

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

SUPPLEMENTARY FACTUM OF THE RESPONDENTS
(Approval of Reports and Activities)

November 17, 2017

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

David C. Moore (LSUC #16996U)
(416) 581-1818 ext. 222
david@moorebarristers.ca

Karen M. Mitchell (LSUC #23816G)
(416) 581-1818 ext. 223
kmitchell@moorebarristers.ca
Fax: (416) 581-1279

Lawyers for Lei Li and Xinduo Yu

TO: STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Dan Murdoch
(416) 869-5529
Fax: (416) 947-0866
dmurdoch@stikeman.com

Lawyers for the Receiver,
Ernst & Young Inc.

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

SUPPLEMENTARY FACTUM OF THE RESPONDENTS
(Approval of Reports and Activities)

PART I - Introduction

1. The Respondents have delivered a factum relating to the question of whether or not the Court should approve the Receiver's fees and disbursements at this time.
2. The aforementioned factum indicates that a Supplemental Factum would be delivered, if practicable, regarding the Receiver's request for approval of the activities set out in the Supplement to the First Report, the 4th Report, and the 5th Report.
3. This is that factum.

PART II - Position of the Respondents

4. The position of Xindo Yu ("Yu") and Lei Li ("Li") (collectively the "**Respondents**") is simple.
5. There are serious issues regarding the allegations made in the Reports and regarding the steps taken or not taken by the Receiver firm and after, approximately, August 2015.
6. These issues include disputes regarding the fairness of the 4th and 5th Reports and the accuracy of the allegations made therein.
7. Many of these issues overlap with the allegations of misconduct set out in the parallel legal proceedings commenced by the Receiver against these Respondents in which damages in excess of CDN \$120,000,000 are sought against them ("**Civil Action**").
8. The Respondents have vigorously denied and defended the claims against them. Although the Receivers' 4th Report has essentially described the Respondents' Statement of Defence as a general denial, in fact it is a lengthy and detailed pleading responding to all of the allegations which have been advanced.

9. There is a substantial overlap between the activities and allegations described in the 4th and 5th Reports, and the allegations which are in issue in the Civil Action.
10. The Court should do nothing that will in any way adversely impact the right and ability of any of the litigants in the Civil Action – including the Respondents – to a full and fair trial in accordance with all of the applicable Rules of Civil Procedure and the usual practices followed in such cases.
11. In the circumstances of this case it would be inappropriate for the Court to issue any approval order in respect of the 4th and 5th Reports, as to do so could have the effect of prejudicing the position of the Respondents in the Civil Action, and also in relation to several proposed motions for directions which they intend to bring in the instant Receivership proceedings.
12. Alternatively, any order should make it clear that any approval is without prejudice to and has no impact upon either the Civil Action or any further motions for directions in the Receivership proceeding.

PART III – Concise Statement of Facts

13. In March 2016 the Receiver initiated the Civil Action claiming over \$120,000,000 against the Respondents.
14. Following interlocutory proceedings resulting in the delivery of particulars, a lengthy Statement of Defence was delivered in early January 2017.
15. By decision dated October 3, 2017, the Honourable Mr. Justice Cavanagh struck out certain of the Plaintiff's claims against Li, with leave to amend with 30 days. The Plaintiff has delivered a proposed amendment, but has not followed through with the steps needed to formerly file an Amended Statement of Claim.
16. Productions have not been exchanged and no discoveries have been held in the Civil Action.
17. There are many overlapping issues between the claims and defences in the Civil Action and the activities described and the allegations contained in the 4th and 5th Reports.
18. In addition there are several issues which require further directions in the Receivership proceedings.
19. Commencing upon receipt of the 4th Receiver's Report, Counsel for Yu and Li wrote to Receiver's counsel asking for information, requesting documents, and raising concerns with respect to the allegations made and activities undertaken by the Receiver as set out in the 4th and 5th Reports.
20. These questions, requests and concerns are set out in letters and emails from Moore Barristers to the Receiver's counsel dated May 12, May 19, June 6-12, June 7, June 26, July 14 and September 13, 2017 and were further referenced in several additional letters

from Moore Barristers to Stikemans dated October 18, 2017. These communications are reproduced in the Respondents' Motion Record.

21. The questions requests, and concerns raised by the Respondents related to, among other things, the following subjects:
 - (1) The accuracy of the disclosure or lack of disclosure in the 4th and 5th Reports;
 - (2) Yu's willingness (and wish) to resign as legal representative of Hanfeng China;
 - (3) Allegations of failure to cooperate which the Respondents believed to be unsupported and inaccurate;
 - (4) Information and documents about financial records apparently obtained by the Receiver from local management in China;
 - (5) Information and documents about certain escrow funds and the steps taken or not taken by the Receiver in connection therewith;
 - (6) Information and clarification about the Chinese regulatory rules and related matters;
 - (7) The Receiver's decision (for apparently tactical reasons) to reject a claim filed by Yu under the Court sanctioned Claims process;
 - (8) The (in)completeness of the postings on the Receiver's website;
 - (9) The inquiries made and steps taken (or not taken) about the liquidation of Hanfeng China;
 - (10) The details of certain dealings between the Receiver and Chinese regulatory authorities (HAIC) and related Court proceedings which were referred to but not reproduced in the Receiver's Reports.
 - (11) Whether the Receiver had any actual documentation or evidence to substantiate certain of the allegations of misconduct against the Respondents contained in the 4th and 5th Reports;
 - (12) Information and documentation regarding the Receiver's role and involvement in additional Chinese legal proceedings in relation to the deposit in issue therein, and,
 - (13) Details of certain legal opinions referred to in the Receiver's Reports.
22. Some of the above matters (and the allegations in the 4th and 5th Reports) overlap with allegations in the Statement of Claim. Virtually all of the questions and requests for information and documents were rejected, and some of the above referenced communications remain unanswered.

23. In September 2017 the Respondents identified a series of issues which they believed warranted direction from the Court and suggested that a case manager be appointed. A copy of a list prepared by the Respondents' counsel listing these matters and provided to the Receiver's counsel at that time is attached as Appendix A.
24. After discussions between counsel, it was agreed that Moore Barristers would prepare a draft letter to be sent to His Honour Justice Hainey requesting that a case management judge be appointed.
25. On October 18, 2017, Moore Barristers sent the proposed draft letter to counsel for Ernst & Young. A copy of this draft is attached as Appendix B.
26. No response was received until November 16, 2017. Appendix C is a copy of this response.
27. Although Respondents' counsel has expressed concern that sufficient detail of the complexities and overlapping issues in the Civil Action and the Receivership Proceedings are not contained in the joint letter suggested by counsel for Ernst and Young, in order to expedite matters the joint letter has been sent to Justice Hainey, as reflected in Appendix D.

PART IV - Concise Argument

28. It is respectfully submitted that it is impossible on this motion, and in any event would be procedurally unfair, for the Court to issue any order which adversely affect the rights of any party to the Civil Action or impact the intended motions for directions in the Receivership Proceedings.
29. In the circumstances the Court should not issue any order approving the Supplement to the First Report, the 4th Report or the 5th Report.
30. To the extent any consideration of orders to approve the contents of the above Reports is appropriate, it is submitted that such consideration should be left to be decided by the Court following Justice Hainey's consideration of the Respondents' request for the appointment of a case manager.
31. The Receiver's refusals to answer the Respondents' questions and requests were maintained in the cross-examinations leading up to this motion. Even if it were appropriate to consider approving the 4th and 5th Reports, in the absence of proper responses to the questions and requests which have been made, it is submitted that the Court should not do so.

Reference: Essery Estate v. Essery [2016] O.J. No. 528

Re Bell Canada International Inc. [2003] O.J. No. 4738

PART V – Order Sought

32. Ernst and Young's request for approval of the activities described in the above Reports, and/or the Reports themselves, should be dismissed, without prejudice to the parties' positions in the Civil Action.
33. Alternatively, any orders approving or implying approval of the Reports should expressly state that such order or orders are without prejudice to the parties' position in the Civil Action and in the proposed motions for directions in the Receivership Proceedings.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of November, 2017.



David C. Moore



Karen M. Mitchell

Lawyers for Xinduo Yu and Lei Li

APPENDIX A

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

APPENDIX B

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/rn

Enclosures (3)

APPENDIX C

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

If you do not wish to receive our email marketing messages, please [unsubscribe](#).

Stikeman Elliott

Follow us: [LinkedIn](#) / [Twitter](#) / stikeman.com

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.

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~~ 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&Y~~the Receiver~~ initiated a claim against Yu and Li claiming over \$2~~170~~,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;~~

Formatted: Justified, Indent: Left: 0", Hanging: 0.39", Right: 0", Space After: 0 pt, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5", Don't allow hanging punctuation, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers, Font Alignment: Baseline

~~(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)

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Normal, No bullets or numbering

APPENDIX D

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 Hailey.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 Hailey 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

CONFIDENTIALITY NOTE: This message contains information which may be privileged or confidential, or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby NOTIFIED that any dissemination, distribution, retention, archiving, or copying of this communication is strictly prohibited. If you have received this e-mail in error, please notify us immediately by return e-mail or by telephoning the number given above, and delete the original message.

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 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.
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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings Commenced at Toronto

**SUPPLEMENTARY FACTUM OF THE
RESPONDENTS**
(Approval of Reports and Activities)

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

David C. Moore (LSUC #16996U)
(416) 581-1818 ext. 222
david@bellmore.ca

Karen M. Mitchell (LSUC #23816G)
(416) 581-1818 ext. 223
kmmitchell@bellmore.ca
Fax: (416) 581-1279

Lawyers for Lei Li and Xinduo Yu