

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

**ONTARIO
SUPERIOUR 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.

Applicant

**RESPONDENTS' SUPPLEMENTAL MOTION RECORD
(Motion for Approval of Fees, returnable November 20, 2017)**

November 17, 2017

**MOORE BARRISTERS
Professional Corporation**
393 University Avenue
Suite 1600
Toronto, Ontario
M5G 1E6

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Lawyers for Lei Li and Xinduo Yu

TO: STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
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Lawyers for the Receiver, Ernst & Young Inc.

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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 NICHOLAS REINKELUERS
(Sworn November 17, 2017)

I, NICHOLAS REINKELUERS, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am a lawyer at Moore Barristers Professional Corporation, counsel for the Respondents.
2. I am advised by David C. Moore and verily believe as follows:
 - (1) **Exhibit A** hereto is a true copy of a letter written by David Moore to Dan Murdoch dated November 17, 2017;
 - (2) **Exhibit B** hereto is a true copy of an email and the attached November 8, 2017 letter from Dentons' Chinese (Dalian) office relating to certain Chinese legal proceedings;
 - (3) **Exhibit C** hereto is a true copy of outstanding issues requiring directions which Mr. Moore provided to Dan Murdoch on or about September 19, 2017;
 - (4) **Exhibit D** hereto is a true copy of a proposed joint request letter regarding the appointment of a case management judge in this proceeding and in the proceeding commenced by the Receiver;
 - (5) No response to the draft request letter attached as Exhibit D was received until November 14, 2017, when counsel for the Receiver provided a revised letter, a true copy of which is attached as **Exhibit E**.
 - (6) **Exhibit F** hereto is a true copy of an email and attachment which reflects the fact that this joint request letter has been provided to the Commercial List;

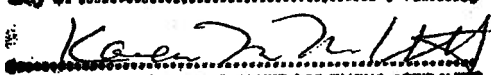
- (7) On November 3, 2017, counsel for the Receiver circulated lists of undertakings, refusals and advisements which were made during the cross-examinations of Mr. Pukier and Mr. Beekenkamp on November 1 and 2, respectively;
- (8) The transcripts for the above referenced cross-examinations were ordered on an expedited basis and were available on November 9, 2017;
- (9) The responses to the undertakings, advisements and refusals of Mr. Pukier (24 pages) and Mr. Beekenkamp (117 pages) were not delivered until 5:08 PM on Thursday November 16, 2017 and 12:04PM on Friday November 17, 2017, respectively;
- (10) Earlier this week, counsel for the Receiver delivered a 25 page factum and a document entitled "Supplement to the Receiver's 5th Report" consisting of 15 pages of text and 137 pages of attachments.

SWORN before me at the City of)
 Toronto, in the Province of Ontario)
 this 17th day of November, 2017)


 A COMMISSIONER, ETC.



Nicholas Reinkeluers

This is Exhibit A referred to in the
affidavit of Nicholas Reinkeluers
sworn before me, this 17th
day of November, 2017

A COMMISSIONER FOR TAKING AFFIDAVITS

MOORE BARRISTERS

PROFESSIONAL CORPORATION

David C. Moore, B.Sc., LL.B.
 Karen M. Mitchell, B.A., LL.B.
 Kenneth G. G. Jones, LL.B.
 Nicholas P. Reinkeluers, B.A., J.D.

Suite 1600
 393 University Avenue
 Toronto, Ontario
 M5G 1E6
 Tel: 416-581-1818
 Fax: 416-581-1279

November 17, 2017

VIA EMAIL to: dmurdoch@stikeman.com
FAX to: (416) 947-0866

Dan Murdoch
 Stikeman Elliott LLP
 Suite 5300, Commerce Court West
 199 Bay Street
 Toronto, Ontario
 M5L 1B9

Dear Mr. Murdoch:

Re: Hanfeng Evergreen Inc., Court File No. CV-14-10667-00CL

1. I am writing to follow up on my email last night.
2. As of now (that is 8:00 am, now 9:00 am Friday November 17, 2017):
 - (1) We have not received any answers to any of the undertakings (by our count, 9) or advisements (21) or any explanation of the position regarding the refusals (32) which arose during the cross-examination of Mr. Beekenkamp on November 2, 2017;
 - (2) These matters were listed in the chart circulated November 3, 2017;
 - (3) While specific page and question references to these matters could not be included until the receipt of the transcript (which arrived on November 9, having been ordered on an expedited basis), there is no reason why the answers could not have been completed based on the above chart, and delivered immediately upon receipt of the transcript;
 - (4) In addition, I only just received – at 5:08 pm yesterday - answers to the undertakings, advisements and refusals from Mr. Pukier's cross-examination on November 1, 2017;

- (5) Instead of attending to the above matters on an expedited basis, earlier this week the Receiver elected to concentrate on other matters – resulting in the delivery of its factum as well as a lengthy “Supplement to the 5th Report”;
 - (6) The Supplement to the 5th Report contains extensive new allegations, documentation, and other materials which I have not had an opportunity to properly review or consider, particularly since some of the important materials (eg. documentation relating to Mr. Yu’s status as the legal representative of Hangfengs Chinese subsidiary) are in Chinese – see for example Appendix K to the Supplement to the 5th Report which, except for 2 pages is entirely in Chinese.
 - (7) This material – including allegations in paragraphs 26-38 of the Supplement to the 5th Report that Mr. Yu is not cooperating – comes after a process which I attempted to institute a change in legal representative on May 12, 2017, a fact omitted from the most recent Receiver’s Report. That process, as the Record indicates, has been fraught with lengthy delays on the Receiver’s part, in responding to my letters about this topic.
 - (8) I cannot properly review and respond to these matters and other matters contained in the Supplement to the 5th Report before Monday.
3. In addition, to the above, the letter from Dentons China delivered to you last night makes it clear that the outcome of the Chinese legal proceedings is far from final and that, according to said letter, there is a strong likelihood that the latest decision may be reversed. As you know, Mr. Yu is concerned that he may be exposed to liability as a guarantor in respect of the Share Transfer Agreement, as a respondent in the Chinese legal proceedings, and as – despite his willingness and efforts to resign – as the continuing legal representative of Hangfeng China.
 4. It is far from clear to me that any or appropriate steps have been taken to notify Dentons China of the position of the Receiver regarding the payment of fees – i.e. the position that the Receiver believes that its original appointment order – issued at a time when none of these issues existed – provides the Receiver with a priority in respect of not just historical fees and disbursements, but also in respect of future fees and disbursements, which will continue to deplete the deposit funds and may make it impossible to return the deposit to China, regardless of the final outcome of the case in China. This position has not been clearly stated in any of the Reports or the Motion Record returnable on Monday.
 5. In these circumstances, in the interests of ensuring that proper procedures are followed, this morning I have spoken with Dentons Toronto (Michael Scheaffer) to advise him of the above facts. Dentons Toronto has no knowledge of this matter and cannot act. However, Mr. Scheaffer has attempted to contact his counterpart in China today (it is 9:45 pm there now). I am quite sure that Dentons China has no idea of your intended position, as set out in paragraph 4 above.

MOORE BARRISTERS PROFESSIONAL CORPORATION

PAGE 3

6. For these and other reasons, in my view it is untenable to proceed with the motion on Monday and I will be seeking an adjournment. I respectfully suggest that this should not be contentious, particularly since (a) most of the Receiver's fees and disbursements have already been paid and (b) the fee approval motion was initiated almost 3 years after the original appointment order, despite the provisions in that order contemplating such applications "from time to time".
7. I will write to you under separate cover regarding the letter to Justice Hainey seeking appointment of a case manager and the status of your amended pleading, including the lack of response to my letter dated November 3 regarding Justice Cavanaugh's order.
8. Please let me know your position about the above matters as soon as possible.
9. If we do not agree about the need for an adjournment, I intend to rely upon the contents of this letter and any reply thereto.

Yours very truly,

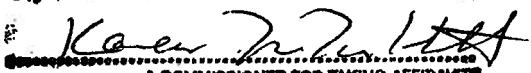
MOORE BARRISTERS



David C. Moore
DCM/jt

cc: Genna Wood

p.s. The above letter was dictated prior to our telephone call this morning in which you scoffed at any issue/need for an adjournment. I will not recite our entire conversation. But to be clear, I have never agreed to a process whereby I would receive a lengthy Supplemental Report the week before the motion and be expected to consider and respond to same, as well as digest your client's responses to undertakings and advisements on the eve of the motion (and prepare a factum taking these matters into account) in this manner.

This is Exhibit B referred to in the
affidavit of Nicholas Reinkeluers
sworn before me, this 17th
day of November, 2017

A COMMISSIONER FOR TAKING AFFIDAVITS

Karen Mitchell

From: David Moore
Sent: Thursday, November 16, 2017 8:59 PM
To: Dan Murdoch
Attachments: Lei 901--Letter from Dentons re appeal Nov 8, 2017.pdf

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
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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：



案号: (2017)最高法民申4628号	受理法院: 最高人民法院
案由: 股权转让合同纠纷	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: 汉枫缓释肥料有限公司 被申请人: 于薪铎先生	

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，同时表明最高法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法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，贵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（上海）律师事务所

律师

2017 年 4 月 08 日

Letter of Attorney

Without any prejudice to any rights

To: Hanfeng Evergreen Inc.

Ernst & Young Inc.

Hanfeng Release Fertilizer Co., Ltd

Mr. Yu Xinduo

As engaged by Harbin Pengcheng Fertilizer Co., Ltd. (hereinafter referred to as the "Entruster"), regarding to the retrial case with Hanfeng Evergreen Inc., we hereby to give our notice as follows,

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,



Case No. (2017) ZGFMS 4628 Case Name: Hanfeng Evergreen Inc. v. Harbin Pengcheng Fertilizer Co., Ltd. Case Type: Civil Case	Case No. (2017) ZGFMS 4628 Case Name: Hanfeng Evergreen Inc. v. Harbin Pengcheng Fertilizer Co., Ltd. Case Type: Civil Case
Case No. (2017) ZGFMS 4628 Case Name: Hanfeng Evergreen Inc. v. Harbin Pengcheng Fertilizer Co., Ltd. Case Type: Civil Case	Case No. (2017) ZGFMS 4628 Case Name: Hanfeng Evergreen Inc. v. Harbin Pengcheng Fertilizer Co., Ltd. Case Type: Civil Case

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.

Kind consideration and acceptance of the above recommendation is

Dentons Law Offices, LLP, Beijing

Counselor

Nov. 01, 2017

Lin Jashi

This is Exhibit C referred to in the
affidavit of Nicholas Reinkeluers
sworn before me, this 17th
day of November, 2017
by Karen R. [Signature]
A COMMISSIONER FOR TAKING AFFIDAVITS

DRAFT LIST OF MOTIONS/ISSUES

September 19, 2017

Receivership Proceedings - CV-14-10667-00CL

1. Motion for permission to sue (Motion dated July 14, 2017)
2. Motion for directions re:
 - (a) non-disclosure in Reports filed to date
 - (b) further Report providing Court with material documents referred to but not provided in Reports 4 and 5
 - (c) Responses to various questions and inquiries made by Yu and Lei (see e.g. correspondence and emails dated April 28, May 10, 12, 19, June 8-12, July 7, 14 and responses)
 - (d) Receivers Website, Commercial List Practice Direction
 - (e) Implication of Chinese legal proceedings (deposit)
 - (f) Variance of prior orders
 - (g) Effect of "approvals"
3. Motion re resignation of Xinduo Yu (correspondence dated May 12, July 7, September 13 and related documentation)
4. Motion re lack of any steps to sell assets in China
5. Status of claims filed to date and issues/procedures regarding rejection of Xinduo Claim

Litigation Proceedings – CV-16-11325-00CL

6. Permission to sue (parallel motion dated July 14, 2017, Originating Notice of Application dated July 14, 2017)
7. Motion re Failure to answer Notice to Inspect dated July 7, 2017 and related issues
8. Receiver's personal responsibility for costs per common law jurisprudence – prior Receivership orders
9. Discovery plan, productions, and schedule

This is Exhibit D referred to in the
affidavit of Nicholas Reinkeluers
sworn before me, this 17th
day of November, 2017

A COMMISSIONER FOR TAKING AFFIDAVITS

MOORE BARRISTERS

PROFESSIONAL CORPORATION

David C. Moore, B.Sc., LL.B.
 Karen M. Mitchell, B.A., LL.B.
 Kenneth G. G. Jones, LL.B.
 Nicholas P. Reinkeluers, B.A., J.D.

Suite 1600
 393 University Avenue
 Toronto, Ontario
 M5G 1E6
 Tel: 416-581-1818
 Fax: 416-581-1279

October ____, 2017

VIA EMAIL Glenn.Hainey@scj-csj.ca

The Honourable Mr. Justice Glenn Hainey
 c/o Judges Administration
 361 University Avenue, Room 170
 Toronto, Ontario
 M3G 1T3

Your Honour:

**Re: Yu Xinduo et al ats Ernst & Young / Court File No. CV16-11325-00CL ("Action")
 Hanfeng Evergreen Inc. / Court File No. CV14-10667-00CL ("Application")
 Request for Appointment of Case Management Judge**

1. I write as counsel to the Defendants, Xinduo Yu ("Yu") and Lei Li ("Li"), in the referenced Action above to request that a case management judge be appointed to manage both the above referenced proceedings. These proceedings are interrelated and would benefit from the appointment of one case management judge to manage the Action and Application together.
2. By way of background, in August 2014, Hanfeng Evergreen Inc. ("**Hanfeng**") made application to approve a share transfer agreement dated August 8, 2014 by which Hanfeng was to sell its 100% shareholding interest in its Chinese subsidiary, Hanfeng Slow-Release Fertilizer Co. Ltd. ("**Hanfeng China**") and to appoint Ernst & Young Inc. ("**E&Y**") as receiver and manager in order, among other things, to complete the Share Transfer Agreement.
3. Difficulties arose in connection with the Share Transfer Agreement, and in August 2015, the Purchaser thereunder issued proceedings in China against Hanfeng, E&Y, Hanfeng China subsidiary and Yu seeking, among other things, an order declaring that the Agreement was invalid and requiring the return of the deposit it had made of approximately \$2,000,000(CAD). In the first instance, the Chinese Court granted the relief requested and ordered that the deposit be returned to the Purchaser. A copy of an informal translation of the decision is attached. E&Y and Hanfeng have appealed the decision and the appeal was allowed, as it appears from an informal translation of the decision provided

by E&Y's counsel, copy of which is attached. The Purchaser has notified the parties of its intention to appeal this decision. A copy of that notification is attached.

4. While the above events were pending, E&Y initiated a claim against Yu and Li claiming over \$2,000,000 in damages against the Defendants and alleging, among other things, misrepresentations regarding the Share Transfer Agreement and (in effect) fraud and theft against Yu. The Defendants dispute the allegations and, among other things, allege that the failure to complete the Agreement was as a result of the actions of the Receiver.
5. The above matters have resulted in the filing of five reports and two supplemental reports by E&Y and a motion is now pending to approve three of these reports and the fees and disbursements since the beginning of the Receivership.
6. The above proceedings are interrelated and have resulted in numerous procedural issues, steps, motions, and potential motions, including the following:
 - (1) issues raised by Yu and Li regarding the accuracy and sufficiency of the Receiver's Reports;
 - (2) pending motions by Yu and Li in the Receivership and the Action seeking permission to institute counterclaims in the Action;
 - (3) motions by Yu and Li which have resulted in the delivery of particulars and the striking out (with leave to amend) claims of knowing receipt and knowing assistance against Li;
 - (4) issues raised by Yu regarding the Receiver's disallowance of a claim submitted by Yu;
 - (5) information sought by Yu and Li (by letters dated May 19, 2017, and July 14, 2017) regarding the conduct of the Receivership;
 - (6) the impact of the Chinese proceedings and any further appeals therein;
 - (7) the status of Yu as the legal representative of the Chinese Subsidiary and the steps necessary to implement his resignation;
 - (8) issues regarding the Defendants' outstanding Notice to Inspect dated July 7, 2017;
 - (9) the timing and details of documentary production and a Discovery Plan in the Action; and
 - (10) anticipated motions for directions with impact to Items 6 (1) (2) (4) (5) (6) (7) (8) and (9) above.

7. As noted above, while the parties disagree with respect to most if not all of the above issues, they agree that the appointment of a case management judge would be desirable and create efficiencies for the parties and the Court in the conduct of these proceedings.
8. I should note that Your Honour dealt with the last two attendances/Court orders with respect to the First, Second and Supplement Reports of the Receiver on July 31, 2015 and with respect to the Third Report, on October 5, 2015. If Your Honour is persuaded that there is an appropriate case for the appointment of a case manager, consideration might be given to Your Honour assuming this role.
9. We would be happy to answer any questions about this request or to attend informally before your Honour and provide any further information that may be necessary to enable the Court to consider these requests.
10. Thank you for considering the above.

Sincerely,

MOORE BARRISTERS

David C. Moore
DCM/m

Enclosures (3)

This is Exhibit E referred to in the
affidavit of Nicholas Reinkeluers
sworn before me, this 17th
day of November, 2017

A COMMISSIONER FOR TAKING AFFIDAVITS

Karen Mitchell

From: Dan Murdoch <DMurdoch@stikeman.com>
Sent: Tuesday, November 14, 2017 11:28 AM
To: David Moore
Cc: Haddon Murray; Genna Wood
Subject: Hanfeng - Case Management
Attachments: 20171018 draft DCM to Justice Hainey.pdf

David,

Attached is a mark-up of your proposed letter on case management.

Regards,

Dan

Daniel S. Murdoch

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

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Stikeman Elliott

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Stikeman Elliott LLP Barristers & Solicitors

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

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MOORE BARRISTERS

PROFESSIONAL CORPORATION

David C. Moore, B.Sc., LL.B.
 Karen M. Mitchell, B.A., LL.B.
 Kenneth G. G. Jones, LL.B.
 Nicholas P. Reinkeluers, B.A., J.D.

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 393 University Avenue
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 M5G 1E6
 Tel: 416-581-1818
 Fax: 416-581-1279

~~October~~ November _____, 2017

VIA EMAIL Glenn.Hainey@scj-csj.ca

The Honourable Mr. Justice Glenn Hainey
 c/o Judges Administration
 361 University Avenue, Room 170
 Toronto, Ontario
 M3G 1T3

Your Honour:

**Re: Yu Xinduo et al ats Ernst & Young / Court File No. CV16-11325-00CL ("Action")
 Hanfeng Evergreen Inc. / Court File No. CV14-10667-00CL ("Application")
 Request for Appointment of Case Management Judge**

1. We act as counsel to Xinduo Yu ("Yu") and Lei Li ("Li") in the referenced Commercial List proceedings.
2. This letter is being written with the consent of Stikeman Elliott, counsel to the Receiver in said proceedings.
3. The purpose is to jointly request that a case management judge be appointed to manage both the proceedings, as in counsels' view, they are interrelated and would benefit from the appointment of one case management judge to manage the Action and Application together.
4. By way of background, in August 2014, Hanfeng Evergreen Inc. ("Hanfeng") made application to approve a share transfer agreement dated August 8, 2014 by which Hanfeng was to sell its 100% shareholding interest in its Chinese subsidiary, Hanfeng Slow-Release Fertilizer Co. Ltd. ("Hanfeng China") and to appoint Ernst & Young Inc. ("E&Y") as receiver and manager in order, among other things, to complete the Share Transfer Agreement. The principal asset of Hanfeng was its shares in Hanfeng China. Yu was the founder and former CEO of Hanfeng and is the legal representative of Hanfeng China. Li is the spouse of Yu and a former director and officer of Hanfeng.

5. ~~The Share Transfer Agreement did not close and the Receiver received only a deposit of approximately \$2,000,000 CAD. Difficulties arose in connection with the Share Transfer Agreement, and in August 2015, the Purchaser thereunder issued proceedings in China against Hanfeng, E&Y, Hanfeng China subsidiary and Yu seeking, among other things, an order declaring that the Agreement was invalid and requiring the return of the deposit it had made of approximately \$2,000,000(CAD). In the first instance, the Chinese Court granted the relief requested and ordered that the deposit be returned to the Purchaser. A copy of an informal translation of the decision is attached. E&Y and Hanfeng have appealed the decision and the appeal was allowed, as it appears from an informal translation of the decision provided by E&Y's counsel, copy of which is attached. The Purchaser has notified the parties of its intention to appeal this decision. A copy of that notification is attached.~~
6. ~~While the above events were pending~~In early 2016, E&Ythe Receiver initiated a claim against Yu and Li claiming over \$2170,000,000 in damages against the Defendants and alleging, among other things, breach of fiduciary duty and fraudulent misrepresentations regarding the identity of the purchaser in the Share Transfer Agreement and (in effect) fraud and theft against Yu. The Defendants dispute the allegations and, among other things, allege that the failure to complete the Agreement was as a result of the actions of the Receiver.
7. ~~The above matters have resulted in the filing of five reports and two supplemental reports by E&Y and a motion is now pending to approve three of these reports and the fees and disbursements since the beginning of the Receivership.~~
8. ~~The above proceedings are complex and interrelated and the parties are in agreement that and have resulted in numerous procedural issues, steps, motions, and potential motions, including the following:~~
 - (1) ~~issues raised by Yu and Li regarding the accuracy and sufficiency of the Receiver's Reports;~~
 - (2) ~~pending motions by Yu and Li in the Receivership and the Action seeking permission to institute counterclaims in the Action;~~
 - (3) ~~motions by Yu and Li which have resulted in the delivery of particulars and the striking out (with leave to amend) claims of knowing receipt and knowing assistance against Li;~~
 - (4) ~~issues raised by Yu regarding the Receiver's disallowance of a claim submitted by Yu;~~
 - (5) ~~information sought by Yu and Li (by letters dated May 19, 2017, and July 14, 2017) regarding the conduct of the Receivership;~~
 - (6) ~~the impact of the Chinese proceedings and any further appeals therein;~~
 - (7) ~~the status of Yu as the legal representative of the Chinese Subsidiary and the steps necessary to implement his resignation;~~

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PAGE 3

~~(8) issues regarding the Defendants' outstanding Notice to Inspect dated July 7, 2017;~~

~~(9) the timing and details of documentary production and a Discovery Plan in the Action; and~~

~~(10) anticipated motions for directions with impact to Items 6 (1) (2) (4) (5) (6) (7) (8) and (9) above.~~

9. ~~As noted above, while the parties disagree with respect to most if not all of the above issues, they agree that the appointment of a case management judge would be desirable and create efficiencies for the parties and the Court in the conduct of these proceedings.~~

10. ~~I should note that Your Honour dealt with the last two attendances/Court orders with respect to the First, Second and Supplement Reports of the Receiver on July 31, 2015 and with respect to the Third Report, on October 5, 2015. If Your Honour is persuaded that there is an appropriate case for the appointment of a case manager, consideration might be given to Your Honour assuming this role.~~

11.7. We would be happy to answer any questions about this request or to attend informally before your Honour and provide any further information that may be necessary to enable the Court to consider these requests.

12.8. Thank you for considering the above.

Sincerely,

MOORE BARRISTERS

David C. Moore
DCM/m

Enclosures (3)

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This is Exhibit F referred to in the
affidavit of Nicholas Reinkeluers
sworn before me, this 17th
day of November, 2017
By: Karen M. H. [Signature]
A COMMISSIONER FOR TAKING AFFIDAVITS

Karen Mitchell

From: Karen Mitchell
Sent: Friday, November 17, 2017 3:05 PM
To: 'JUS-G-MAG-CSD-Toronto-SCJ Commercial List'
Cc: Dan Murdoch (DMurdoch@stikeman.com)
Subject: In the matter of Hangfeng Evergreen Inc., Court File No. CV-14-10667-00CL (Receivership Proceeding); Ernst & Young as Receiver of Hangfeng Evergreen INC. v Yu Xinduo and Lei Li, Court File No. CV-16-11325-00CL (Litigation Proceeding)
Attachments: 20171117 DCM to Justice Hainey.pdf

Please find attached correspondence from Mr. Moore, which is sent on behalf of both counsel, with respect to the appointment of a Case Management Judge in the above noted matters.

We respectfully request that you provide Mr. Justice Hainey with a copy of the attached correspondence.

Thank you for your assistance in this matter.

David Moore/ per Karen Mitchell

***** 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. *****

Karen M. Mitchell
 Moore Barristers Professional Corporation
 1600 - 393 University Avenue, Toronto, M5G 1E6
kmmitchell@moorebarristers.ca
 T: 416-581-1818 ext. 222/223
 F: 416-581-1279

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David C. Moore, B.Sc., LL.B.
 Karen M. Mitchell, B.A., LL.B.
 Kenneth G. G. Jones, LL.B.
 Nicholas P. Reinkeluers, B.A., J.D.

Suite 1600
 393 University Avenue
 Toronto, Ontario
 M5G 1E6
 Tel: 416-581-1818
 Fax: 416-581-1279

November 17, 2017

VIA EMAIL Glenn.Hainey@scj-csj.ca

The Honourable Mr. Justice Glenn Hainey
 c/o Judges Administration
 361 University Avenue, Room 170
 Toronto, Ontario
 M3G 1T3

Your Honour:

**Re: Yu Xinduo et al ats Ernst & Young / Court File No. CV16-11325-00CL ("Action")
 Hanfeng Evergreen Inc. / Court File No. CV14-10667-00CL ("Application")
 Request for Appointment of Case Management Judge**

1. We act as counsel to Xinduo Yu ("Yu") and Lei Li ("Li") in the referenced Commercial List proceedings.
2. This letter is being written with the consent of Stikeman Elliott, counsel to the Receiver in said proceedings.
3. The purpose is to jointly request that a case management judge be appointed to manage both the proceedings, as in counsels' view, they are interrelated and would benefit from the appointment of one case management judge to manage the Action and Application together.
4. By way of background, in August 2014, Hanfeng Evergreen Inc. ("Hanfeng") made application to approve a share transfer agreement dated August 8, 2014 by which Hanfeng was to sell its 100% shareholding interest in its Chinese subsidiary, Hanfeng Slow-Release Fertilizer Co. Ltd. ("Hanfeng China") and to appoint Ernst & Young Inc. ("E&Y") as receiver and manager in order, among other things, to complete the Share Transfer Agreement. The principal asset of Hanfeng was its shares in Hanfeng China. Yu was the founder and former CEO of Hanfeng and is the legal representative of Hanfeng China. Li is the spouse of Yu and a former director and officer of Hanfeng.

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PAGE 2

5. The Share Transfer Agreement did not close and the Receiver received only a deposit of approximately \$2,000,000 CAD.
6. In early 2016, the Receiver initiated a claim against Yu and Li claiming over \$170,000,000 in damages against the Defendants and alleging, among other things, breach of fiduciary duty and fraudulent misrepresentation regarding the identity of the purchaser in the Share Transfer Agreement. The Defendants dispute the allegations that the failure to complete the Agreement was as a result of the actions of the Receiver.
7. The above proceedings are complex and related and the parties are in agreement that the appointment of a case management judge would be desirable and create efficiencies for the parties and the Court in the conduct of these proceedings.
8. We would be happy to answer any questions about this request or to attend informally before your Honour and provide any further information that may be necessary to enable the Court to consider these requests.
9. Thank you for considering the above.

Sincerely,

MOORE BARRISTERS



David C. Moore

DCM/m