinese counsel to Harbin Pengcheng Fertilizer Co., Ltd., ("**New Pengcheng**") sent an email to Haddon Murray, an associate at Stikeman Elliott LLP ("**Stikeman Elliott**") who act as counsel to Ernst & Young Inc., the court-appointed receiver of Hanfeng Evergreen Inc. (the "**Receiver**"). Attached hereto as **Exhibit "A"** is the November 8, 2017 email.
3. On November 16, 2017, David Moore, counsel to Lei Li and Xinduo Yu, sent an email to Dan Murdoch, a partner at Stikeman Elliott, attaching a letter from David Liu to Hanfeng Evergreen Inc., Ernst & Young Inc., Hanfeng Release Fertilizer Co. Ltd, and Mr. Yu Xinduo. Attached hereto as **Exhibit "B"** is the November 16, 2017 email and attachment.
4. On November 17, 2017, David Liu sent an email to the Service List in this receivership. Attached hereto as **Exhibit "C"** is the November 17, 2017 email with attachment.

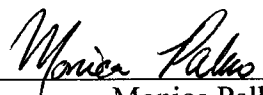
5. On Wednesday, November 29, 2017, David Liu sent an email to, among others, Allen Yao and Brent Beekenkamp of the Receiver, and Dan Murdoch and Haddon Murray of Stikeman Elliott. Attached hereto as **Exhibit "D"** is the November 29, 2017 email with attachments.
6. On December 4, 2017, Paul Pape, Canadian counsel to New Pengcheng, forwarded an email from David Liu to Dan Murdoch. Attached hereto as **Exhibit "E"** is the December 4, 2017 email with attachments.

SWORN BEFORE ME at the City of Toronto,
this 5th day of February, 2018.



A Commissioner for taking Affidavits (or as may be)

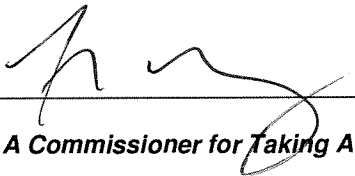
C. Haddon Murray
LSO # 61640P



Monica Palko

THIS IS EXHIBIT "A"
to the Affidavit of Monica Palko

Sworn before me this
day of February 5, 2018



A Commissioner for Taking Affidavits

From: 刘大志 Liu, David <dazhi.liu@dentons.cn>
Sent: Wednesday, November 08, 2017 5:36 AM
To: Haddon Murray; 刘文琛 Liu, Wenchen
Cc: Eun Ji Yoon
Subject: 答复: E-SERVICE - Hanfeng Evergreen Inc. Court File No. CV-14-10667-00CL - Motion Record (Approval of Fees) - 1/4

Good day,

As the attorney of Haerbin Pengcheng Fertilize Co.ltd, I am not concerned about the case you sent to me. I don't get the point for sending these files to me.

Kind Regards

Dazhi Liu

刘大志 David Liu
律师 Attorney at Law

电话 D +86 411 82181111 | 手机 M +86 13889636259
dazhi.liu@dentons.cn
网站 Website

大成律师事务所

辽宁省大连市沙河口区体坛路22号诺德大厦29层 邮编:116021
29th Floor, Nord Building, 22 Titan Road, Shahekou District, Dalian, Liaoning, China

Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners > 大成 > McKenna Long

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发件人: Eun Ji Yoon <EYoon@stikeman.com> 代表 Haddon Murray <HMurray@stikeman.com>

发送时间: 2017年11月8日 0:56

收件人: 刘大志 Liu, David; 刘文琛 Liu, Wenchen

抄送: Haddon Murray

主题: FW: E-SERVICE - Hanfeng Evergreen Inc. Court File No. CV-14-10667-00CL - Motion Record (Approval of Fees) - 1/4

Good afternoon,

Please see attached Part 1 of 4 of the Motion Record of the Receiver with respect to the motion described in the email below. Parts 2-4 of the Motion Record and the Supplemental Affidavit of Brent Beekenkamp sworn October 30, 2017 will follow in separate emails.

Regards,

Eun Ji Yoon on behalf of Haddon Murray

Legal Administrative Assistant to David R. Byers and Haddon Murray

Direct: +1 416 869 7047

Email: eyoon@stikeman.com

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Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

This email is confidential and may contain privileged information. If you are not an intended recipient, please delete this email and notify us immediately. Any unauthorized use or disclosure is prohibited.

From: Haddon Murray

Sent: Monday, October 30, 2017 3:38 PM

To: Allen Yao; Annie Tong; Asim Iqbal; Beidahuang Agriculture Development Limited; Brent Beekenkamp; Dan Murdoch; David A. P. Lees; David C. Moore; David C. Rosenbaum; Diane H. Winters; Doug Worndl; George Zhao; Guido DeWinne; Haddon Murray; Isabella Lee; Jason Koskela; Jesse R. Harper; Jiechang Liu; Joanne Yan; Jonathan Pollack; Kevin J. O'Hara; Li-Yin Chong; Lizhi Han; Loudon Owen; Louis Goluboff; Maria Konyukhova; Matt Noel; Michael G. Robb; Murray McDonald; Nicholas Baker; Patrick Freeman; Peter Howard; Tom Mix; Wenli Xue; Xinyi Li

Cc: Brian Pukler; Eun Ji Yoon

Subject: E-SERVICE - Hanfeng Evergreen Inc. Court File No. CV-14-10667-00CL - Motion Record (Approval of Fees) - 1/4

Please find attached the motion record of the Receiver in respect of its motion seeking an order, among other things:

1. approving the Supplement to the First Report of the Receiver, the Fourth Report of the Receiver and the Fifth Report of the Receiver, and the activities set out therein; and
2. approving the fees and disbursements of the Receiver and its counsel.

The motion is returnable on **November 20, 2017 at 10:00 a.m. at 330 University Avenue, Toronto, Ontario.**

Due to the size of the pdf file, the Motion Record has been split into four parts. This is part 1 of 4.

Regards,

Haddon Murray

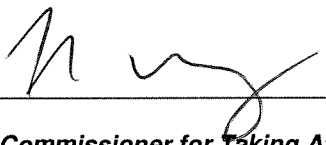
Haddon Murray

Tel : (416) 869-5239

hmurray@stikeman.com

THIS IS EXHIBIT "B"
to the Affidavit of Monica Palko

Sworn before me this
day of February 5, 2018


A Commissioner for Taking Affidavits

From: Dan Murdoch
Sent: Friday, February 02, 2018 3:00 PM
To: Haddon Murray
Subject: FW:
Attachments: Lei 901--Letter from Dentons re appeal Nov 8, 2017.pdf

Dan Murdoch

Direct: +1 416 869 5529
Mobile: +1 647 284 6159
Email: dmurdoch@stikeman.com

From: David Moore [<mailto:david@moorebarristers.ca>]
Sent: Thursday, November 16, 2017 8:59 PM
To: Dan Murdoch
Subject:

Please see attached letter which I would ask you to call me about tomorrow morning.

*** Please update your records with our new firm name and email address as set out below. Our address, telephone and fax numbers remain the same. ***

David C. Moore
Moore Barristers
Professional Corporation
393 University Avenue, Suite 1600
Toronto, Ontario M5G 1E6
Tel. No. (416) 581-1818 Ext. 222
Fax No. (416) 581-1279
e-mail: david@moorebarristers.ca
Web: www.moorebarristers.ca

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DENTONS

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邮编：116021

29th Floor
Nord Building
No 22, Tian Road
Shahekou District
116021, Dalian, China

大成 Salans FMC SMR Denton McKenna Long
dentons.cn

北京大成（大连）律师事务所 律 师 函

本律师函不影响权利人的任何权利和义务

致 加拿大汉枫常绿有限公司 (Hanfeng Evergreen Inc.),
安永有限公司 (Ernst & Young Inc.)
汉枫缓释肥料有限公司
于薪铎 先生:

北京大成（大连）律师事务所受哈尔滨鹏程肥业有限公司（以下简称委托人）的委托，就委托人与加拿大汉枫常绿有限公司股权转让再审案件事宜致函如下：

一、本所曾于10月13日致函贵司告知委托人哈尔滨鹏程肥业有限公司已将与加拿大汉枫常绿有限公司股权转让案件向中国最高人民法院提起再审，现中国最高人民法院已经正式受理了我们的再审申请。再审案号为（2017）最高法民申4628号，此案件立案信息如下：

案件来源：已立案	案号：（2017）最高法民申4628号 立案法院：最高人民法院 立案日期：2017-11-07
被申请人：加拿大汉枫常绿有限公司 被申请人：安永有限公司 被申请人：于薪铎 被申请人：加拿大汉枫常绿有限公司 被申请人：加拿大汉枫常绿有限公司	

A. DENTONS

大成 Salans FMC SNR Denton McKenna Long
dentons.cn

二、 鉴于最高人民法院已经受理了我们的再审案件，即表明原二审法院黑龙江省高级人民法院做出的（2017）黑民终字 270 号民事判决并非终审判决，同时表明最高院认为该判决确实存在不符合法律规定的错误内容，需要通过再审程序更正，才受理了我们的再审申请。贵公司应该不久就会收到最高院的再审案件通知书。

三、 鉴于以上情况，我们再次建议贵公司不要随意处置委托人已经支付的 1240 万元的股权转让款。黑龙江省高院做出的判决存在明显错误，最高人民法院按照审判监督程序已经受理了再审申请，在再审没有做出最后的裁决之前，贵公司过早处置股权转让款，一旦案件被纠正，双方势必会进入到另一个追偿纠纷中，届时对贵我双方都会产生不必要的麻烦和巨额法律费用。因此强烈建议贵公司暂时不要处置委托人的股权转让款，待中国最高人民法院的裁定结果来决定如何处置，委托人善意提醒贵公司，希望贵公司慎重考虑我方建议。

以上建议望贵公司慎重考虑！予以采纳！

特此函告！

北京大成

律师

2017年11月08日

北京大成(大连)律师事务所
大连市沙河口区体坛路22号
诺德大厦29楼
邮编:116021

29th Floor
Nord Building
No 22, Tian Road
Shaherkou District
116021, Dalian, China

2.4. Selans FMC SNR Denton McKenna Long
dentons on

Without any prejudice to any rights

Mr. Yu Xinduo

1. On 13th of October, 2017 we couriered you a letter of attorney for stating our retrial appeal to the Supreme People's Court of People's Republic of China. Now we have informed by the Supreme Court that our retrial appeal has been formally accepted and recorded. The retrial No. is (2017) ZGFMS 4628, the information of official record are as follows,



日期: 2017-11-07 姓名: 王明 性别: 男 年龄: 35	身份证号: 360102198210101010 联系电话: 13801234567 电子邮箱: 123456789@163.com
---	--

DENTONS

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2. Given that the Supreme People's Court has accepted our appeal of retrial, it means that the second trial judgment of The Higher People's Court of Heilongjiang Province (2017) No.267 is not a final judgment. Moreover it shows that the Supreme People's Court thinks that this judgment does exist wrong decisions that is not in conformity with the law of China and needs to be corrected t retrial procedures. Your company should soon receive the retrial case notice from the Supreme Court.
3. Given the above, again we strongly recommend your company not to dispose the RMB 12,400,000 Fund already paid by the Entruster at your free will. There is obvious mistake in the judgment of Heilongjiang High People's Court, which is very likely to be corrected by the Supreme People's Court. If your company disposes the above Fund before the final decision of the Supreme Court, once the case is corrected, the two parties will be involved in another compensation claim dispute, and unnecessary trouble and large amount of legal cost will incur for both the two parties. Therefore we strongly recommend your company not to dispose the Fund of the Entruster temporarily till the final decision of the Supreme People's Court. This is a kind reminder to your company from the Entruster, and hope that our recommendation could be considered by your company.

your consideration and acceptance of the above recommendation is

Dentons Salans FMC SNR Denton McKenna Long

Counsel

Nov. 08, 2017

2/2

THIS IS EXHIBIT "C"
to the Affidavit of Monica Palko

Sworn before me this
day of February 5, 2018

A handwritten signature in black ink, consisting of a stylized 'M' followed by a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

A Commissioner for Taking Affidavits

From: 刘大志 Liu, David <dazhi.liu@dentons.cn>
Sent: Friday, November 17, 2017 10:15 AM
To: Haddon Murray; Allen Yao; Annie Tong; Asim Iqbal; Beidahuang Agriculture Development Limited; Brent Beekenkamp; Dan Murdoch; David A. P. Lees; David C. Moore; David C. Rosenbaum; Diane H. Winters; George Zhao; Guido DeWinne; Isabella Lee; Jason Koskela; Jesse R. Harper; Jiechang Liu; Joanne Yan; Jonathan Pollack; Kevin J. O'Hara; Li-Yin Chong; Lizhi Han; Louden Owen; Louis Goluboff; Maria Konyukhova; Matt Noel; Murray McDonald; Patrick Freeman; Peter Howard; Tom Mix; Wenli Xue
Cc: Brian Pukier; Eun Ji Yoon
Subject: 答复: E-SERVICE - Hanfeng Evergreen Inc. Court File No. CV-14-10667-00CL - Supplement to the Fifth Report of the Receiver dated November 13, 2017 - 1/3
Attachments: Retrial file.png

To whom it may concern:

Thanks for your motion records regarding to the case held in Canada. After reviewing these documents, I think some parts of the description is not accurate. I think it is necessary to clarify it.

1. I and my assistant Liu Wenchen representing Harbin Pengcheng Fertilizer Co., Ltd.,(as you mentioned New Pengcheng) handled the retrial cases of shares transfer disputes between Pengcheng Company and Hanfeng Evergreen Inc, we are not the lawyer for the first instance and second instance of the case. We are lawyers of Beijing Dentons Law Office,LLP(Dalian). Although we are based in Liaoning Province, the laws of all the provinces in China are identical and we can practice in the entire country. Therefore, the so called "region legal systems" mentioned in the fifth report is totally unrealistic. I just wonder what this statement comes from?

2. After receiving the judgment of the second instance from Pengcheng Company, through the analysis of the case, we found that there are obvious errors in the judgment of the second instance. Therefore, we think it is necessary to correct the mistake of the judgment of the second instance and not allow the wrong judgment to infringe the interests of the parties involved. In Chinese legal system, although the two-trial system is implemented, it does not mean that the judgment of the second instance can not be changed. In view of the apparently wrong judgment, the parties may, according to Article 199 of the Civil Procedure Law, Where the judgment or ruling of legal procedure is not correct, parties may apply to the people's court at a higher level for retrial. Article 200 of the Civil Procedure Law: If the party's application meets one of the following circumstances, the people's court shall retry:

- (1) there is new evidence, enough to overthrow the original judgments, rulings;
- (2) The basic facts of the original verdicts and rulings are lack of proof of evidence;
- (3) The main evidence in the original judgment and ruling of ascertaining the facts is falsification;
- (4) The main evidence of the original judgment and ruling of ascertaining the facts is unverified;
- (5) If the parties are unable to collect the evidence for the trial of the case due to objective reasons, they shall apply in writing to the people's court for investigation and collection, and the people's court shall not investigate and collect the evidence;

- (6) Where the original judgment or ruling that the applicable law is in error,
- (7) Judges who are not legally constituted or who should be evaded in accordance with the law are not evasive;
- (8) Persons without litigating ability who have not acted as lawsuits or should participate in the litigation without legal representative, who have not participated in the litigation because they can not be blamed on themselves or their litigants;
- (9) Violating the law and depriving the parties of their right to debate
- (10) without the summons, absent judgment;
- (11) If the original judgment or ruling omits or exceeds the claim for litigation;
- (12) The legal document on which the original decision or ruling was made is revoked or changed;
- (13) Judges try corruption, taking bribes, favoritism and malpractices in favor of favoritism and committing acts in vain.

Therefore, on behalf of Pengcheng Company, we filed a retrial application to the Supreme People's Court of China on October 13, 2017.

3. The reasons for the retrial on the appeal application we filed to the Supreme People's Court are A. The basic facts found by the second instance judgment lacks evidence to prove B. Where the original judgment or ruling that the applicable law is in error in that the second instance judgment. After receiving our retrial

application and relevant evidential materials, the Supreme People's Court determined that our application for retrial meets the conditions for initiating retrial and decided to put the case on file (see the attached notice for the case). This shows that the Supreme People's Court found our retrial reasoning , The second instance judgment is in error need to be corrected, if our retrial application is not reasoning, the Supreme Court will not accept our application for retrial.

4. At the same time that we filed for retrial, we couriered attorney letters to Hanfeng Evergreen, Ernst & Young's attorney and Heilongjiang Hanfeng Slow-release Fertilizer Company on October 16 to elaborate the above and hope that the above units should not rush to allocate payment of Pengcheng company for share transfer, because the judgment of the second instance is obviously wrong, we are trying to correct this mistake. After the Supreme People's Court accepted our application for retrial, on November 15, we couriered another letter of attorney to the above-mentioned company again. Each of letters was received by your attorney and signed on receipt.

5, Regarding to the statement made by Mr. Guan Liu, I think it is wrong. First of all, as mentioned earlier, the second instance system does not mean that the second instance judgment is the final judgment, and that the second instance judgment can be changed by the retrial procedure. The two-trial system means that as long as the parties in the two trial proceedings, any sue/appeal must be accepted by the court. The court cannot refuse it. But after the two trials, if the part applies for retrial, the

court has the right to decide whether to accept the application or not. If the retrial application can not meet the conditions of retrial, the court can refuse it. Once the court decides to accept the retrial, the ruling and judgment of retrial will be the final judgment, the second judgment will not be the final judgment any more. That is correct understand of two-trial system.

Secondly, Mr. Guan Liu said the execution of the judgment and ruling shall not stopped when the parties apply for retrial according to Article 199. This provision means that when a party applies for retrial, the court does not need to stop execution, because the application retrial may be refused by the higher court. So it is not necessary to stop the execution at this stage. But once the court has accepted the application for retrial, it shall follow the Article 206 of the Civil Procedure Law, In accordance with the acceptance of the retrial supervision procedure, the decision shall be made to suspend the execution of the original judgment, ruling and conciliation statement

As this case does not involve execution procedures, the Supreme People's Court does not need to give the decision to suspend the execution. If this case has involved execution procedures, then the Supreme Court should had already issued a decision to suspend execution.

Mr. Guan Liu is one-sided about this understanding, or deliberately concealed the following provisions for misleading the court. At the same time, this article also shows that the retrial application and the acceptance of retrial are completely different concepts. Once the court accepts the application for retrial, filing the case shows that there is a mistake in the second instance judgment.

6. Since the supreme court of this case has accepted and filed a case, we hope that all parties will not rush to allocate Pengcheng's advance payments. Too hasty allocation will only bring greater losses to us. If the retrial case corrects the mistake of the second instance and the payment has been distributed, then we will surely launch recover procedure against your company. At that time, the legal costs will only cause more losses to your company. At the same time, we also believe Canada is a developed country with a advanced legal system and will not make a wrong decision based on a wrong judgment regardless of the fairness and fairness of the law. We are already working hard to correct the wrong judgment of Chinese court, not only for seeking justice for Pengcheng but also for not making the wrong decisions affecting your company's interests. I hope both your company and the Canadian courts can make sensible judgments.

Please be patient to wait for the results of the retrial, the time will not be long. When the Supreme Court results issued, no matter what the outcome of retrial is, we will accept the result without any further objections.

Please double think my advise before your next move. Thank you very much!

Kind Regards

Dazhi Liu

刘大志 David Liu
律师 Attorney at Law

电话 D +86 411 82181111 | 手机 M +86 13889636259
dazhi.liu@dentons.cn
网站 Website

大成律师事务所
辽宁省大连市沙河口区体坛路22号诺德大厦29层 邮编:116021
29th Floor, Nord Building, 22 Titan Road, Shahekou District, Dalian, Liaoning, China

Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde
> Rodyk > Boekel > OPF Partners > 大成 > McKenna Long

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发件人: Haddon Murray <HMurray@stikeman.com>

发送时间: 2017年11月14日 5:24

收件人: Allen Yao; Annie Tong; Asim Iqbal; Beidahuang Agriculture Development Limited; Brent Beekenkamp; Dan Murdoch; David A. P. Lees; David C. Moore; David C. Rosenbaum; 刘大志 Liu, David; 刘文琛 Liu, Wenchen; Diane H. Winters; George Zhao; Guido DeWinne; Isabella Lee; Jason Koskela; Jesse R. Harper; Jiechang Liu; Joanne Yan; Jonathan Pollack; Kevin J. O'Hara; Li-Yin Chong; Lizhi Han; Loudon Owen; Louis Goluboff; Maria Konyukhova; Matt Noel; Murray McDonald; Patrick Freeman; Peter Howard; Tom Mix; Wenli Xue; 李欣怡 Li, Xinyi

抄送: Brian Pukier; Eun Ji Yoon

主题: E-SERVICE - Hanfeng Evergreen Inc. Court File No. CV-14-10667-00CL - Supplement to the Fifth Report of the Receiver dated November 13, 2017 - 1/3

Further to the below correspondence, attached is email 1 of 3 containing Part 1 of the Supplement to the Fifth Report of the Receiver dated November 13, 2017

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Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

This email is confidential and may contain privileged information. If you are not an intended recipient, please delete this email and notify us immediately. Any unauthorized use or disclosure is prohibited.

From: Haddon Murray

Sent: Monday, November 13, 2017 4:05 PM

To: 'Allen Yao'; 'Annie Tong'; 'Asim Iqbal'; 'Beidahuang Agriculture Development Limited'; 'Brent Beekenkamp'; Dan

Murdoch; 'David A. P. Lees'; 'David C. Moore'; 'David C. Rosenbaum'; '刘大志 Liu, David'; '刘文琛 Liu, Wenchen'; 'Diane H. Winters'; 'George Zhao'; 'Guido DeWinne'; 'Isabella Lee'; 'Jason Koskela'; 'Jesse R. Harper'; 'Jiechang Liu'; 'Joanne Yan'; 'Jonathan Pollack'; 'Kevin J. O'Hara'; 'Li-Yin Chong'; 'Lizhi Han'; 'Louden Owen'; 'Louis Goluboff'; 'Maria Konyukhova'; 'Matt Noel'; 'Murray McDonald'; 'Patrick Freeman'; Peter Howard; 'Tom Mix'; 'Wenli Xue'; 'Xinyi Li'

Cc: Brian Pukier; Eun Ji Yoon (eyoon@stikeman.com)

Subject: RE: E-SERVICE - Hanfeng Evergreen Inc. Court File No. CV-14-10667-00CL - Supplemental Affidavit of Brent Beekenkamp sworn October 30, 2017

Due to large file size you may not have received the documents served below. Consequently they will be re-served in smaller pdf files.

Attached is the:

1. Factum of the Receiver dated November 13, 2017; and
2. Book of Authorities of the Receiver dated November 13, 2017.

The Supplement to the Fifth Report of the Receiver dated November 13, 2017 will follow in three separate emails.

From: Haddon Murray

Sent: Monday, November 13, 2017 3:59 PM

To: 'Allen Yao'; 'Annie Tong'; 'Asim Iqbal'; 'Beidahuang Agriculture Development Limited'; 'Brent Beekenkamp'; Dan Murdoch; 'David A. P. Lees'; 'David C. Moore'; 'David C. Rosenbaum'; '刘大志 Liu, David'; '刘文琛 Liu, Wenchen'; 'Diane H. Winters'; 'George Zhao'; 'Guido DeWinne'; 'Isabella Lee'; 'Jason Koskela'; 'Jesse R. Harper'; 'Jiechang Liu'; 'Joanne Yan'; 'Jonathan Pollack'; 'Kevin J. O'Hara'; 'Li-Yin Chong'; 'Lizhi Han'; 'Louden Owen'; 'Louis Goluboff'; 'Maria Konyukhova'; 'Matt Noel'; 'Murray McDonald'; 'Patrick Freeman'; Peter Howard; 'Tom Mix'; 'Wenli Xue'; 'Xinyi Li'

Cc: Brian Pukier; Eun Ji Yoon (eyoon@stikeman.com)

Subject: RE: E-SERVICE - Hanfeng Evergreen Inc. Court File No. CV-14-10667-00CL - Supplemental Affidavit of Brent Beekenkamp sworn October 30, 2017

Further to the email correspondence below and in connection with the Receiver's motion for, among other things, approval of fees returnable November 20, 2017, please find attached the:

1. Supplement to the Fifth Report of the Receiver dated November 13, 2017;
2. Factum of the Receiver dated November 13, 2017; and
3. Book of Authorities of the Receiver dated November 13, 2017.

Regards,

Haddon Murray

Haddon Murray

Tel : (416) 869-5239

hmurray@stikeman.com

From: Haddon Murray

Sent: Monday, October 30, 2017 3:41 PM

To: 'Allen Yao'; 'Annie Tong'; 'Asim Iqbal'; 'Beidahuang Agriculture Development Limited'; 'Brent Beekenkamp'; Dan Murdoch; 'David A. P. Lees'; 'David C. Moore'; 'David C. Rosenbaum'; 'Diane H. Winters'; 'Doug Worndl'; 'George Zhao'; 'Guido DeWinne'; 'Isabella Lee'; 'Jason Koskela'; 'Jesse R. Harper'; 'Jiechang Liu'; 'Joanne Yan'; 'Jonathan Pollack'; 'Kevin J. O'Hara'; 'Li-Yin Chong'; 'Lizhi Han'; 'Louden Owen'; 'Louis Goluboff'; 'Maria Konyukhova'; 'Matt Noel'; 'Michael G. Robb'; 'Murray McDonald'; 'Nicholas Baker'; 'Patrick Freeman'; Peter Howard; 'Tom Mix'; 'Wenli Xue'; 'Xinyi Li'

Cc: Brian Pukier; Eun Ji Yoon (eyoon@stikeman.com)

Subject: E-SERVICE - Hanfeng Evergreen Inc. Court File No. CV-14-10667-00CL - Supplemental Affidavit of Brent Beekenkamp sworn October 30, 2017

Further to my email below, attached is the Supplemental Affidavit of Brent Beekenkamp sworn October 30, 2017 in respect of the above noted motion.

From: Haddon Murray

Sent: Monday, October 30, 2017 3:38 PM

To: 'Allen Yao'; 'Annie Tong'; 'Asim Iqbal'; 'Beidahuang Agriculture Development Limited'; 'Brent Beekenkamp'; Dan Murdoch; 'David A. P. Lees'; 'David C. Moore'; 'David C. Rosenbaum'; 'Diane H. Winters'; 'Doug Worndl'; 'George Zhao'; 'Guido DeWinne'; Haddon Murray; 'Isabella Lee'; 'Jason Koskela'; 'Jesse R. Harper'; 'Jiechang Liu'; 'Joanne Yan'; 'Jonathan Pollack'; 'Kevin J. O'Hara'; 'Li-Yin Chong'; 'Lizhi Han'; 'Louden Owen'; 'Louis Goluboff'; Maria Konyukhova; 'Matt Noel'; 'Michael G. Robb'; 'Murray McDonald'; 'Nicholas Baker'; 'Patrick Freeman'; Peter Howard; 'Tom Mix'; 'Wenli Xue'; 'Xinyi Li'

Cc: Brian Pukier; Eun Ji Yoon (eyoon@stikeman.com)

Subject: E-SERVICE - Hanfeng Evergreen Inc. Court File No. CV-14-10667-00CL - Motion Record (Approval of Fees) - 1/4

Please find attached the motion record of the Receiver in respect of its motion seeking an order, among other things:

1. approving the Supplement to the First Report of the Receiver, the Fourth Report of the Receiver and the Fifth Report of the Receiver, and the activities set out therein; and
2. approving the fees and disbursements of the Receiver and its counsel.

The motion is returnable on **November 20, 2017 at 10:00 a.m. at 330 University Avenue, Toronto, Ontario.**

Due to the size of the pdf file, the Motion Record has been split into four parts. This is part 1 of 4.

Regards,

Haddon Murray

Haddon Murray

Tel : (416) 869-5239

hmurray@stikeman.com



当前位置: 我的首页 >> 案件进展查询 >> 案件详情

案件状态: 已确定合议庭成员

立案信息

案号: (2017)最高法民申4628号
立案案由: 股权转让纠纷
审判程序: 申请再审

审理法院: 最高人民法院

立案日期: 2017-11-07

当事人及代理人信息

被申请人: 加拿大汉枫常绿有限公司
原审被告: 安永有限公司
原审被告: 于新铎
原审被告: 汉枫缓释肥料有限公司
再审申请人: 哈尔滨鹏程肥业有限公司

审判组织信息

确定合议庭成员日期: 2017-11-08
承办庭室: 民四庭
审判长: 沈红雨
审判员: 黄西武
审判员: 任雪峰
书记员: 丁一
承办法官: 沈红雨

办公电话: 010-67556940

审理期限信息

审限: 无



立案信息

当事人及代理人信息

审判组织信息

审理期限信息

THIS IS EXHIBIT "D"
to the Affidavit of Monica Palko

Sworn before me this
day of February 5, 2018



A handwritten signature in black ink, consisting of a stylized 'M' followed by a series of loops and a long horizontal stroke, is written over a solid horizontal line.

A Commissioner for Taking Affidavits

From: 刘大志 Liu, David <dazhi.liu@dentons.cn>
Sent: Wednesday, November 29, 2017 3:25 AM
To: 关刘
Cc: allen.yao@ca.ey.com; brent.r.beekenkamp@ca.ey.com; Dan Murdoch; Haddon Murray; Brian Pukier; david@moorebarristers.ca; pjp@papebarristers.com
Subject: 答复: 对于大成律师函的回复
Attachments: letter of attorney.pdf; 再审通知-06082012110342.pdf

关律师，你好：

针对你的律师函件，详细回复请见附件。谢谢！

刘大志

刘大志 David Liu
律师 Attorney at Law

电话 D +86 411 82181111 | 手机 M +86 13889636259
dazhi.liu@dentons.cn
网站 Website

大成律师事务所

辽宁省大连市沙河口区体坛路22号诺德大厦29层 邮编:116021
29th Floor, Nord Building, 22 Titan Road, Shahekou District, Dalian, Liaoning, China

Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde
> Rodyk > Boekel > OPF Partners > 大成 > McKenna Long

大成是一家通过其成员单位和联盟机构向全球范围的客户提供法律服务的法律执业机构。本函可能含有保密内容并受法律特权保护。如阁下并非抬头标明的收件人，则任何披露、复制、分发和使用的行为都是禁止的：请您即刻将此误发情形通知我们，并将本函从系统删除。如需更新阁下接收商业电子信件的偏好信息，请登录我们的网站；如需查看法律声明，请访问dentons.cn。

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发件人: 关刘 <guanliulvshi@163.com>

发送时间: 2017年11月28日 9:35

收件人: 刘大志 Liu, David; 刘文琛 Liu, Wenchen

抄送: allen.yao@ca.ey.com; brent.r.beekenkamp@ca.ey.com; DMurdoch@stikeman.com; HMurray@stikeman.com; BPukier@stikeman.com

主题: 对于大成律师函的回复

我所认为大成律师所刘大志律师2017年11月8日的律师函，内容有误导和不正确的陈述，现予以澄清。

律 师 函

Letter of Attorney

关刘律师，你好：

来函收悉。关于再审程序的理解，我们不同意你们的观点，不存在误导和不正确的陈述，因此我认为有必要在此说明以下我们的观点：

Well received your letter of attorney. Regarding to the understanding of re-trial procedure under Chinese law, I am afraid I can not agree with your opinions, there are no misleading and incorrect statements. Therefore, It is necessary to clarify my opinion again.

1. 二审终审制并不表明二审判决就一定是终审判决，二审判决可以通过再审程序予以改判。一旦上级法院决定再审，是很有可能改变二审判决的。而且一旦上级法院决定再审，依据《民诉法》第二百零六条按照审判监督程序决定再审的案件，裁定中止原判决、裁定、调解书的执行。说明二审判决并不是最终判决，其能执行与否要等待再审的审理结果。

1. The second instance system does not mean that the second instance judgment is the final judgment, and that the second instance judgment can be changed by the retrial procedure. Once the court decides to retrial the case, the ruling and judgment of retrial will be the final judgment, the second judgment will not be the final judgment any more. Moreover, according to the Article 206 of the Civil Procedure Law, In accordance with the acceptance of the retrial supervision procedure, the decision shall be made to suspend the execution of the original judgment, ruling and conciliation statement. It also means that the second instance judgment is not the final judgment, it depends

on the result of retail.

2、正如我们之前说过的我们认为二审判决确实存在错误，外资企业股权转让，政府审批是法定义务，违反此义务的是加拿大汉枫常绿公司而不是鹏程公司，二审判决忽略此法定义务明显是错误。因此依据《民事诉讼法》200 条的规定：“当事人的申请符合下列情形之一的，人民法院应当再审：（二）原判决、裁定认定的基本事实缺乏证据证明的；（六）原判决、裁定适用法律确有错误的；”这两项规定向最高院申请再审，现最高院已经受理再审申请。随函附上最高院受理通知书。

2. We think there are really mistakes in second judgment as we mentioned before. To get the approval of local government for shares transfer of foreign investment company, is the lawful duty. It is Evergreen who breached this duty not Pengcheng Co.ltd. This is obvious mistake made by the second judgment. Therefore, we applied the retrial to the Supreme Court of China based on Article 200 of the Civil Procedure Law: If the party's application meets one of the following circumstances, the people's court shall retry:(2) The basic facts of the original verdicts and rulings are lack of proof of evidence;(6) Where the original judgment or ruling that the applicable law is in error; Now the Supreme Court accepted our application of retrial. The notice of acceptance of retrial from the Supreme Court is attached.

3. 根据中国法律，我们的再审申请书是交给最高院无需交给贵方，最高院审理之前会向你们送达再审申请书的。

According to the legal procedures of China, we don't need to hand over the application of retrial to you. The Supreme Court will

delivery it to you before hearing of retrail.

注：律师函上注明“不影响权利人的任何权利和义务”这句话的概念，您误解了，这是律师函的常规用语，只是不因律师函内容影响当事人的实体权利而已，不是您理解的那样。

PS: "Without privilege to any rights or obligations of parties" is common language in letter of attorney, just means the letter will not privilege any rights of client. It is not what you thought.

如有疑问，欢迎随时和我沟通。

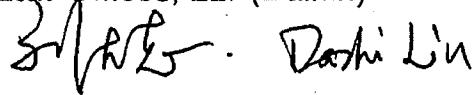
Any questions, feel free to contact me.

此致

北京大成（大连）律师事务所

Dentons Law Offices, LLP(Dalian)

律师：



Attorney in Law:

2017 年 11 月 29 日

中华人民共和国最高人民法院

民事申请再审案件受理通知书

(2017)最高法民申 4628 号

哈尔滨鹏程肥业有限公司:

你公司因与被申请人加拿大汉枫常绿有限公司 (Hanfeng Evergreen Inc.) 及原审被告安永有限公司 (Ernst & Young Inc.)、汉枫缓释肥料有限公司、于薪铎股权转让纠纷一案, 不服黑龙江省高级人民法院作出的 (2017) 黑民终 270 号民事判决, 向本院申请再审, 本院已立案审查。本案合议庭由审判长沈红雨、审判员任雪峰、审判员黄西武组成。法官助理由邓江源担任, 书记员由丁一担任。

特此通知。

注: 1、如需向本院提交或补充材料, 应列明材料清单, 及时通过邮局邮寄给北京市东城区东交民巷 27 号最高人民法院民四庭丁一 (010-67556940); 邮编: 100745。

2、本院发生法律效力的判决书、裁定书、决定书, 除涉及国家秘密、个人隐私, 涉及未成年人违法犯罪, 或者以调解方式结案, 或者其他具有特殊情形不宜在互联网公布以外, 将在中国裁判文书网 (<http://www.court.gov.cn/zgcpwsw>) 公布。

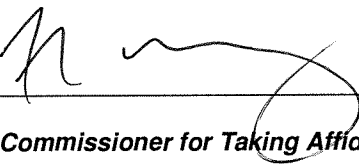
3、本院将通过审判流程信息公开平台向案件当事人及诉讼代理人公开案件进展、提供电子送达和联系法官等服务。如你公司在本院预留了证件号码、手机号码和送达地址, 本院将以手机短信及“最高人民法院审判流程信息公开告知书”的形式向你公司告知查询密码和查询方式。你公司可凭预留的证件号码和查询密码通过中国审判流程信息公开网、手机 APP 客户端、最高人民法院微信、电子触摸屏等接受上述服务。

如你公司尚未在本院预留证件号码、手机号码和送达地址，或预留的上述信息发生变更，请详细填写“最高人民法院送达地址、送达方式确认书”后寄送本院。本院将及时为你公司开通上述功能。



THIS IS EXHIBIT "E"
to the Affidavit of Monica Palko

Sworn before me this
day of February 5, 2018



A handwritten signature in black ink, consisting of a stylized 'M' followed by a series of loops and a large circular flourish, is written over a horizontal line.

A Commissioner for Taking Affidavits

From: Dan Murdoch
Sent: Monday, December 04, 2017 1:05 PM
To: Haddon Murray; Maria Konyukhova
Subject: FW: Hanfeng - Court Appearance 2017.11.20
Attachments: 再审通知-06082012110342.pdf; Translation of Acceptance Notice.docx

Dan Murdoch

Direct: +1 416 869 5529
Mobile: +1 647 284 6159
Email: dmurdoch@stikeman.com

From: Paul Pape [<mailto:pjp@papebarristers.com>]
Sent: Monday, December 04, 2017 12:48 PM
To: Dan Murdoch; Brian Pukier
Cc: dazhi.liu@dentons.cn; Lisa Sheehan Shaw
Subject: FW: Hanfeng - Court Appearance 2017.11.20

dm
here's what i have received
from
local counsel
i have added
my question to him

in addition
he has added

"It's supposed to have first hearing within 3 months."

lets talk further this week
p

From: 刘大志 Liu, David [<mailto:dazhi.liu@dentons.cn>]
Sent: Sunday, December 03, 2017 1:51 AM
To: Paul Pape
Cc: Lisa Sheehan Shaw
Subject: 答复: Hanfeng - Court Appearance 2017.11.20

Attachments are the acceptance notice of Supreme Court of PRC and the English translation.

The application of retrial has been accepted by the Supreme Court, the Supreme Court will have the hearing soon or later..The result of retrial may support our application to correct the second trial, or maybe not. But it is not like what the receiver's lawyer said. The receiver's lawyer did not deny the fact of acceptance of retrial application, he just wants to say the retrial hearing is not coming yet. But we are confident with that.

刘大志 David Liu
律师 Attorney at Law

电话 D +86 411 82181111 | 手机 M +86 13889636259
dazhi.liu@dentons.cn
网站 Website

大成律师事务所

辽宁省大连市沙河口区体坛路22号诺德大厦29层 邮编:116021
29th Floor, Nord Building, 22 Titan Road, Shahekou District, Dalian, Liaoning, China

Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners > 大成 > McKenna Long

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发件人: Paul Pape <pip@papebarristers.com>
发送时间: 2017年12月2日 1:55
收件人: 刘大志 Liu, David
抄送: Lisa Sheehan Shaw
主题: RE: Hanfeng - Court Appearance 2017.11.20

the receiver has agreed not to take
the deposit for fees
before we attend in court
on monday
dec 11th

we have time to sort the matter out
before then

there is a difference
between what you are telling me and
what
the receivers lawyers
are telling him
about the state of the chinese litigation
it is important to clarify
this

you say the court has agreed that the third trial is to take place

the receiver s lawyer says
there is no such agreement

can you send me in chinese and english
the order which orders the third trial
thank you

中华人民共和国最高人民法院

民事申请再审案件受理通知书

(2017)最高法民申 4628 号

哈尔滨鹏程肥业有限公司:

你公司因与被申请人加拿大汉枫常绿有限公司 (Hanfeng Evergreen Inc.) 及原审被告安永有限公司 (Ernst & Young Inc.)、汉枫缓释肥料有限公司、于薪铎股权转让纠纷一案, 不服黑龙江省高级人民法院作出的 (2017) 黑民终 270 号民事判决, 向本院申请再审, 本院已立案审查。本案合议庭由审判长沈红雨、审判员任雪峰、审判员黄西武组成。法官助理由邓江源担任, 书记员由丁一担任。

特此通知。

注: 1、如需向本院提交或补充材料, 应列明材料清单, 及时通过邮局邮寄给北京市东城区东交民巷 27 号最高人民法院民四庭丁一 (010-67556940); 邮编: 100745。

2、本院发生法律效力的判决书、裁定书、决定书, 除涉及国家秘密、个人隐私, 涉及未成年人违法犯罪, 或者以调解方式结案, 或者其他具有特殊情形不宜在互联网公布以外, 将在中国裁判文书网 (<http://www.court.gov.cn/zgcpwsw>) 公布。

3、本院将通过审判流程信息公开平台向案件当事人及诉讼代理人公开案件进展、提供电子送达和联系法官等服务。如你公司在本院预留了证件号码、手机号码和送达地址, 本院将以手机短信及“最高人民法院审判流程信息公开告知书”的形式向你公司告知查询密码和查询方式。你公司可凭预留的证件号码和查询密码通过中国审判流程信息公开网、手机 APP 客户端、最高人民法院微信、电子触摸屏等接受上述服务。

如你公司尚未在本院预留证件号码、手机号码和送达地址，或预留的上述信息发生变更，请详细填写“最高人民法院送达地址、送达方式确认书”后寄送本院。本院将及时为你公司开通上述功能。



中华人民共和国最高人民法院 民事申请再审案件受理通知书

(2017) 最高法民申 4628 号

Acceptance Notice of Supreme People's Court of PRC for civil application of retrial cases

(2017) Supreme civil application NO.4628

哈尔滨鹏程肥业有限公司:

你公司因与被申请人加拿大汉枫常绿有限公司 (Hanf eng Evergreen Inc.) 及原审被告安永有限公司 (Erns t&Young Inc)、汉枫缓释肥料有限公司、于薪锋股权转让纠纷一案, 不服黑龙江省高级人民法院作出的 (2017) 黑民终 270 号民事判决, 向本院 申请再审, 本院已立案审查。 本案合议庭由审判长沈红雨、审判员任雪峰、审判员黄西武组成。 法官助理由邓江源担任, 书记员由丁 一担任。

Harbin Pengcheng Fertilizer Co., Ltd.:

Due to the dispute of shares transfer with the respondent Hanfeng Evergreen Inc. and the original defendants Ernst & Young Inc, Hanfeng slow-release fertilizer Co., and Mr. Xin duo Yu, by not satisfied with the civil judgment of (2017) Heiminzhong 270 issued by Higher People's Court of Heilongjiang Province, your company applied to this court for retrial, and this court has placed the case on file to investigate. The case collegiate bench consists of presiding judge Shen Hongyu, judge Ren Xuefeng and judge Huang Sewu. Judge assistant served by Deng Jiangyuan and clerk Ding Yi.

特此通知。

It is hereby announced.

注: 1、如需向本院提交或补充材料, 应列明材料清单, 及时通过邮局邮寄给北京市东城区东交民巷 27 号最高人民法院民 四庭丁 一 (010-67556940); 邮编: 1007450

Note: 1. If you need to submit or supplement materials to our Court, please list the materials and mail them to Ding Yi, Supreme People's Court, No. 27 Dong Jiao Min Xiang, Dong Cheng District, Beijing via post office (010-67556940); Postcode: 1007450

2、本院发生法律效力的判决书、裁定书、决定书, 除涉及国家秘密、个人隐私, 涉及未成年人违法犯罪, 或者以调解方式结案, 或者其他具有特殊情形不宜在互联网公布以外, 将在中国 裁判文书网 (<http://www.court.gov.cn/zgcpwsw>) 公布。

2. Judgments, rulings and decisions made by our court will be published on the website of China Arbitration Paper (<http://www.court.gov.cn/zgcpwsw>), except for those which involving state secrets, privacy, minors involved in criminal activities, or settled by mediation, or other special circumstances should not be published on the Internet.

3、本院将通过审判流程信息公开平台向案件当事人及诉讼代理人公开案件进展、提供电子送达和联系法官等服务。如你公司在本院预留了证件号码、手机号码和送达地址, 本院将以手机短信及 “最高人民法院审判流程信息公开告知书” 的形式向你公司告知查询密码和查询方式。你公司可凭预留的证件号码和查询密码通过中国审判流程信息公开网、手机 APP 客户端、最高人民 法院微信、电子触摸屏等接受上述服务。

The Court will open the case to litigants and agents through the trial process information disclosure platform and provide services such as electronic delivery and contact with judges. If your company reserves the ID number, cell phone number and delivery address in our Court, we

will inform your company about the password and query method by SMS and "Notice of Publicity of Supreme People's Court Trial Process Information". Your company can use the reserved ID number and password to access the above services through China Trial Process Information Disclosure Network, Mobile APP Client, Supreme People's Court WeChat, and Electronic Touch Screen.

如你公司尚未在本院预留证件号码、手机号码和送达地址，或预留的上述信息发生变更，请详细填写“最高人民法院送达地址、送达方式确认书”后寄送本院。本院将及时为你公司开通上述功能。

If your company has not reserved the ID number, phone number and delivery address in our Court or the above information has been changed, please fill in the Confirmation of the Service Address and Delivery Method of Supreme People's Court in detail and send it to our Court. We will promptly open these functions for your company.

(Seal of Supreme Court of PRC)

10th November, 2017

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

AFFIDAVIT OF MONICA PALKO
(Sworn February 5, 2018)

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