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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF HANFENG EVERGREEN INC.

SUPPLEMENTAL AFFIDAVIT OF MONICA PALKO
(Sworn February 16, 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, 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 30, 2017, Dan Murdoch, counsel to Ernst & Young Inc., the court-appointed receiver of Hanfeng Evergreen Inc. (the "**Receiver**"), sent a letter to Paul Pape, counsel to Harbin Pengcheng Fertilizer Co., Ltd. Attached hereto as **Exhibit "A"** is the November 30, 2017 letter.

3. On December 1, 2017, Mr. Pape responded in a letter to Mr. Murdoch. Attached hereto as **Exhibit "B"** is the December 1, 2017 letter.

4. On January 12, 2018, Receiver's counsel sent a letter to Mr. Pape and David Moore, counsel to Lei Li and Xinduo Yu, the respondents in the Receiver's motion heard on November 20, 2017 (the "**Respondents**"). Attached hereto as **Exhibit "C"** is the January 12, 2018 letter.

5. On January 16, 2018, Mr. Moore submitted the Respondents' Submissions as to Costs for the Receiver's motion heard on November 20, 2017. Attached hereto as

Exhibit "D" are the Respondents' Submissions as to Costs dated January 16, 2018.

SWORN BEFORE ME at the City of Toronto, this 16th day of February, 2018.	Monica Palko
A Commissioner for taking Affidavits *(or as may be)*	Monica Palko
C. Haldan Murray LSO #: 61640P	

THIS IS EXHIBIT "A"

to the Supplemental Affidavit of Monica Palko

Sworn before me this

day of February 16, 2018

A Commissioner for Taking Affidavits

Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON Canada M5L 1B9

Main: 416 869 5500
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Daniel S. Murdoch
Direct: (416) 869-5529
dmurdoch@stikeman.com

November 30, 2017
File No. 131522.1002

BY E-MAIL

Pape Barristers
Professional Corporation
One Queen Street East,
Suite 1910, Box 69
Toronto, ON M5C 2W5

Attention: Paul Pape

Dear Counsel:

Re: Hanfeng Evergreen Inc. (Re) – Court File No. CV-14-10667-00CL

We are counsel to Ernst & Young Inc. ("**EY**") in its capacity as receiver (the "**Receiver**") of Hanfeng Evergreen Inc. ("**Hanfeng**"). You have advised us that you have been retained to act for Harbin Pengcheng Fertilizer Co., Ltd. (the "**Purchaser**").

On November 16, 2017, we received a letter from Mr. David Liu of Dentons (China) acting for the Purchaser by way of an email from David Moore, counsel to Xinduo Yu and Lei Li, which is attached for your reference. On November 17, 2017, we also received the email circulated by Mr. Liu to the Service List for the Hanfeng receivership proceedings in the Ontario Superior Court of Justice (Commercial List), Court File No. CV-14-10667-00CL (also attached).

The purpose of this letter is to address the statement at paragraph 3 of Mr. Liu's letter, which states that "we strongly recommend your company not to dispose the RMB 12,400,000 Fund already paid by the Entruster [the Purchaser] at your free will."

Please find attached the endorsement of Myers J. of the Ontario Superior Court of Justice (Commercial List) dated November 30, 2017, approving the fees of the Receiver and its counsel in the aggregate amount of $1,548,812. The Receiver intends to pay its outstanding fees and those of its counsel with the funds it currently holds in the estate of Hanfeng, which funds are less than RMB 12,400,000 at current exchange rates. The Receiver will make this payment as permitted by paragraph 20 of the appointment order of the Matheson J. dated August 20, 2014 (the "**Appointment Order**"), pursuant to which EY was appointed as the Receiver of Hanfeng. Paragraph 18 of the Appointment Order granted the Receiver a charge over Hanfeng's property. For your reference, a copy of the Appointment Order is also attached.

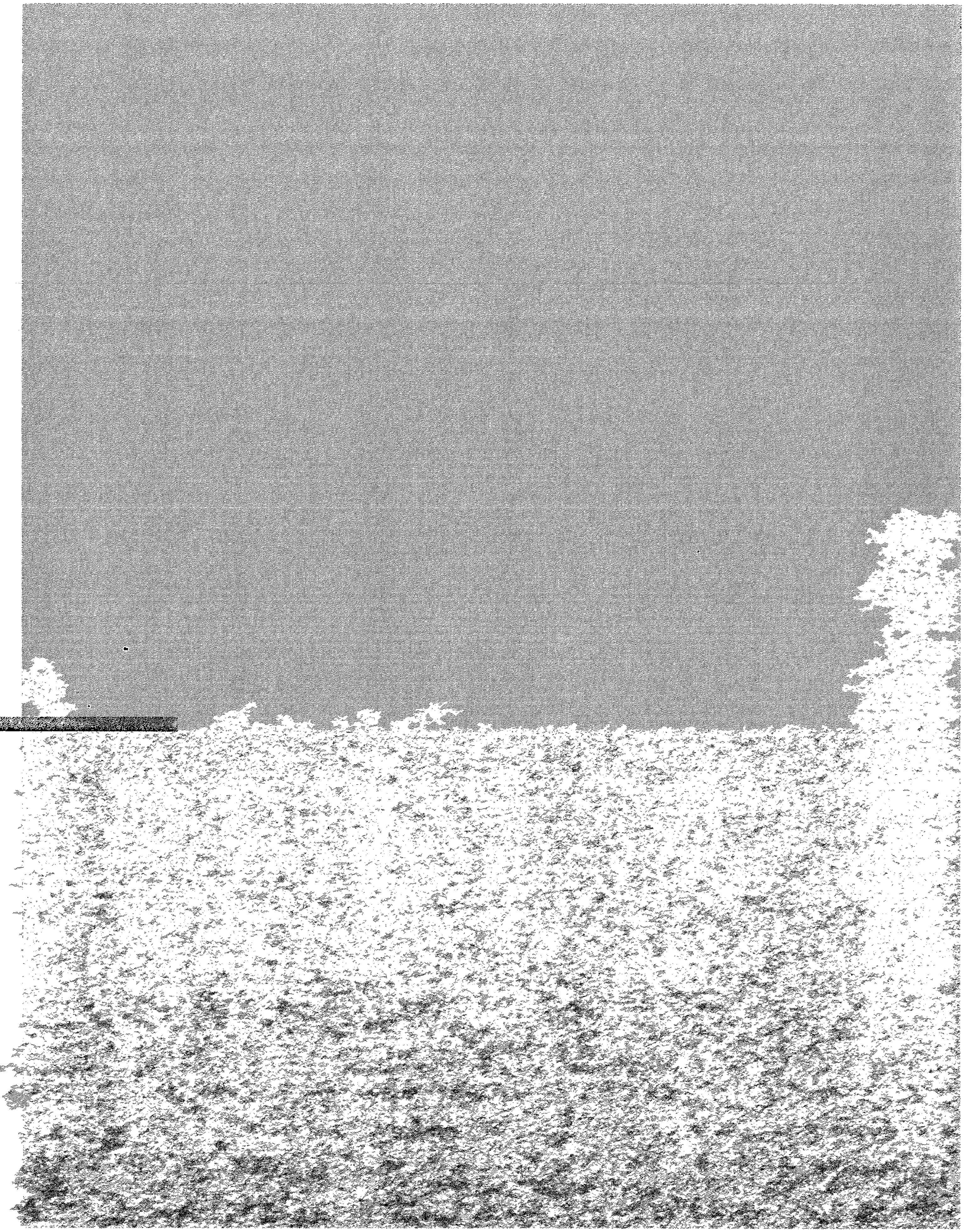
Yours truly,

Per

Daniel S. Murdoch

DSM/tk
Enclosures (4)

6810602 v3



DENTONS

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大连市沙河口区体坛路22号
诺德大厦29楼
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116021, Dalian, China

大成 Salans FMC SNR Denton McKenna Long
dentons.cn

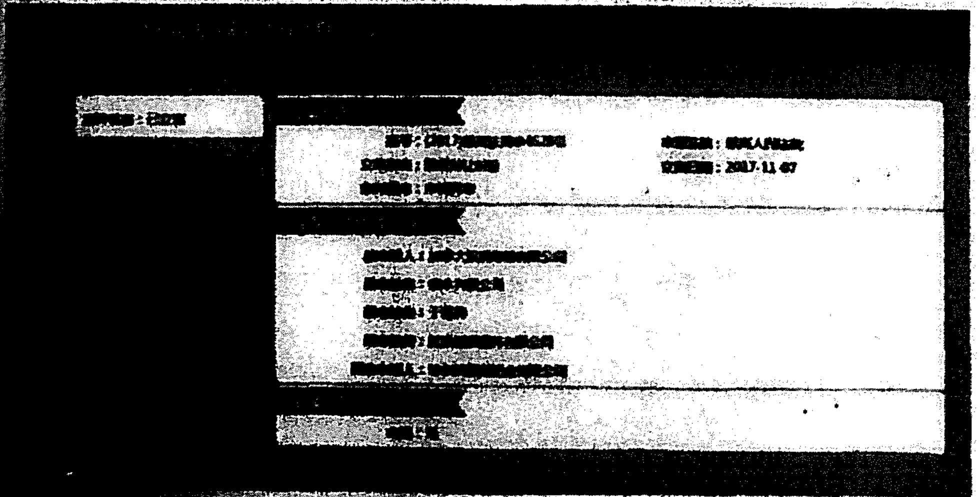
北京大成（大连）律师事务所
律 师 函

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：



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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（大连）律师事务所

律师：

2017年11月08日

大成 DENTONS

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,Titan Road
Shahekou District
116021, Dalian, China

大成 Salans FMC SNR Denton McKenna Long
dentons.cn

Letter of Attorney

Without any prejudice to any rights

To: Hanfeng Evergreen Inc.

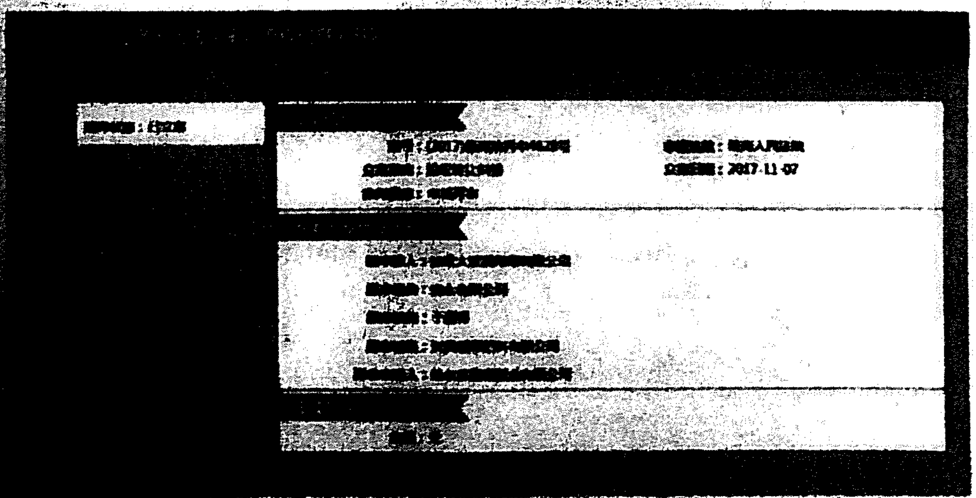
Ernst & Young Inc.

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,



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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. Therfore 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.

[illegible] consideration and acceptance of the above recommendation is

Dentons Law Offices, LLP Dalian

Counsel: Lin dazhi

Nov, 0[illegible] 2017

2/2

Eun Ji Yoon

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 applys 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 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 >

发件人: Haddon Murray <HMurray@stikeman.com>
发送时间: 2017年11月14日 5:24
收 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; Louden 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

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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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.

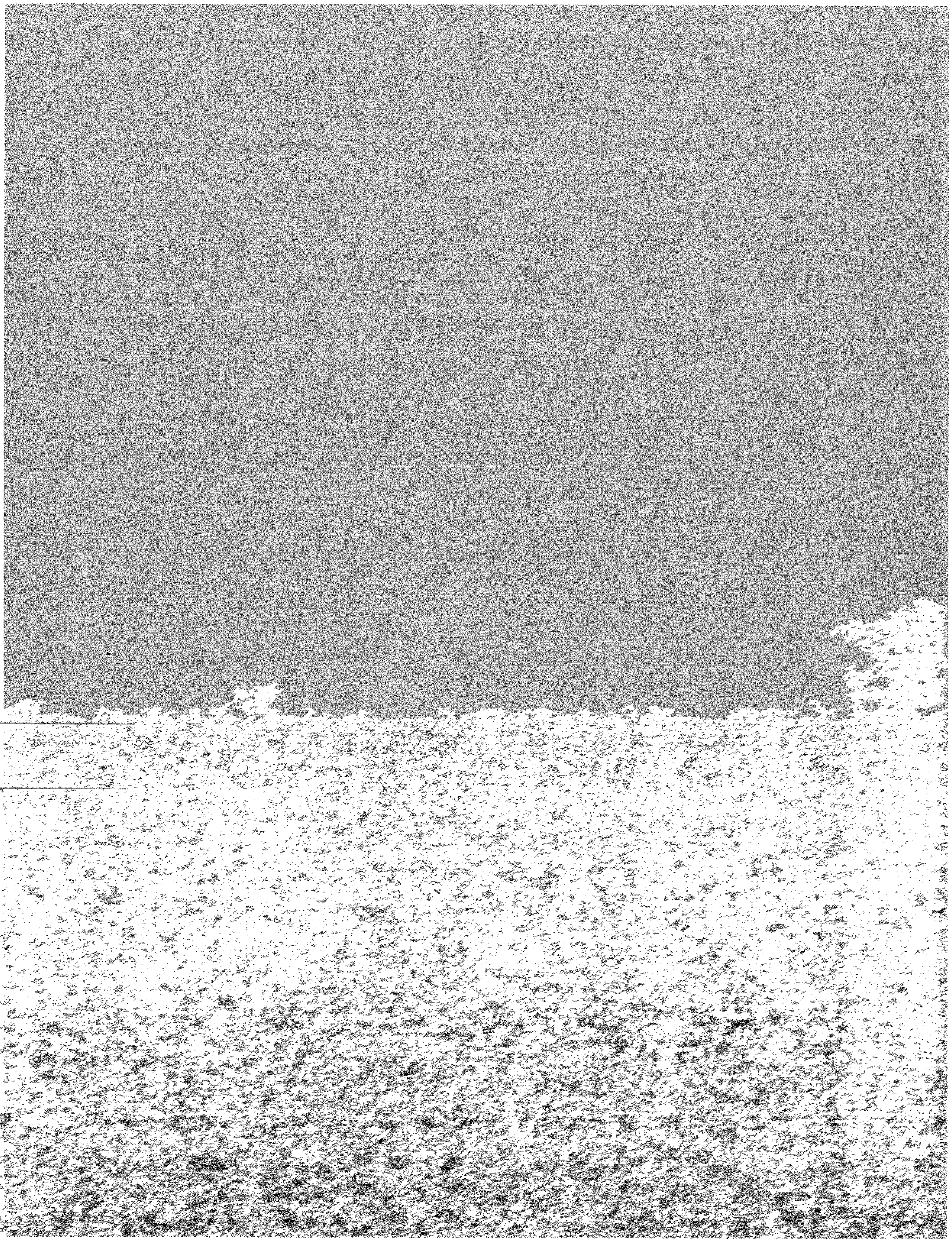
The motion is returnable on **November 20, 2017 at 10:00 a.m. at 330 University Avenue, Toronto, Ontario**.

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



CITATION: Hanfeng Evergreen Inc., (Re), 2017 ONSC 7161
COURT FILE NO.: CV-14-10667-00CL
DATE: 20171130

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.

Applicant

BEFORE: F.L. Myers J.

COUNSEL: *Daniel S. Murdoch and Haddon Murray*, counsel for Ernst & Young Inc., receiver
David C. Moore and Karen M. Mitchell, counsel for the Lei Lo and Xinduo Yu

HEARD: November 20, 2017

ENDORSEMENT

[1] Ernst & Young Inc. moves for approval of its activities as receiver and manager of Hanfeng Evergreen Inc. as described in the Supplement to its First Report, its Fourth Report, and its Fifth Report. It also seeks approval of its fees and disbursements including the fees and disbursements of its counsel here and abroad.

[2] Xinduo Yu, the founder and former CEO of Henfeng Evergreen Inc. and his spouse Lei Li oppose the approval of the receiver's reports at this time. They seek, at minimum, the imposition of conditions to protect their positions in separate litigation that the receiver has brought against them. They also argue that the receiver has failed or refused to deliver sufficient evidence to support its claim for approval of its fees and disbursements. They invite the court to require the receiver to engage in a document disclosure process so as to create a sufficient factual record on which they can make submissions and the court can meaningfully assess the fees and disbursements of the receiver and its counsel.

[3] For the reasons that follow the receiver's motion is granted on the terms set out below.

Brief Background

[4] Hanfeng Evergreen Inc. is an Ontario public corporation. Henfeng was a financing vehicle to raise money from investors who were interested in investing in the fertilizer business operated by a subsidiary in the People's Republic of China. By 2014, Henfeng's sole operations were limited to the fertilizer business.

[5] When this proceeding began, Mr. Yu was a member of the board of directors of Henfeng. He was a principal contact for the receiver. He controlled Chinese management of the business.

[6] The receiver advises that in 2011, Henfeng's biggest customer was a company run by the state in China. It sought to buy 30% of the fertilizer business to ensure its control over its supply. By February, 2013, an agreement had been prepared whereby Henfeng would sell its shares in the fertilizer subsidiary to a company controlled by Mr. Yu. Mr. Yu agreed to sell 30% of that company's shares to the state actor. The transactions were expected to close in April, 2013.

[7] The deal did not close as expected. Eventually Henfeng established a special committee representing shareholders independent of management. Acrimony developed between the special committee and Mr. Yu. In December, 2013, the purchaser terminated the transaction. The board of directors proceeded to fire Mr. Yu.

[8] A proxy battle ensured. During the proxy battle, Henfeng's auditor KPMG resigned. Thereupon, the rest of the board of directors resigned. Ultimately, Mr. Yu regained control of the public corporation.

[9] In April, 2014, Mr. Yu brought forward a transaction to sell the operating subsidiary to an established third party business in China for a price of approximately $40 million. The transaction would have provided meaningful recovery to shareholders. The transaction required shareholder approval. However, without an auditor, Henfeng could not produce the material required to call a shareholders' meeting under Ontario securities laws. Therefore, this receivership was proposed as a way to convey title in a solvent transaction.

[10] Negotiations with the buyer proved difficult. The receiver retained the Mayer Brown law firm to help it obtain a deposit of approximately $2.4 million required by the agreement and to deal with some Chinese regulatory matters that arose. The purchaser was also supposed to put funds in escrow. With Mayer Brown's assistance some funds were escrowed. But then they were released back to the purchaser by the escrow agent ostensibly with Mr. Yu's cooperation. In addition, the receiver says that the buyer's name seems to have changed subtly in the documents over time. While initially Mr. Yu represented that the buyer was an established third party, the ultimate buyer may have been a company with a similar name that is actually a shell controlled by Mr. Yu. Further, the receiver alleges that while the transaction was playing out, Mr. Yu obtained very substantial loans in China on the credit of the subsidiary so that they he has effectively taken the value of the business leaving the other shareholders with nothing.

[11] The receiver has sued Mr. Yu and Ms. Li for damages exceeding $100 million.

[12] In addition, the ostensible purchaser has sued the receiver in China for the return of the $2.4 million deposit. Mr. Yu is a defendant in that case as he is a guarantor under the terms of the relevant agreement. Whether he is also behind the plaintiff/purchaser remains to be proven.

[13] The purchaser succeeded against the receiver at first instance in China. But an appellate court overruled the first decision. As of this moment therefore, the deposit has been forfeited and is properly counted among the funds realized by the receiver. The purchaser has appealed from that decision however and the further appeal is pending.

[14] In this receivership proceeding, Mr. Yu is concerned to ensure that the receiver does not consume the deposit on its own fees and disbursements in case it is required to return the deposit to the purchaser by the ultimate appeal court in China. If the purchaser succeeds in China, there may be a priorities dispute between the purchaser and the receiver over which has a better claim to the deposit funds in the receiver's hands. In any event, Mr. Yu argues that as guarantor of the return of the deposit, he has an interest in protecting the deposit in the receiver's hands and in minimizing or delaying the receiver's use of the deposit to pay its fees and disbursements until the Chinese litigation ends.

Approval of the Receiver's Activities

[15] In *Target Canada Co. (Re)*, 2015 ONSC 7574 (CanLII), Morawetz RSJ discussed the process for approval of the reports of a court officer. In that case the court dealt with a Monitor under the CCAA. The same principles apply in a receivership in my view.

[16] In *Target*, Morawetz RSJ recognized that the effect of the approval of the reports of a court officer varies with the context. Where a report is delivered for a specific purpose, such as a sale transaction, express findings of fact may be required to support the relief being sought. An affidavit may be delivered to support the findings or not. In either case, the court is called up to address squarely specific facts and to make specific findings that will be binding in future.

[17] However, the context of a general approval of activities, such as the motion that is currently before me, is different. As discussed by Morawetz RSJ:

> [20] The Monitor has in its various reports provided commentary, some based on its own observations and work product and some based on information provided to it by the Applicant or other stakeholders. Certain aspects of the information provided by the Monitor has not been scrutinized or challenged in any formal sense. In addition, for the most part, no fact-finding process has been undertaken by the court.
>
> [21] In circumstances where the Monitor is requesting approval of its reports and activities in a general sense, it seems to me that caution should be exercised so as to avoid a broad application of res judicata and related doctrines. The benefit of any such approval of the Monitor's reports and its activities should be limited to the Monitor itself. To the extent that approvals are provided, the effect of such approvals should not extend to the Applicant or other third parties.
>
> [22] I recognized there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process. These reasons are set out in paragraph [12] above. However, in my view, the protection should be limited to the Monitor in the manner suggested by counsel to Rio Can and KingSett.

[23] By proceeding in this manner, Court approval serves the purposes set out by the Monitor above. Specifically, Court approval:

(a) allows the Monitor to move forward with the next steps in the CCAA proceedings;

(b) brings the Monitor's activities before the Court;

(c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified,

(d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;

(e) provides protection for the Monitor not otherwise provided by the CCAA; and

(f) protects the creditors from the delay and distribution that would be caused by:

(i) re-litigation of steps taken to date, and

(ii) potential indemnity claims by the Monitor.

[24] By limiting the effect of the approval, the concerns of the objecting parties are addressed as the approval of Monitor's activities do not constitute approval of the activities of parties other than the Monitor.

[18] In this case, Mr. Yu and Ms. Li do not want the approval of the receiver's activities to impact on their litigation with the receiver including their desire to counterclaim against the receiver in that litigation. Apparently they have sought directions regarding a possible counterclaim although no motion for leave to proceed has been heard as yet. Regional Senior Justice Morawetz held that the general approval of a court officer's activities should not affect third party dealings generally. He accepted however that the approval of the receiver's activities does affect the court officer's own status. For example, there is case law suggesting that a stronger showing on the merits is required to obtain leave to sue a receiver in respect of activities that have been approved than for unapproved activities.[1]

[1] Compare and contrast for example, *Bank of America Canada v Wilann Investments Ltd.* (1993), 23 CBR (3d) 98 (Ont. Gen. Div) with *GMAC Commercial Credit Corporation - Canada v. T.C.T. Logistics Inc.*, 2006 SCC 35 (CanLII). See also: Houlden, Morawetz & Sarra, *The 2007*

[19] Mr. Yu and Ms. Li argue that if they are prejudiced by the approval of the receiver's activities, then they would be required to contest in this motion the substance of their concerns in order to protect themselves in their other litigation. I agree that it is not the purpose of this summary proceeding to engage in fact finding that might prejudge or affect the fact finding process in other litigation. As such, there is no need to delve deeply into the concerns raised by the objectors with the receiver's characterization of their behaviour or the other details of specific issues of fact that may become the subject matter of proceedings later. There will be no findings of contested facts that might bind Mr. Yu or Ms. Li elsewhere.

[20] The receiver argues that it seeks broad, general approval for its decisions to bring litigation against Mr. Yu and Ms. Li and to defend the litigation in China. It notes that its prior activities have already been approved in relation to the approval of its earlier reports.

[21] Under the terms of its appointment order, the receiver is already authorized to litigate on behalf of the debtor generally. As such, Mr. Yu and Ms. Li argue that it does not need any further approval of its litigation activities. But, I agree with Morawetz RSJ that there are additional proposes to a court officer's reporting and the court's approval functions such as those listed in para. 23 of T*arget* above. In this case for example, concerns of stakeholders can be considered and addressed in real time rather than waiting until matters are concluded some years hence. Moreover, stakeholders are given an opportunity to bring to the fore any concerns with the receiver's prudence and diligence in the issues under consideration. Here, for example, no one – not even Mr. Yu or Ms. Li - contest the prudence of the receiver's decisions to defend the deposit in China or to commence the litigation here against Mr. Yu and Ms. Li.

[22] The receiver also argues that is wants its activities approved so as to protect it from personal liability for costs in the event that it is later determined that the deposit must be returned to the purchaser with the result that the receiver may not have any assets left in the estate to fund any costs liability that it may incur. The receiver refers to the decision of Pattillo J. in *Essery Estate (Trustee of) v Essery*, 2016 ONSC 321. At para. 72 of that decision, Pattillo J. wrote:

> [72] In receiverships, the general rule is that costs are awarded against a receiver personally in rare cases. Where a receiver engages in litigation in its capacity as receiver in the normal course of the receivership, is it is subject to the costs in accordance with s. 131 of the CJA and Rule 57.01. To the extent that costs are awarded against a receiver they are normally covered by receivership funds or by an indemnity agreement with a

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Annotated Bankruptcy and Insolvency Act, (Thomson Reuters, Toronto) at L§26. Whether *Wilann* remains good law after *TCT* is an issue that is not before the court today.

> secured creditor. It is only when the receiver embarks on a course of action extraneous to the credit-driven relationship which effectively undermines its neutral position as an officer of the court and turn itself into a "real litigant' [*sic*] that a receiver exposes itself to costs personally: see *Akagi v Synergy Group (2000)*, 2015 ONCA 771 (Ont. C.A.), at para. 18.

[23] In my view, the receiver reads too much into this quotation. I do not read *Essery* as altering the receiver's risk of personal liability for costs. Rather, Pattillo J. explains the court's historic hesitation to award costs against receivers because they can bear personal liability for costs. In my view *Essery* does not create any special protection for receivers' costs liability. Neither does the approval of a receiver's activities provide it with any special protection in relation to costs awards in subsequent litigation. That is the reason that Pattillo J. noted that before undertaking litigation, receivers typically will consider the sufficiency of the assets under their charge to meet a costs award or obtain an indemnity from a creditor to protect themselves from the risk of adverse costs.

[24] It is clear therefore that in approving the receiver's general activities broadly and summarily in this motion, I am not finding any facts beyond expressing satisfaction with the general scope and direction of the receiver's activities as set out in the three reports that are before me. However, if the law post-*TCT* still provides that the approval of a receiver's conduct raises the bar for those who seek to sue a receiver, as referenced in the footnote above, that is indeed a consequence of approval and nothing I say or do not say should affect that outcome. The fact that approval may have some effect is not a basis to withhold or deny approval. Rather it reflects the intention of the law as it applies in circumstances where the court is satisfied with the activities undertaken by its officer and with the protections that the law affords court officers in such circumstances as discussed by Morawetz RSJ above.

[25] I also do not see the existence of an outstanding appeal in China as a basis to defer or withhold approval of the receiver's activities, especially its activities in defending and participating fully in that case. Approval does not affect the ongoing litigation in China. Neither does it affect the priorities in the deposit or authorize or embolden the receiver to distribute to itself or to its counsel funds that it currently holds. If the court in China rules that the funds are a deposit that are to be returned to the purchaser, legal results flow. As noted above, if that creates a priority issue here, that issue may have to be determined.

[26] As argument of this aspect of the motion was drawing to a close, it appeared that counsel might be able to agree upon language to resolve the issues in dispute. I invited them to advise me within 48 hours if they reached agreement. On November 22, 2017, counsel advised that while they had not agreed to resolve the objections of Mr Yu and Ms. Li, they had agreed upon some language to limit the relief granted should I determine to approve the receiver's activities.

[27] The term agreed upon by counsel reflects the limitations that I have discussed above as follows:

> THIS COURT ORDERS that the approval of the Fourth Report and the Fifth Report shall be without prejudice to any of the procedural or substantive rights of the Receiver, Xinduo Lu and Lei Li in respect of Action No. CV-16-11325-00CL, and, without limiting

> the generality of the foregoing, shall be deemed not to constitute any finding or determination of any kind whatsoever in respect of any allegations, issues or defences in said Action.

[28] While this term does not satisfy all of the concerns of Mr. Yu and Ms. Li, it does satisfy mine. Accordingly, it is appropriate to approve the activities of the receiver as set out in the three reports that are before the court on the term set out in the immediately preceding paragraph.

Receiver's Fees

[29] In accordance with the principles set out in *Confectionately Yours Inc. (Re)*, 2002 CanLII 45059 (ON CA), the receiver delivered affidavits supporting its fees and disbursements including those of its counsel. Cross-examinations ensued. Mr. Yu and Ms. Li argue that there is insufficient disclosure of information to enable the court to determine the reasonableness of the receiver's fees and disbursements. They say they have delivered letter after letter for months seeking production of documents relating to matters set out in the receiver's invoices so as to be able to understand the work performed by the receiver and to make proper submissions on the fees and disbursements sought in relation to the work. In addition, the receiver delivered dockets (belatedly in some cases) that are heavily redacted to prevent disclosure of the subject matter of much of the work that is the subject of the docket entries.

[30] The receiver argues that the scope of its discussions with its counsel and the work being performed by its counsel on its behalf are privileged – both under lawyer client privilege and litigation privilege. I agree. Disclosing the subject matter of a meeting is essentially disclosing the communication from client to lawyer (or vice versa) concerning the topic on which advice was being sought or given. That does not mean however that the receiver is entitled to approval of its fees or disbursements without providing proper supporting evidence. If the claims of privilege prevent the court from making the assessment required, then the motion will not succeed until sufficient evidence is duly adduced to meet the required standard.

[31] In *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 (CanLII), the Court of Appeal discussed the test for assessment of a receiver's fees as follows:

> [32] In *Bakemates*, this court described the purpose of the passing of a receiver's accounts and also discussed the applicable procedure. Borins J.A. stated, at para. 31, that there is an onus on the receiver to prove that the compensation for which it seeks approval is fair and reasonable. This includes the compensation claimed on behalf of its counsel. At para. 37, he observed that the accounts must disclose the total charges for each of the categories of services rendered. In addition:
>
> > The accounts should be in a form that can be easily understood by those affected by the receivership (or by the judicial officer required to assess the accounts) so that such person can determine the amount of time spent by the receiver's employees (and others that the receiver may have hired) in respect to the various discrete aspects of the receivership.

[33] The court endorsed the factors applicable to receiver's compensation described by the New Brunswick Court of Appeal in *Belyea*: *Bakemates*, at para. 51. In *Belyea*, at para. 9, Stratton J.A. listed the following factors:

- the nature, extent and value of the assets;
- the complications and difficulties encountered;
- the degree of assistance provided by the debtor;
- the time spent;
- the receiver's knowledge, experience and skill;
- the diligence and thoroughness displayed;
- the responsibilities assumed;
- the results of the receiver's efforts; and
- the cost of comparable services when performed in a prudent and economical manner.

These factors constitute a useful guideline but are not exhaustive: *Bakemates*, at para. 51.

[32] The Court of Appeal also noted in *Diemers* that while the calculation of billable hours times hourly rates is not the most desirable metric for conducting this review, it is the predominant methodology in the case law. Moreover, while counsel for Mr. Yu and Ms. Li submitted that this is not to be a mathematical exercise, the bulk of their complaints are essentially directed to the question of whether there has been duplication in the dockets or, more specifically, whether the claims of privilege prevent them and the court from determining with any degree of precision whether there is duplication in the dockets that ought to be excluded from the value calculus. While I certainly do not dismiss the risk of duplication in an assessment of the reasonableness of the fees, it is but one factor and not an especially important one in my view. Duplication might suggest a lack of value-added but not necessarily so in a holistic review. If an issue takes time to resolve, there may be several docket entries that look similar. That does not make them duplicative. More than one person may be involved providing different services and docket to the same issue – either at different levels of seniority or different subject matters. Reading brief docket descriptions years after complex work is performed is a poor method to learn precisely what was accomplished by any single person on any given day. A full assessment of the file accompanied by oral narrative is required to assess professional accounts. That is what assessment officers routinely do in formal cost assessment hearings. But that is not what is anticipated or even desirable in fee approval hearings of this type.

[33] It is not lost on me that what was also at play on Mr. Yu's side of the table is possibly a desire for discovery in the other litigation or at least opening up a threat to the receiver's remuneration as a strategy to provide bargaining leverage. Thus, rather than responding to the receiver's request for the specifics of documents required or bringing their own motion (or 9:30 appointment) seeking production of documents that they actually need, Mr. Yu and Ms. Li were

content to make request after request and then graciously offer to allow the receiver an adjournment to give it time to make yet further production. I have little doubt that were any further documents produced, Mr. Yu and Ms. Li would just ask for more. After all, if you want to assess what every person acting for counsel and the receiver have done every day, then every draft of every document and communication is ostensibly relevant. The eight, non-exhaustive *Belyea* factors do not require or anticipate a full fee assessment process. Mr. Yu and Ms. Li's digging for more and ever more documents ostensibly to allow them to review in minute detail the receiver's fees was misdirected from the outset.

[34] Mr. Yu and Ms. Li make much of the fact that the receiver's Ontario counsel had 27 billers on the file over a period of three years. Counsel for the receiver took me through each biller's name and role. Apart from a few students, there was one partner and an associate in each relevant area at each time. The associate generally performed the bulk of the work. As the project evolved from a consensual corporate transaction to contested litigation, the identities and focus of the partners involved changed. There is nothing untoward or even suspicious in the identification of the lawyers engaged despite the effort to evoke an emotional reaction to the overall number of billers. I am perfectly satisfied that given the complexity and evolution of the matter over time, staffing raises no significant concerns. Given the limited numbers of people involved in each specialty area, and the swing from corporate to contested litigation, duplication is not a significant issue in my view.

[35] The receiver has not provided docket level evidence of activities from its litigation counsel in China. However that lawyer was retained on a fixed fee of $100,000. The litigation involved securing the receiver's right to keep the deposit of approximately $2.4 million. A fee of 4% of the fund whose preservation is in issue strikes me as quite reasonable. Dockets would not assist the understanding of the flat fee account in this circumstance.

[36] Other counsel were retained for other specific purposes. Each had to be briefed so, once again, it is not surprising to see docket entries where people discuss similar things. They are instructing or reporting back to each other. Mr. Yu and Ms. Li pointed to docket entries in which telephone inter-firm communications are set out but only by one firm. The unstated implication is that unless both sides docketed the call, then the docket that was recorded is suspect and may be fraudulent. I do not know a more innocent word to characterize a docket of a call that did not happen. But Mr. Yu and Ms. Li forgot to account for the International Date Line. When one looks to see if telephone calls from this side of the globe were docketed in China on the next day, many of the calls were indeed recorded. I cannot draw an inference of fraud, or even suspicion from noting that a firm did not record every single telephone call it ostensibly received or made. Docketing practices can differ. I did not look to see if the calls that were not recorded by both sides were recorded as being short or long duration for example. In any event, I do not see how a few calls has much impact on the assessment of the *Belyea* factors.

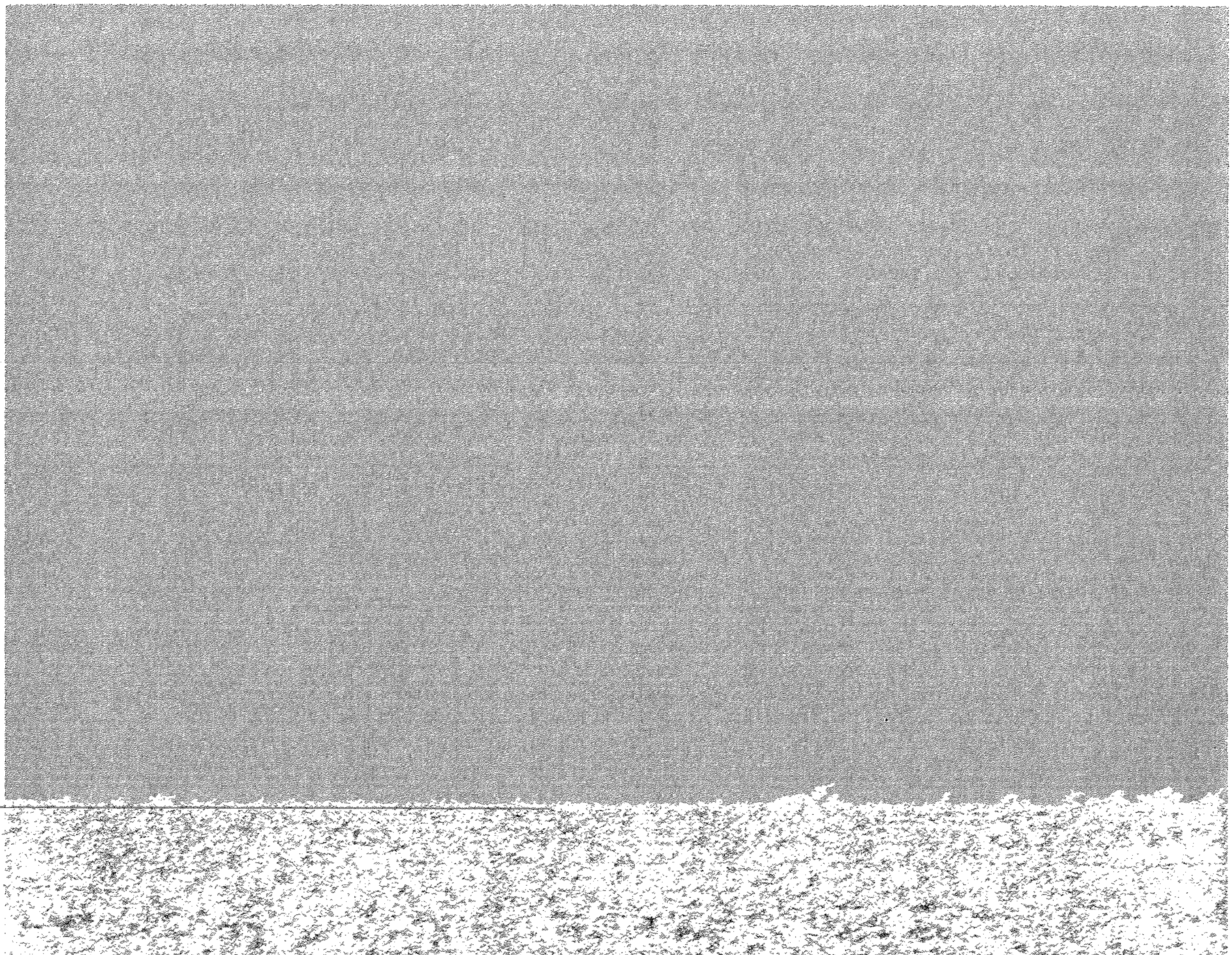
[37] The receiver's counsel has provided a lengthy assessment of the *Belyea* factors in para. 60 of its factum. Again, without making findings of fact on the level of cooperation or the lack thereof by Mr. Yu and Ms. Li, in my view in para. 60 the receiver provided a very fair analysis of the relevant factors and I adopt it in full.

[38] In all, I am satisfied that the fees and disbursement of the receiver, including those of its counsel, are fair, reasonable and ought to be approved as sought.

[39] Costs should be agreed upon. Barring exceptional circumstances, I would expect them to follow the event on a partial indemnity basis. If counsel cannot agree on costs then they should exchange Costs Outlines and schedule a telephone case conference through my Assistant for oral argument of costs.

F.L. Myers J.

Date: November 30, 2017



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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM	)	WEDNESDAY, THE 20TH
	)	
JUSTICE MATHESON	)	DAY OF AUGUST, 2014

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.

ORDER
(Appointment Order)

THIS APPLICATION made by the Applicant Hanfeng Evergreen Inc. (the "**Applicant**") for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Ernst & Young Inc. ("**E&Y**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of the Applicant acquired for, or used in relation to a business carried on by the Applicant, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Jonathan Pollack sworn August 13, 2014 and the Exhibits thereto and on hearing the submissions of counsel for Hanfeng and for Harris Christopoulos, no one appearing for anyone else although duly served as appears from the affidavits of service sworn August 14, 2014 and the affidavit of Sheila van Spronsen dated August 20, 2014, filed, and on reading the consent of E&Y to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 101 of the CJA, E&Y is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Applicant acquired for, or used in relation to a business carried on by the Applicant, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction contemplated by the share transfer agreement with Heilongjiang Pengcheng Fertilizer Co., Ltd. dated August 8, 2014;

(b) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(c) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(d) to manage, operate, and carry on the business of the Applicant, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Applicant;

(e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Applicant or any part or parts thereof;

(g) to receive and collect all monies and accounts now owed or hereafter owing to the Applicant and to exercise all remedies of the Applicant in collecting such monies, including, without limitation, to enforce any security held by the Applicant;

(h) to settle, extend or compromise any indebtedness owing to the Applicant;

(i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Applicant, for any purpose pursuant to this Order;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Applicant, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding $100,000, provided that the aggregate consideration for all such transactions does not exceed $1,000,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Applicant;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Applicant, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Applicant;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Applicant may have;

(s) to seek Court approval of and conduct a procedure for the solicitation, determination and resolution of claims against the Applicant;

(t) to seek Court approval to distribute any proceeds of any sale of the Property to the stakeholders of the Applicant in accordance with their relative priorities pursuant to further Order of the Court;

(u) to take such steps and execute such documents as may be necessary or desirable to purchase tail director and officer liability insurance coverage; and

(v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Applicant, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Applicant, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the

Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Applicant, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least

seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Applicant or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Applicant or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Applicant, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided that nothing in this paragraph shall (i) empower the Receiver or the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) exempt the Receiver or the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Applicant are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Applicant's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Applicant shall remain the employees of the Applicant until such time as the Receiver, on the Applicant's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**"), other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act (Canada).*

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the

Canadian Environmental Protection Act, the *Environmental Protection Act* (Ontario), the *Water Resources Act* (Ontario), or the *Occupational Health and Safety Act* (Ontario) and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act* (Canada).

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates

and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

21. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'http://www.ey.com/ca/hanfeng'.

22. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

23. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

24. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Applicant.

25. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the People's Republic of China to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

26. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

27. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Natasha Brown
Registrar

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG 2 0 2014

MB

THIS IS EXHIBIT "B"

to the Supplemental Affidavit of Monica Palko

Sworn before me this

day of February 16, 2018

A Commissioner for Taking Affidavits

P A P E B A R R I S T E R S PROFESSIONAL CORPORATION

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December 1, 2017

Via Email

Daniel S. Murdoch
Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Dear Mr. Murdoch:

Re: Hanfeng Evergreen
File No. 53742

Thank you for your letter of November 30, 2017. The deposit funds are not "property" in accordance with the Order of Justice Matheson of August 20, 2014. The referred payment will be in breach of that Order.

Today, I will obtain a 9:30 a.m. appointment before Justice Myers on Monday, December 4, 2017 to schedule an urgent motion to restrain the Receiver from making such payment, and if need be, to amend the Order of Justice Matheson.

Yours very truly,

Paul J. Pape

PJP/ls

cc: David Liu
David Moore

THIS IS EXHIBIT "C"

to the Supplemental Affidavit of Monica Palko

Sworn before me this

day of February 16, 2018

A Commissioner for Taking Affidavits

Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON Canada M5L 1B9

Main: 416 869 5500
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Daniel S. Murdoch
Direct: (416) 869-5529
dmurdoch@stikeman.com

January 12, 2018
File No. 131522.1002

BY E-MAIL

PAPE BARRISTERS
Professional Corporation
One Queen Street East,
Suite 1910, Box 69
Toronto, ON M5C 2W5

Attention: Paul Pape

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

Attention: David C. Moore

Dear Counsel:

Re: Hanfeng Evergreen Inc. (Re) – Court File No. CV-14-10667-00CL

I write in respect of (1) the payment of the Receiver's fees, and those of its counsel, as approved by Justice Myers; and (2) the appointment of a case management judge.

In his endorsement following our 9:30 appointment on December 11, 2017, Justice Myers directed that the Receiver not pay its fees prior to January 10, 2018 to permit scheduling of a motion by New Pengcheng to seek to restrain such payment. No such motion has been brought and the date has passed.

We understood that the dismissal of New Pengcheng's application for retrial by the People's Supreme Court in China rendered moot any such motion. In a conversation with Mr. Pape yesterday, he advised that he had discussed how to move forward with Mr. Moore and options were being considered. He also stated that Chinese counsel for New Pengcheng advised him that there may be a further avenue to pursue in China to seek to recover the deposit. This came as considerable surprise not only because the Receiver's Chinese counsel has told us that the application for retrial to the People's Supreme Court was the last possible avenue of appeal, but also because New Pengcheng's Chinese counsel, David Liu of Dentons, has said the same thing.

- Mr. Liu stated in a letter dated October 13, 2017 (delivered by Mr. Moore on October 18, 2017) that "The Procedure for Trial Supervision is the last legal remedy measure, please wait patiently for the trial result of the Supreme People's Court before disposing the Fund of the Entruster."

- Mr. Liu further stated in an email to the service list on November 17, 2017: "Please be patient to wait 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 objection."

In a letter to Justice Myers dated December 7, 2017, Mr. Pape, on the basis of information received from Mr. Liu, told the Court that the application for retrial had been granted by the People's Supreme Court. We advised at the time that this was contrary to the advice of the Receiver's Chinese counsel and we now know this information was incorrect as the application for retrial has been denied.

The Receiver intends to pay its fees and those of its counsel forthwith. These fees are not only long overdue, they were approved on November 30, 2017, and no motion has been served by New Pengcheng to restrain payment. We will, in addition, write to Justice Hainey attaching Justice Myers' endorsement and requesting the appointment of a case management judge to coordinate the next steps in the proceeding. If your clients have any objection to raise in respect of this course of action, please advise immediately and deliver any motion materials by close of business on Monday, January 15, 2018, in which case we will schedule an urgent 9:30 appointment

Yours truly,

Daniel S. Murdoch

DSM/tk

Cc: Brian Pukier, Stikeman Elliott LLP
Brent Beekenkamp/Allen Yao, Ernst & Young Inc.

THIS IS EXHIBIT "D"

to the Supplemental Affidavit of Monica Palko

Sworn before me this

day of February 16, 2018

A Commissioner for Taking Affidavits

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.

RESPONDENTS' SUBMISSIONS AS TO COSTS (November 20, 2017 Motion)

INTRODUCTION

1. These submissions address whether Lei Li and Xinduo Yu (the "**Respondents**") should be ordered to pay partial indemnity costs of $ 38,895.38, inclusive of HST, in relation to the two hour motion heard by this Court on November 20, 2017 (the "**Motion**").

2. The Respondents submit that this is a case where no costs should be awarded, or, in the alternative, costs substantially less than the above amount should be awarded.

SUBMISSIONS

3. The Motion was predominantly concerned with the Receiver's request for an order approving its fees and disbursements from the outset of the Receivership (August, 2014) to approximately May, 2017 (the end date for the legal fee disbursements varied).

4. In addition, the Court dealt with the issue of whether the Supplement to the First Report of the Receiver, and Fourth and Fifth Reports of the Receiver should be approved. On this issue, the Reports were not reviewed in any detail at the November 20, 2017 hearing. Rather, the Respondents made it clear that their main concern arose from the fact that the Reports contained detailed allegations of wrongdoing against them[1], several of which overlapped with allegations contained in a multi-million dollar lawsuit instituted by the Receiver in March, 2016 ("**Litigation**"). In this context, at the hearing of the Motion, the Respondents' submission was that any order made in connection with the Reports should expressly state that it was without prejudice to and did not affect the rights of the parties in the Litigation.

[1] These Reports were also posted on the Receiver's website, together with the Receiver's Statement of Claim in the parallel litigation, but not the detailed Statement of Defence filed by the Respondents in January 2017. This latter document was only added to the website after the Respondents raised an issue about this in the summer of 2017.

5. During oral argument, Receiver's counsel indicated that the Receiver would consider language reflecting the above concern. Following the hearing of the Motion, discussions took place between counsel as a result of which the Court was provided with wording which the parties requested be inserted into any order dealing with the Reports.

6. In determining whether and to what extent any award of costs of the Motion should be made, it is respectfully submitted that the following are relevant:

    (1) the Receiver was compelled, in any event, to submit an application to the Court for approval of its fees and disbursements;

    (2) independent of any opposition, on a "fee approval" motion:

        (a) The onus was on the Receiver to file appropriate materials to enable the Court to conduct an informed review of the fees and disbursements for which approval is sought[2];

        (b) Consequently, the Receiver had an obligation to provide the Court with reasonable detail of the services and amounts, supported by appropriate affidavits:

> "**37** As for the procedure that applies to the passing of the accounts, Bennett indicates at p.460 that there is no prescribed process. Nonetheless, the case law provides some requirements for the substance or content of the accounts. The accounts must disclose in detail the name of each person who rendered services, the dates on which the services were rendered, the time expended each day, the rate charged and the total charges for each of the categories of services rendered. See, e.g., Hermanns v. Ingle *(1988, 68 C.B.R. (N.S.) 15* (Ont. Ass. Off.); Toronto Dominion Bank v. Park Foods Ltd. *(1986), 77 N.S.R. (2d) 202* (S.C.). The accounts should be in a form that can be easily understood by those affected by the receivership (or by the judicial officer required to assess the accounts) so that such person can determine the amount of time spent by the receiver's employees (and others that the receiver may have hired) in respect to the various discrete aspects of the receivership."[3]
>
> (underlining added)

[2] See principles set out in *Re Bakemates International Inc.* [2002] O.J. No. 3589 (OCA), at paragraphs 30 – 41 (Book of Authorities, Tab 1)

[3] *Re Bakemates*, supra, at paragraph 37

(c) The Court then reviews these materials. With or without objections, this is not a perfunctory exercise. Rather, in fulfilling their role to review the fees and disbursements sought to be approved:

> "... Courts employ careful scrutiny in determining whether the remuneration requested by a receiver is fair and reasonable in the context of the duties which the Court has ordered the receiver to perform"[4].
>
> (underlining added)

(d) The case law emphasizes that the task of the Court is to determine "whether the amount claimed for remuneration and the disbursements incurred in carrying out the receivership are fair and reasonable"[5];

(e) In considering these issues, the remuneration may in certain cases be based upon the normal hourly rates of the Receiver's employees, subject to appropriate checks and balances[6]; and

(f) The Courts have after made it clear that the assessment of fees based upon hourly rates must be proportionate, and not simply an automatic, arithmetical exercise. This assessment must also take into account issues relating to access to justice.[7]

7. The July 11, 2017 fee approval Motion Record contained no detail regarding the services rendered for the Receiver – the information provided at that time was a chart of the overall time spent, without any details of what was done or how the work was split up[8].

8. Insofar as the legal fee disbursements were concerned, in the case of the Stikeman Elliott and Mayer Brown fees, detailed dockets were included in the July 11, 2017 Motion Record, but they were obscured by (respectively) 378 and 215 redactions[9]. In the case of the Chinese law firm for which fees of over $107,000 were sought to be approved, the July 11, 2017 Motion Record provided no details whatsoever of the services and only provided a few lines of Mandarin script.[10]

9. The omissions with respect to the Receiver's services and the Heilongjiang legal fees were identified in paragraphs 7 – 10 of Lei Li's October 20, 2017 Affidavit (**"Lei Affidavit"**). The Lei Affidavit also attached a letter dated October 18, 2017 to the Receiver indicating that the Respondents wished to cross-examine Messrs. Beekenkamp and Pukier regarding the fees and disbursements sought to be approved. The Lei Affidavit also identified

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[4] *Re Bakemates,* supra, at paragraph 41
[5] *Re Bakemates,* supra, at paragraphs 42 – 50
[6] *Re Bakemates,* supra, at paragraph 52
[7] *Boucher v Public Accountants Council (Ontario)* (2004), 71 O.R. (2d) 291 (Book of Authorities, Tab 2)
[8] See July 11, 2017 Motion Record, at Appendix S
[9] See Second Supplemental Record of the Respondents dated November 19, 2017 at Tabs 1A and 1B (annotated legal fee dockets showing the number of redactions)
[10] See July 11, 2017 Motion Record, Appendix V

additional gaps and questions with respect to the work undertaken during the period to which the fee approval applied, including with respect to:

(a) the status of the Claims Process initiated by the Receiver shortly after its appointment (Lei Affidavit, paragraphs 20 – 26),

(b) the status of the Chinese legal proceedings (Lei Affidavit, paragraphs 38 – 39), and

(c) what steps had been taken to consider a liquidation of Hanfeng China (Lei Affidavit, paragraph 18).

These were all inquiries which were relevant to the scope of the services rendered by the Receiver and its counsel during the relevant period. They resulted in additional information being provided to the Court regarding these matters, so that the Court could properly exercise its review function regarding the Receiver's fees and disbursements.

10. It is respectfully submitted that identifying gaps in the materials delivered by the Receiver with respect to the fee approval motion, which resulted in the delivery of additional relevant information to the Court's consideration of the fees, should not attract any award of costs, let alone the quantum of costs sought by the Receiver.

11. In addition, the Lei Affidavit identified several other issues in relation to the Litigation, or in relation to which the Respondents had indicated that they intended to seek directions.[11] The Respondents did <u>not</u> pursue these issues on the November 20, 2017 Motion, given the time which had been allocated to that Motion and the pending request for the appointment of a case manager.[12]

12. The omission with respect to the details of the Receiver's services was only rectified by the delivery of a Supplemental Affidavit of Brent Beekenkamp delivered on October 30, 2017 which produced (as Exhibit A thereto) "itemized dockets prepared by the Receiver setting out the tasks performed by the Receiver and time spent on each task."[13] This affidavit was delivered <u>the day before</u> a previously scheduled two hour cross-examination of Mr. Beekenkamp.

13. In the above circumstances, while the Court approved the fees and disbursements sought, it did so after the filing of the Supplemental Beekenkamp Affidavit and the delivery (on November 13, 2017) of the Supplement to the Fifth Report (which contained information and documentation relating to the Chinese legal fees and the matters referred to in sub-paragraphs 9(a) – (c) above). In addition, the Court heard oral submissions which provided

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[11] See "List of Outstanding Issues requiring Directions", Tab 1C, Respondents' Supplemental Motion Record

[12] See communications with respect to the appointment of a case manager, Tabs 1D – 1F, Respondents' Supplemental Motion Record. As of today's date, no case manager has been appointed and these matters have not been pursued.

[13] Supplemental Affidavit of Brent Beekenkamp delivered on October 30, 2017 (paragraph 4 and Exhibit A). See also paragraph 21(5) below.

additional information regarding the services provided.[14] These additional filings and this additional information would have had to be filed and considered by the Court in order to comply with the *Bakemates* principles, regardless of whether there had been any opposition. These aspects of the motion took up most of the (approximately) two hours of Court time allocated to the Motion.

14. With respect to the Report Approval issue, this was not a standard approval motion given the parallel Litigation. On this aspect of the Motion, the Respondents made it clear that the concern was to ensure that nothing ordered by the Court on the Motion should affect any of the rights of <u>any</u> of the parties in the Litigation. This became the subject of further discussion at the Motion which resulted in agreed upon, proposed language. Consequently, this part of the Motion did not result in (nor would the allotted time have allowed) any detailed review of the contents of the Reports in question or the other issues which had been identified by the Respondents as matters for which they would be seeking directions from a case management judge.[15]

15. In these circumstances, it is respectfully submitted that most of the costs resulting from the Respondents' position in the Motion regarding the fee approval issues would have been incurred in any event, and that the caveat with respect to Report approval – in particular when the contents of the Reports mirrored many of the allegations in the Litigation – was reasonable, appropriate and reflected in the outcome. In these circumstances, it is submitted that this is a case where it would be an appropriate exercise of discretion not to award any costs against the Respondents.

16. Alternatively, it is respectfully submitted that the costs claimed are excessive for a two hour Motion, and well beyond the expectation of any reasonable litigant. Moreover, if the consequences of a two hour motion, which:

    (a) did not involve complicated or novel legal principles, and,

    (b) in the main, related to materials and information that would have been necessary in any event,

is a costs award of $40,000, this outcome would raise serious access to justice issues. It is submitted that such an award would create a significant hurdle which would materially impair the ability of any individual litigant to initiate or participate in Commercial List motions.

17. In considering these submissions, the expectations of the Respondents, as well as the often cited principles set out in *Boucher v Public Accountants Council (Ontario)* (2004), 71 O.R. (3d) 291, are relevant.

[14] For example, the oral submissions included an explanation of the manner in which the 27 professionals assigned to the case had been assigned work: see paragraph 34 of the Court's Reasons for Decision Issued November 30, 2017 (Re Hanfeng Evergreen Inc. 2017 ONSC 7161).
[15] See paragraphs 18, 19, 24, 26 and 27 of the Court's November 30, 2017 Decision.

18. Attached as Schedule A is a summary of two accounts showing what was actually billed to the Respondents in connection with the Motion, together with copies of the two accounts in question (the underlined entries detail the time spent in connection with the Motion). The amounts actually billed take into account what counsel determined to be a fair, reasonable and proportionate fee when these accounts were rendered.

19. It is further submitted that if any award of costs is made, it should be based upon the incremental costs resulting from the Respondents' opposition on a partial indemnity basis. It is further submitted that any such costs should be in accordance with the principles articulated in *Boucher* and consistent with relevant precedents.

20. In the result, the full indemnity costs actually billed to the Respondents for the entire Motion was $41,778.62 (not including HST). It is respectfully submitted that the component of the Motion which reflects incremental costs would be ⅓ – ½, i.e. $14,882.34 - $22,278.51. However, these are based upon full indemnity numbers. Partial indemnity costs (60%) would result in a range of $8,355.72 - $12,553.59.

ADDITIONAL CASE LAW

21. It is further submitted that any award of costs in this case should be consistent with costs awards in Commercial List cases. In this regard, costs awards made in the *Akagi* case by the Ontario Court of Appeal are instructive. In this appeal, the Court of Appeal applied the *Boucher* principles in determining the appropriate award of costs for various steps in the Receivership.

22. In its costs reasons, the Court of Appeal fixed the costs of two motions – a comeback motion before Campbell J. and a stay motion before Feldman J.A. in the Court of Appeal. These were complex and important motions, as appears from the description contained in the *Akagi* Costs Decision (*Akagi v. Synergy Group* (2015), 128 O.R. (3d) 64)[16] in paragraphs 46 – 51 (referring to the comeback motion) of the *Akagi* Merits Decision (*Akagi v. Synergy Group* (2015), 125 O.R. (3d) 401)[17] in paragraphs 42 – 43 (referring to the stay motion before Feldman J.A.). It is noteworthy, as a matter of precedent, that the Court of Appeal fixed the partial indemnity costs for the entire *Akagi* stay motion at $7,500 + HST and at $10,000 + HST for the comeback motion.

23. The costs awards for important and complicated motions in the *Akagi* case are consistent with other recent awards:

    (1) *Aly v. Tohamy*, [2013] O.J. No. 5777[18] (Brown J.), in which costs of a contested motion to appoint a receiver in aid of execution were fixed (in aggregate) at $10,000;

[16] Book of Authorities, Tab 3
[17] Book of Authorities, Tab 4
[18] Book of Authorities, Tab 5

(2) *Canrock Ventures LLC v. Ambercore Software Inc.*, [2011] O.J. No. 2986[19], where Brown J. ordered recovery of partial indemnity costs of $4,266.65, following the issuance of lengthy reasons for decision approving the sale of assets in a Receivership, the approval of an asset sale agreement, and approval of an Interim Report (underlying decision on the merits reported at [2011] O.J. No. 1705); and

(3) *Polish Alliance of Canada v. Polish Assn. of Toronto Ltd.*, [2016] O.J. No. 66[20], where the Court dealt with a fee approval motion and fixed the costs at $10,000, applying the *Boucher* principles.

24. Finally, there are recent non-Commercial List cases in the Ontario Court of Appeal, in which judgment was reserved and the Court of Appeal granted costs to the successful party, in amounts substantially less than what is claimed in the case at Bar: *Strudwick v. Applied Consumer & Clinical Evaluations Inc.*, 2016 ONCA 520[21] (costs of $20,000 awarded at paragraph 128); *1739061 Ontario Inc. v. Hamilton-Wentworth District School Board*, 2016 ONCA 210[22] (costs of $16,000 awarded at paragraphs 97 – 99 in an expropriation case where the successful party had sought costs of $33,757.50); and *Teixeira v. Markgraf Estate*, 2017 ONCA 819[23] (costs of $15,000 awarded at paragraph 64). These cases all involved significant issues of law which were the subject of detailed analysis and lengthy reasons by the Court of Appeal.

ADDITIONAL SPECIFIC ISSUES

25. The following specific matters referred to in the Receiver's Costs Submissions warrant brief comments:

(1) The Receiver's submissions placed considerable emphasis upon the costs incurred as a result of two cross-examinations conducted on behalf of the Respondents. According to the Receiver's Costs Submissions, these cross-examinations "were lengthy" and "time consuming". In fact, the cross-examinations required, in total, four hours (approximately two hours each);

(2) The Receiver's Submissions asserts that the answers to the undertakings "**were never even put into the record on the motion**". This is not accurate. In fact, the "answers" (delivered on the eve of the Motion) were included at Tabs F and G to Volume I and II of the Respondents' 2nd Supplemental Motion Record, dated November 19, 2017;

(3) The timing of the Respondents' incorporation of these materials into the Record resulted from the fact that although the cross-examinations were conducted on

[19] Book of Authorities, Tab 6
[20] Book of Authorities, Tab 7
[21] Book of Authorities, Tab 8
[22] Book of Authorities, Tab 9
[23] Book of Authorities, Tab 10

November 1 and 2, 2017 (with transcripts expedited as suggested by the Receiver - the cost of which was the responsibility of the Respondents), the Receiver's answers to the undertakings/advisements and refusals were only delivered on Thursday, November 16 and Friday, November 17, 2017;

(4) Moreover, most of the answers provided simply repeated the Receiver's refusal to provide the information sought. As for the validity of these positions and the responsiveness of the answers actually given, argument regarding these matters would have required lengthy submissions which were neither made nor possible given the time allotted to the Motion; and

(5) The Receiver's Submissions also assert that the Respondents did not specify detailed grounds for their opposition to the fee approval motion. The combined effect of the 500+ docket redaction and the failure of the Receiver to provide details of its services until the day before the cross-examinations made this impossible. The omission of these materials was referred to in paragraphs 7 – 11 of the Affidavit of Lei Li dated October 20, 2017, Respondents' Motion Record, at pages 2 – 4. The materials filed by the Respondents went on to reflect concerns that sufficient information were not provided to the Court in the Receiver's Reports. Some but not all of the missing information was alluded to in the Supplement to the Fifth Report, dated November 13, 2017. These latter issues were not reviewed in detail as the approval of the Receiver's Reports was dealt with on the basis of the qualification jointly requested by counsel to preserve the rights of the parties in the parallel Litigation.

CONCLUSION

26. If costs are awarded, it is respectfully submitted that the incremental costs resulting from the Respondents' opposition on a partial indemnity basis should be in the range of $9,000 - $12,000 and that such an award would be in accordance with principles and precedents cited above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of January, 2018.

David C. Moore
Of counsel for the Respondents

LAWYER'S CERTIFICATE

I CERTIFY that the hours claimed have been spent, that the rates shown are correct, that the fees have been adjusted and billed as rendered on the invoices, and that each disbursement has been incurred as claimed.

January 16, 2018

David C. Moore

APPENDIX A

<u>Summary of Fees Billed on account of November 20, 2017 Motion</u>[1]

October 2017

David Moore	14.5 hours	@ $ 650	=	$ 9,425.00
Karen Mitchell	25.6 hours	@ $ 550	=	$14,080.00
Ken Jones	6.0 hours	@ $ 400	=	$ 2,400.00
Nicholas Reinkeluers	4.8 hours	@ $ 250	=	$ 1,200.00
		Total Docketed Billings		$ 27,105.00

<u>Reduction</u> - Fees actually billed: $ 27,105.00 x .554 (Adjustment: % actually billed)[2] — $ 15,016.17 A

November 2017

David Moore	30.9 hours	@ $ 650	=	$ 20,085.00
Karen Mitchell	45.3 hours	@ $ 550	=	$ 24,915.00
Nicholas Reinkeluers	36.7 hours	@ $ 250	=	$ 9,175.00
		Total Docketed Billings		$ 54,175.00

<u>Reduction</u> - Fees actually billed: $ 54,175.00 x .494 (Adjustment: % actually billed)[3] — $ 26,762.45 B

<u>Full Indemnity</u> fees actually billed for the motion (i.e. Fee Approval and Report Approval) based upon A + B above = $ 41,778.62

<u>Partial Indemnity</u> for the <u>entire</u> motion x 60% = <u>$ 25,067.17</u> C

<u>Incremental Partial Indemnity Portion</u> (1/3 – 1/2 of motion time)[4] $ 8,355.72 - $ 12,553.59

---

[1] See attached annotated copies of the applicable accounts to the Respondents in which the underlined items and entries reflect the above hours, rates, and adjustments. In addition, approximately two hours were spent in September 2017 preparing for and attending upon a 9:30 am appointment when the hearing date was fixed.

[2] The above numbers relate to the entire Motion, i.e. both the Fee Approval component and the Report Approval component.

[3] 60% partial indemnity appears to be a rule of thumb: See *<u>Akagi</u>*, OCA Costs decision, at para 54

[4] Based on an estimate that the incremental time resulting from the Respondents` opposition represented 1/3 – 1/2 of the actual time that would otherwise been required for the Receiver to file and submit and to consider in accordance with accepted principles.

APPENDIX B

IN ACCOUNT WITH

MOORE
BARRISTERS
PROFESSIONAL CORPORATION

Suite 1600
393 University Avenue
Toronto, Ontario,
M5G 1E6

Telephone: 416-581-1818
Fax: 416-581-1279

HST #79304 0924

November 02, 2017
Invoice #: 6626

Lei Li
306 Russell Hill Road
Toronto, Ontario
M4V 2T6

RE: E & Y Claim
Our File No.: LILE 901

TO OUR PROFESSIONAL SERVICES rendered from October 1 to October 31, in connection with Hanfeng Litigation and Receivership Proceedings, including:

- receipt and review of decision of Cavanagh J., report and consider next steps,
- preparation for and meeting with Lei Li on October 5, 13 and 17 regarding priority items, Cavanagh J decision, Chinese legal proceedings, and affidavit materials required to be filed for November 20, 2017 motion,
- prepare draft motion for directions and materials re case management,
- draft and finalize numerous additional letters to Stikeman Elliott regarding Yu status and documentation, Notice to Inspect, cross-examinations re fees, and Chinese legal proceedings,
- draft, redraft, review, and finalize affidavit of Lei Li,
- organize and review exhibits to Lei Li affidavit,
- discussions and meetings with Lei Li on October 18 – 19, attend to execution and delivery of the sworn affidavit,
- follow-up re outstanding issues with Dan Murdoch, including cross-examinations,

- review dockets for cross-examination, and,
- resolve costs issues re Cavanagh J. decision and advise Court re same.

as detailed in Schedule A hereto.

Our Fee Herein	$ 45,095.00
Reduction	($ 20,095.00)
NET FEE	$ 25,000.00
HST on Net Fee	$ 3,250.00
Total Fees and HST	$ 28,250.00

DISBURSEMENTS

Transaction Levy: Filing Notice of Application	50.00	
Photocopies	217.25	
Totals	$ 267.25	
HST on Disbursements	$ 34.74	
Total Disbursements and HST	$ 301.99	
Total Fees, Disbursements and HST		**$ 28,551.99**

THIS IS OUR ACCOUNT HEREIN

MOORE BARRISTERS

David Moore

David C. Moore
DCM/m

E. & O.E.
Expenses and disbursements, if any, recorded after date of statement will appear on a subsequent statement. Accounts are due when rendered. All amounts overdue thirty days or more will bear interest at the rate of 5% per annum.
HST #79304 0924

SCHEDULE A

TO OUR PROFESSIONAL SERVICES RENDERED FROM OCTOBER 1 TO 31, 2017

NOTE: The entries below which are bolded and marked with an ** are entries where the actual number of hours engaged was greater than the amount billed.

DATE	DESCRIPTION	HOURS	LAWYER
Oct. 3, 2017	Review decision of Cavanagh J. and consider next steps;	0.50	DM
	Receipt and review of decision of Cavanagh J., correspondence with Lei Li to report on decision, meet with David Moore to discuss and consider costs and next steps, telephone call to Lei Li (left message;	1.20	KM
Oct. 4, 2017	** **(Oct. 4 - 5) Prepare for and attend meeting with Lei Li, discuss status of document inquiry, related issues;**	2.00	DM
	Prepare agenda for meeting, consider responding position regarding receiver fees;	~~0.90~~ .4	KM
Oct. 5, 2017	Meeting with David Moore regarding preparation for meeting, revisions to documents chart for use of clients, attend meeting with Lei Li;	3.20	KM
Oct. 6, 2017	Prepare rider regarding fees, consider appointment order and obligations of clients regarding information;	2.30	KM
Oct. 10, 2017	** **Meeting with Karen Mitchell re issues - Receiver's motion; review September 19 list re same; prioritize next steps;**	~~1.00~~ .5	DM
	Correspondence from Lei Li regarding information and "brainstorm", meet with David Moore regarding responses, review documents for emails exchanges between Xinduo Yu and the Receiver, correspondence with Lei Li, meet with David Moore regarding next steps including costs position, correspondence regarding case	~~3.80~~ 1.0	KM

	management, continued preparation of rider regarding fees/case references;		
Oct. 11, 2017	Correspondence regarding case management, correspondence from Lei Li regarding information requested;	0.80	KM
Oct. 12, 2017	**** (Oct. 12 - 13) Preparation for and attend meeting with Lei Li; review status of priority items, update re status;**	~~1.00~~ .5	DM
	Meet with David Moore regarding motion cost position, material for motion and motion for directions, review appeal decision regarding Pengcheng and Hanfeng, collect documents for meeting with Lei Li and motion, draft rider continued regarding fee approval;	~~3.40~~ 1.5	KM
Oct. 13, 2017	Preparation and meeting with Lei Li regarding instructions, PRC decisions and motion materials, obtain documents for motion materials, correspondence with Lei Li regarding scheduling;	~~3.20~~ 1.6	KM
Oct. 16, 2017	Preparation of notice of cross-motion and affidavit continued;	~~4.20~~ 2.1	KM
Oct. 17, 2017	**** Review draft affidavit, consider issues, prepare for and attend further meeting with Lei Li; revisions to affidavit;**	~~3.00~~ 2.0	DM
	Revisions to affidavit, organize exhibits, correspondence from Lei Li regarding Denton letter to parties, case law regarding receivership fee approval, meeting with Lei Li;	~~5.10~~ 2.5	KM
Oct. 18, 2017	Engaged all day in revising the draft Affidavit; considering issues, follow-up re priority items; review numerous versions of the amended affidavit; redraft same; add rider to affidavit; telephone calls with Lei Li; contact Dan Murdoch; discussions with Karen Mitchell re issues and exhibits, finalize affidavit; numerous emails throughout day;	$\boxed{10.00}$	DM

	Correspondence from Lei Li regarding resignation, legal opinion and engagement letter, review legal opinion, research regarding PRC litigation hotline, revisions to affidavit;	~~3.40~~ 1.0	KM
	Assist re Affidavit preparation;	6.00	KJ
Oct. 19, 2017	** **Follow-up re status of affidavit and exhibits; final revisions and follow-up;**	1.00	DM
	Final revisions to affidavit, review of email exchanges, preparation of Motion Record, directions regarding index, service and filing, meet with Lei Li regarding review and execution of affidavit;	5.20	KM
	Preparing responding motion record re: Receiver's Motion to Approve Fees;	4.00	NR
Oct. 20, 2017	Telephone calls with Lei Li; review and revise draft letter to Hainey J., follow-up re same;	0.70	DM
	Meet with David Moore regarding next steps and status of costs;	0.20	KM
Oct. 23, 2017	Consider questions for cross-examination;	2.10	KM
Oct. 24, 2017	Meet with David Moore regarding costs and submissions, discussion with Dan Murdoch;	0.30	KM
Oct. 25, 2017	Telephone call with Lei Li; contact Dan Murdoch re costs, emails re same;	0.40	DM
	Correspondence with Dan Murdoch regarding conditions and scheduling of cross-examinations;	0.30	KM
Oct. 27, 2017	Correspondence with court regarding settlement of costs issue, prepare cross-examination questions;	~~5.20~~ 3.0	KM
Oct. 30, 2017	** **(Oct. 30 – 31) Follow-up re cross-examinations, Notices to Stikeman Elliott, and prepare for rescheduled cross-examinations;**	1.00	DM
	Prepare Notice of Cross-examination (2), prepare cross-examination questions;	4.20	KM

	Attending at Commercial List to review court file for receivership action and segregate documents for use at hearing on Nov. 20, 2017, and email to Karen Mitchell re: same;	0.80	NR
Oct. 31, 2017	Cross-examination questions continued, meet with David Moore regarding cross-examinations, correspondence with Haddon Murray regarding scheduling, review affidavit of Brent Beekenkamp and docket entries.	2.10	KM

Total Hours Engaged

Lawyer	Rate	Hours
DAVID MOORE	$650.00	20.60
KAREN MITCHELL	$550.00	51.10
KEN JONES	$400.00	6.00
N. REINKELUERS	$250.00	4.80
		82.50

APPENDIX C

IN ACCOUNT WITH

MOORE
BARRISTERS
PROFESSIONAL CORPORATION

Suite 1600
393 University Avenue
Toronto, Ontario,
M5G 1E6

Telephone: 416-581-1818
Fax: 416-581-1279

HST #79304 0924

December 08, 2017
Invoice #: 6632

Lei Li
306 Russell Hill Road
Toronto Ontario
M4V 2T6

RE: E & Y Claim
Our File No.:lile901

TO OUR PROFESSIONAL SERVICES rendered from November 1 to November 30, 2017, in connection with Hanfeng Litigation and Receivership Proceedings, including:

- receipt of detailed dockets regarding Ernst & Young fees;
- preparation for and attendance on cross-examinations of Brian Pukier and Brent Beekenkamp (November 1 and 2);
- review response to Notice to Admit delivered in lawsuit commenced by Ernst & Young;
- review of Amended Pleading delivered by Ernst & Young pursuant to the Order of Cavanagh J.;
- follow-up up re Brian Pukier and Brent Beekenkamp transcripts (undertakings and refusals);
- analyse work undertaken by Ernst & Young and legal counsel;
- receipt and review of Supplement to the Fifth Report of the Receiver dated November 13, 2017;
- receipt and review of answer to undertakings and refusals;

- draft, redraft and finalize factum with respect to fee approval and Report approval;
- receipt and review of additional correspondence from Purchaser's Chinese counsel regarding the status of the Chinese legal proceedings;
- communication with Dentons (Toronto) regarding appeal proceedings;
- receipt of correspondence from David Liu – contact potential counsel for Purchaser;
- extensive follow-up and discussions with Joanna Nairn and Paul Pape;
- prepare for and attend upon argument of November 20, 2017 motion before Justice Myers; and
- follow-up discussions, meetings and emails with Lei Li regarding status of various matters and priorities to be focused upon.

Our Fee Herein	$ 69,125.00
Reduction	($ 35,000.00)
NET FEE	$ 34,125.00
HST on Fees	$ 4,436.25
Total Fees and HST	$ 38,561.25

DISBURSEMENTS

Photocopies	409.00
Filing fees*	75.00
Victory Verbatim Inv. No. 477006 (Attendance)	235.00
Victory Verbatim Inv. No. 476944 (Attendance)	235.00
Victory Verbatim Inv. No. 477152 (Beekenkamp Transcript)	1,444.10
Victory Verbatim Inv. No. 477144 (Pukier Transcript)	826.10
Totals	$ 3,224.20
HST on Disbursements	$ 409.40
Total Disbursements and HST	$ 3,633.60

Total Fees, Disbursements and HST **$ 42,194.85**

THIS IS OUR ACCOUNT HEREIN

MOORE BARRISTERS

David Moore

David C. Moore
DCM/m

E. & O.E.
Expenses and disbursements, if any, recorded after date of statement will appear on a subsequent statement. Accounts are due when rendered. All amounts overdue thirty days or more will bear interest at the rate of 5% per annum.
HST #79304 0924

SCHEDULE A

TO OUR PROFESSIONAL SERVICES RENDERED FROM NOVEMBER 1 TO 30, 2017

DATE	DESCRIPTION	HOURS	LAWYER
Nov. 1, 2017	Receipt and review of Supplemental Affidavit of Brent Beekenkamp; prepare for and attend cross-examination of Brian Pukier;	3.50	DM
	Review Beekenkamp Second Affidavit and E&Y dockets;	1.30	KM
Nov. 2, 2017	Prepare for and attend on cross-examination of Brent Beekenkamp; follow-up re motion;	3.20	DM
	Review and compare dockets for cross-examination and brief David Moore on issues for cross-examination, correspondence from Dan Murdoch regarding scheduling, attend cross-examination, correspondence from Genna Wood and Dan Murdoch and review draft order and amended Statement of Claim, revise draft order and correspondence with Dan Murdoch regarding same;	~~6.20~~ 3.5	KM
Nov. 3, 2017	Review response to Notice to Admit; draft Court order re Amended Claim, telephone call with Lei Li, reply to Stikemans;	1.80	DM
	Meet with David Moore regarding amended Statement of Claim and draft order to correspond with Cavanagh J decision, correspondence with Dan Murdoch;	0.80	KM
Nov. 6, 2017	Correspondence from Dan Murdoch and review charts, preliminary draft points for factum;	~~1.40~~ 1.0	KM
Nov. 10, 2017	Review transcript of Pukier examination and corrections to Stikeman charts of questions refused, taken under advisement and undertaken to be answered, meet with Nicholas Reinkeluers	4.60	KM

	regarding preparation of chart regarding Stikeman fees, review transcript of Beekencamn affidavits and corrections to Stikeman charts of questions refused, taken under advisement and undertaken to be answered;		
	Reviewing Stikeman Elliott dockets for work done prior to appointment of Receiver (Aug. 1 - 19, 2014) and preparing chart re: same, legal research re: Receiver's ability to claim compensation for legal fees incurred prior to appointment and discussing same with Karen Mitchell;	$\boxed{4.70}$	NR
Nov. 13, 2017	Meeting with Karen Mitchell re next steps and materials re November 20 motion;	$\boxed{0.70}$	DM
	Meet with David Moore regarding next steps, consider redacted sections of dockets, correspondence with Dan Murdoch regarding questions refused, taken under advisement and undertaken to be answered, meet with Nicholas Reinkeluers regarding additional legal research regarding legal and receiver fees and review same, preparation of factum continued;	$\boxed{4.20}$	KM
	Further legal research (including review of international case law) re: Receiver's ability to claim compensation for legal fees incurred prior to appointment and discussing same with K. Mitchell, drafting paragraph re: same for factum re: fee approval motion;	$\boxed{4.00}$	NR
Nov. 14, 2017	Meet with Ken Jones to discuss collection of emails and issues;	0.20	KM
	Meet with Nicholas regarding review of dockets for irregular entries and issues related dockets, review charts of irregular docket entries, consider identified issue related docket entries, preparation of factum;	$\boxed{5.30}$	KM
	Reviewing E&Y dockets for duplicate and repetitive entries, cross-referencing E&Y dockets	~~8.10~~ $\boxed{6.0}$	NR

	with Mayer Brown dockets, preparing charts re: same; reviewing E&Y, Stikeman Elliott and Mayer Brown dockets for references to contact with Mr. Yu after July 31, 2015, contact with escrow bank after Aug. 5, 2015, and investigation of Mr. Yu and purchaser, and memo to K. Mitchell re: same;		
Nov. 15, 2017	Meet with Nicholas and review chart of E&Y time entries, correspondence from Lei Li regarding Denton correspondence to Xinduo Yu, review chart of Stikeman time entries, revise draft factum;	~~8.60~~ 7.0	KM
	Reviewing Supplement to the Fifth Report and chart of undertakings, advisements and refusals from cross-examinations, and discussing same with K. Mitchell; reviewing E&Y dockets and preparing chart of dockets incurred prior to appointment as Receiver;	~~2.20~~ 1.5	NR
Nov. 16, 2017	(to Nov. 17) Review status of factum; meeting with Karen Mitchell; review draft factum; substantive revisions to same; finalize materials, email and arrange for delivery at Commercial List; follow-up with counsel for Purchaser, numerous emails;	~~6.50~~ 5.5	DM
	Correspondence from Haddon Murray regarding Pukier questions refused, taken under advisement and undertaken to be answered and review answers, meet with David Moore to discuss, meet with David Moore and Nicholas regarding additional research regarding activities, consider Li Affidavit and draft additional section for factum regarding receiver conduct;	7.40	KM
	Legal research re: principles applicable to challenging approval of Receiver's conduct and discussing same with D. Moore and K. Mitchell.	4.00	NR
Nov. 17, 2017	Consider additional legal research regarding approval of receiver activities, correspondence with Lei Li regarding correspondence with	~~6.70~~ 4.5	KM

	Dentons (Canada), correspondence from David Liu (Dentons China) regarding appeal filing, correspondence with Stikeman regarding Purchaser issues and motion, correspondence from Michael Schafler regarding Dentons (Canada), correspondence re David Liu regarding return of motion, assist in final revisions to factum, correspondence from Haddon Murray regarding Beekenkamp questions refused, taken under advisement and undertaken to be answered and review 117 page answers, affidavit of Nicholas Reinkulers and attached exhibits, correspondence with court regarding request for case management judge, correspondence with Dan Murdoch regarding same, review and finalize factum, meet with David Moore to consider Receiver position;		
	Legal research re: Receiver's personal liability for costs where company in receivership lacks assets to pay a costs award; drafting affidavit and preparing exhibits for supplementary motion record re: fee approval motion;	~~4.50~~ 2.5	NR
Nov. 18, 2017	Emails with Paul Pape; discuss re case, consider issues; numerous emails; review materials for Monday motion; assemble materials and draft affidavit for Nicholas Reinkeluers;	~~7.50~~ 4.0	DM
Nov. 19, 2017	Engaged all day preparing for motion, review case law, redraft Nicholas Reinkeluers' Affidavit; telephone calls with Paul Pape; emails with Court;	~~7.20~~ 6.2	DM
	Preparing affidavit, 2nd supplemental motion record and supplementary book of authorities re: fee approval motion;	8.00 [redacted]	NR
Nov. 20, 2017	Engaged most of day on preparation for and attendance on motion before Myers J., follow-up meeting re priority and related;	~~8.60~~ 7.0	DM
	Preparation and attendance at motion, meet with Lei Li;	~~7.10~~ 6.0	KM

	Finalizing 2nd supplemental motion record, preparing for hearing and attending hearing before Myers J. re: fee approval motion; attending at court public view terminals to determine file number for Hanfeng v. Marsh action;	~~7.70~~ 6.0	NR
Nov. 21, 2017	Correspondence with Dan Murdoch regarding language for order and discuss with David Moore;	0.20	KM
	Attending at court file room to review and copy contents of Hanfeng v. Marsh court file;	0.40	NR
Nov. 22, 2017	(to Nov. 23) Review draft language re order; review draft order re Myers J. results, follow-up, telephone call with Dan Murdoch, further emails, review Lei Li email; telephone call with Lei Li, follow-up;	~~1.20~~ .8	DM
	Telephone call with Haddon Murray regarding Notices of Motion and correspondence re same, correspondence with Dan Murdoch regarding order and correspondence with Myers J., correspondence from Genna Wood regarding draft Cavanagh J order and review draft amended statement of claim, correspondence with Lei Li regarding meeting and discussions with David Moore;	~~0.60~~ .5	KM
Nov. 29, 2017	Meeting with Lei Li;	1.40	DM
	Prepare Agenda and document brief for meeting, meeting with Lei Li, correspondence with Paul Pape re decisions in Chinese lawsuit;	1.80	KM
Nov. 30, 2017	Review decision of Myers J.	—	

Total Hours Engaged

Lawyer	Rate	Hours
DAVID MOORE	$650.00	41.60
KAREN MITCHELL	$550.00	56.70
N. REINKELUERS	$250.00	43.60
		141.90

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

- and -

AND IN THE MATTER OF HANFENG EVERGREEN INC.
Applicant

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings Commenced at Toronto

RESPONDENTS' SUBMISSIONS AS TO COSTS (November 20, 2017 Motion)

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

David C. Moore (LSUC #16996U)
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Karen M. Mitchell (LSUC #23816G)
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kmmitchell@bellmore.ca
Fax: (416) 581-1279

Lawyers for Lei Li and Xinduo Yu

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

SUPPLEMENTAL AFFIDAVIT OF MONICA PALKO
(Sworn February 16, 2018)

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

Daniel S. Murdoch LSUC#: 53123L
Tel: (416) 869-5529
Email: dmurdoch@stikeman.com
Maria Konyukhova LSUC#: 52880V
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Email: mkonyukhova@stikeman.com
Haddon Murray LSUC# 61640P
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Email: hmurray@stikeman.com
Fax: +1 416 947 0866

Lawyers for the Receiver,
Ernst & Young Inc.