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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF HANFENG EVERGREEN INC.

FACTUM OF THE RECEIVER
Returnable August 29, 2024

August 7, 2024

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TO: THE SERVICE LIST

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PART I: OVERVIEW

1. Ernst & Young Inc. ("**EYI**"), in its capacity as the Court-appointed receiver (EYI in such capacity, the "**Receiver**") of Hanfeng Evergreen Inc. ("**Hanfeng**"), is seeking an order (the "**Distribution and Discharge Order**"):

(a) approving the making of payments and distributions (collectively, the "**Distributions**") from any funds in the possession of the Receiver:

(i) first, to the Receiver and its counsel, Stikeman Elliott LLP ("**Stikeman Elliott**"), in satisfaction of any fees and disbursements they have incurred and not yet been paid, and fees and disbursements to be incurred;

(ii) second, to holders of the Accepted Claims (as defined below) in an amount up to 100% of their accepted value, without any interest or penalties that might otherwise have accrued after August 20, 2014; and

(iii) third, any remaining funds to shareholders of Hanfeng on a *pro rata* basis, provided that no funds shall be distributed to Mr. Xinduo Yu or Ms. Lei Li;

(b) authorizing the TSX Trust Company and any of its affiliates, successors and assigns, as applicable, to facilitate and implement distributions to any remaining shareholders of Hanfeng;

(c) approving the Receiver's Seventh Report dated August 1, 2024 (the "**Seventh Report**") and the Sixth Report dated May 18, 2021 (the "**Sixth Report**"), and the activities of the Receiver described therein;

(d) approving the fees and disbursements of the Receiver and Stikeman Elliott, including the estimated fees and disbursements of the Receiver and Stikeman Elliott through to the date of the Receiver's discharge;

(e) terminating these proceedings and discharging the Receiver;

(f) granting a release in favour of the Receiver and Stikeman Elliott; and

(g) such further and other relief as counsel may advise and this Court deems just.

PART II: THE FACTS

2. The facts underlying this motion are more fully set out in the Seventh Report.

A. Overview

3. Hanfeng was a holding company for certain entities that were incorporated and, at the relevant times, operated in China. As of August 2014, Hanfeng's principal remaining un-monetized asset was all the issued and outstanding shares (the "**Shares**") of Hanfeng Slow-

Release Fertilizer Co., Ltd., Hanfeng's wholly owned subsidiary in China (the "**Chinese Subsidiary**"). [1]

4. EYI was appointed as Receiver of the assets, undertakings and properties of Hanfeng, pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, on August 20, 2014.[2] The primary purpose of these receivership proceedings was to (a) complete the transaction contemplated by a share transfer agreement dated August 8, 2014 (the "**Share Transfer Agreement**", and such transaction, the "**Share Transfer Transaction**"), which vested the Shares in a purchaser, and (b) effect a distribution of the proceeds thereof.[3] This Court granted an order approving the Share Transfer Transaction on August 20, 2014 (the "**Approval Order**").[4]

5. The Share Transfer Agreement was negotiated on the basis that the purchaser would be the Chinese language translation of Heilongjiang Pengcheng Fertilizer Co. Ltd. ("**HLJ Pengcheng**"). The Approval Order names HLJ Pengcheng as the purchaser. However, the name of the purchaser was switched in the Share Transfer Transaction prior to its execution from HLJ Pengcheng to the Chinese language translation of Harbin Pengcheng Fertilizer Co. Ltd. ("**New Pengcheng**").[5]

6. In the course of attempting to advance the Share Transfer Transaction, the Receiver took steps to investigate and obtain information in respect of New Pengcheng. The Receiver found no connection between HLJ Pengcheng – a well-established company – and New Pengcheng –

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[1] Seventh Report of the Receiver dated August 1, 2024 [**Seventh Report**] at para 1, Motion Record of the Receiver dated August 1, 2024 at Tab 2 [**Motion Record**].
[2] *Ibid* at para 3, Motion Record at Tab 2.
[3] *Ibid* at para 4, Motion Record at Tab 2.
[4] *Ibid* at para 2, Motion Record at Tab 2.
[5] *Ibid* at para 17, Motion Record at Tab 2; Fourth Report of the Receiver dated April 4, 2017 [**Fourth Report**] at paras 17-21, Motion Record at Tab 2 – Appendix "A".

a newly registered company with no known operations.[6] The Receiver developed concerns about New Pengcheng's ability and desire to close the Share Transfer Transaction, as well as the potential relationship between New Pengcheng and Mr. Xinduo Yu, the founder, former president, former chief executive officer, and a former director of Hanfeng.[7]

7. New Pengcheng paid a RMB 12.4 million (approximately CAN$2.48 million) deposit (the "**Deposit**") to the Receiver in connection with the Share Transfer Agreement, but failed to make any further payments required thereunder.[8]

8. Despite extensive efforts to advancing the Share Transfer Transaction, the Receiver was not successful in closing it, due in part to the actions of New Pengcheng. In light of New Pengcheng's continued failure to meet its contractual obligations, the Receiver concluded that New Pengcheng did not have the financial wherewithal or desire to close the Share Transfer Transaction.[9]

B. Protracted Litigation in China Regarding the Deposit

9. In August 2015, New Pengcheng commenced litigation in China against Hanfeng and EYI, among others (the "**Chinese Litigation**"), and sought to terminate the Share Transfer Agreement and cause the return of the Deposit.[10] The Chinese Litigation process took nearly six years to conclude.[11] The timeline of the Chinese Litigation can be summarized as follows:

[6] Seventh Report, *ibid* at para 18, Motion Record at Tab 2.
[7] Sixth Report of the Receiver dated May 18, 2021 [**Sixth Report**] at para 5, Motion Record Tab 2 – Appendix "C".
[8] Fourth Report at para. 23, Motion Record at Tab 2 – Appendix "A"; Seventh Report, *ibid* at para 8, Motion Record at Tab 2.
[9] Seventh Report, *ibid* at para 19, Motion Record at Tab 2.
[10] *Ibid* at para 8, Motion Record at Tab 2.
[11] *Ibid* at para 9, Motion Record at Tab 2.

(a) on February 15, 2017, the Intermediate People's Court of Harbin City (the "**Harbin City Court**") released a decision granting certain relief sought by New Pengcheng;

(b) on March 20, 2017, the Receiver appealed to the Heilongjiang Province Superior Court (the "**Provincial Court**");

(c) on September 18, 2017, the Provincial Court rendered its decision (the "**Provincial Court Judgement**"), which granted the Receiver's appeal and overturned certain parts of the Harbin City Court's decision;

(d) New Pengcheng refused to accept the Provincial Court Judgement and applied for a retrial to the Supreme People's Court of China (the "**Supreme Court**");

(e) in December 2017, the Supreme Court denied New Pengcheng's application for re-trial;

(f) on February 12, 2018, counsel to New Pengcheng advised that New Pengcheng had applied for trial supervision (the "**Protest Application**") to the Supreme People's Procuratorate in China (the "**Supreme Procuratorate**")

(g) on or about May 7, 2018, New Pengcheng's counsel advised that the Protest Application was in fact filed with the Provincial Procuratorate of Heilongjiang Province (the "**Provincial Procuratorate**");

(h) on August 28, 2019, the Provincial Procuratorate issued a decision dismissing the Protest Application (the "**Provincial Procuratorate's Decision**");

(i) in October 2019, counsel to New Pengcheng advised the Receiver and this Court that New Pengcheng had appealed the Provincial Procuratorate's Decision to the Supreme Procuratorate; and

(j) in April 2021, the Receiver's Chinese counsel obtained the decision of the Supreme Procuratorate rendered on February 17, 2020, which rejected New Pengcheng's appeal and upheld the Provincial Procuratorate's Decision.[12]

10. The Supreme Procuratorate's February 17, 2020, decision represents the conclusion of the Chinese Litigation in favour of Hanfeng and the Receiver. It confirmed Hanfeng's entitlement to retain the Deposit.[13]

C. The Receiver's Unsuccessful Efforts to Take Control of the Chinese Subsidiary

11. As part of the Receiver's efforts to close the Share Transfer Transaction, with assistance of Chinese counsel and advisors, investigated the financial affairs of the Chinese Subsidiary. The Receiver uncovered evidence of concealed loans, legal actions against the Chinese Subsidiary and other information that led to mounting concerns over the state of the Chinese Subsidiary, the potential linkage between Mr. Yu and New Pengcheng, as well as Mr. Yu's role in the entire Share Transfer Transaction.[14]

12. The Receiver made significant efforts to collect information from local management; however, such information proved untrustworthy and inconsistent with other data. In or around August 2015, local management stopped providing information to the Receiver.[15]

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[12] *Ibid* at paras 20-26, Motion Record at Tab 2.
[13] *Ibid* at para 27, Motion Record at Tab 2.
[14] *Ibid* at para 28, Motion Record at Tab 2.
[15] *Ibid* at para 30, Motion Record at Tab 2.

13. The Receiver made attempts to assert control over and gain access to the Chinese Subsidiary. In or around August 2015, the Receiver successfully appointed its Chinese counsel to a vacant seat on the three-member board of the Chinese Subsidiary, with Mr. Yu and the general manager of the Chinese Subsidiary serving as the other two directors. The Receiver was unable to appoint a second director (which would be required to gain control of the board), and as a result did not make any meaningful progress in controlling the Chinese Subsidiary or accessing the Chinese Subsidiary.[16]

14. The local court was not prepared to hear the Receiver's submissions for legal relief.[17]

15. The Receiver has concluded that it is challenging, if not impossible, to determine whether any recovery from the Chinese Subsidiary is feasible without investing substantial additional time, effort, and funding. The Receiver lacks the necessary resources to make such an investment.[18]

D. The Receiver's Litigation with Yu and Li in Ontario

16. The Receiver commenced actions against Mr. Yu and his spouse, Mrs. Li, in the Ontario Superior Court of Justice (Toronto) on March 22, 2016, for relief including damages for breaches of fiduciary duties and fraudulent misrepresentation.[19]

17. The Receiver's actions against Mr. Yu and Mrs. Li were settled, which settlement resulted in, among other things, Mr. Yu and Mrs. Li withdrawing the claims they filed against

[16] *Ibid* at paras 31-32, Motion Record at Tab 2.
[17] *Ibid* at para 33, Motion Record at Tab 2.
[18] *Ibid* at para 35, Motion Record at Tab 2.
[19] *Ibid* at para 36, Motion Record at Tab 2.

Hanfeng, agreeing not making any further claims in respect of their ownership of shares of Hanfeng, and waiving any and all rights to recovery and distribution in respect of same.[20]

E. The Claims Process

18. On September 23, 2014, this Court issued an Order (the "**Claims Procedure Order**") approving a claims process (the "**Claims Process**").[21] As a result of the Claims Process:

(a) the Receiver received 17 claims (the "**Claims**") with a total face value of $4,307,663 prior to the applicable deadline. After reviewing these 17 Claims, the Receiver issued 13 notices of revision or disallowance, ten of which were disputed by the respective claimants (the "**Disputed Claims**").

(b) the Receiver received one late claim of $173.32, which was disallowed pursuant to the Claims Procedure Order;

(c) the Receiver received 61 claims related to shareholder rights with a total face value of $11,944,533 (the "**Equity Claims**"). The Receiver sent letters to each person who submitted Equity Claims acknowledging receipt of their Equity Claim, but the Receiver did not (and has not yet) accepted, revised, or dismissed any Equity Claims.[22]

19. The Receiver paused work relating to the resolution of the Disputed Claims after the Share Transfer Transaction was stalled and the Chinese Litigation was initiated because

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[20] *Ibid*.
[21] *Hanfeng Evergreen Inc.* (22 September 2014), Toronto CV-14-10667-00CL (Ont Sup Ct [Comm List]) Order (Claims Procedure Order) (Receiver's Website), Motion Record at Tab 2 – Appendix "D" [**Claims Procedure Order**].
[22] Seventh Report at para 41, Motion Record at Tab 2.

Hanfeng's entitlement to the Deposit, which represented all the funds left in Hanfeng's estate, was brought into question.[23]

20. The Receiver has now resolved all of the Disputed Claims. Eleven Claims have been accepted or settled for a total amount of $456,191.32 (the "**Accepted Claims**"), and six have been disallowed.[24]

F. Proposed Distributions

21. The Receiver proposes to make the Distributions to creditors. The Distributions will be funded by what remains of the Deposit, being all the funds left in Hanfeng's estate. As of the date of the Seventh Report, the Receiver held funds in the amount of approximately C$1,780,850 and US$315 before accounting for unpaid and accrued fees and disbursements of the Receiver and its counsel.[25] The proposed Distributions will be made first to the Receiver and Stikeman Elliott to pay unpaid and accrued fees and disbursements. Distributions will then be made to creditors and shareholders, who are expected to recover as follows (such recovery remains subject to unpaid and accrued fees and disbursements of the Receiver and its counsel):

(a) the Accepted Claims are projected to receive 100% of their accepted value; and

(b) an estimated surplus of approximately $458,702 is estimated to be available for distribution among remaining shareholders.[26]

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[23] *Ibid* at para 42, Motion Record at Tab 2.
[24] *Ibid* at para 45, Motion Record at Tab 2.
[25] *Ibid* at para 50, Motion Record at Tab 2.
[26] *Ibid* at para 60, Motion Record at Tab 2.

22. Mr. Yu and Ms. Li will not receive any distributions on their claims and shareholdings due to the settlement agreement they entered into with the Receiver.[27]

23. In accordance with the Claims Procedure Order, holders of the Accepted Claims will not recover any interest or penalties that would otherwise accrue after August 20, 2014 (i.e., the date of the receivership).[28]

24. The Receiver proposes to make distributions to claimants of the Accepted Claims via cheque. The Receiver will notify the claimants of the distribution through phone, email or mail based on available contact information. If any cheques remain uncashed after six months, those funds will be included to the pool of funds for distribution to shareholders.[29]

25. The Receiver proposes to work with the TSX Trust Company to effect distributions to shareholders. The TSX Trust Company previously served as the transfer agent for the shareholders of Hanfeng and has access to the latest shareholder registry. The TSX Trust Company has been served with notice of this motion.[30]

G. The Termination of the Receivership and the Discharge of the Receiver

26. Upon completing the Distributions and attending to any remaining administrative activities, the Receiver's duties and responsibilities will be substantially completed. As set out above, the Receiver does not think it is feasible to recover value from the Chinese Subsidiary, and there are no other assets for the Receiver to monetize.

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[27] *Ibid*.
[28] *Ibid* at para 61, Motion Record at Tab 2.
[29] *Ibid* at para 62, Motion Record at Tab 2.
[30] *Ibid* at para 63, Motion Record at Tab 2.

27. The proposed Distribution and Discharge Order provides that the Receiver shall be discharged, and these receivership proceedings terminated effective upon the Receiver serving on the service list a certificate (the "**Receiver's Termination Certificate**") certifying that all remaining tasks have been completed. [31] The Receiver is to notify the service list of its intention to serve the Receiver's Termination Certificate at least seven days prior to service thereof. If a party objects to such service, the Receiver's Termination Certificate shall only be served if the objection is resolved or on further order of this Court.

H. Fees and Disbursements of the Receiver and its Counsel

28. On November 30, 2017, this Court approved the Receiver's fees to April 28, 2017, and Stikeman Elliott's fees to May 5, 2017.[32]

29. The Receiver is now seeking approval of its fees and disbursements for the period April 29, 2017, to June 30, 2024, in the amount of $246,804.17 (including HST), as described in the affidavit of Allen (Liang) Yao affirmed August 1, 2024;[33] and the fees and disbursements of Stikeman Elliott for the period May 6, 2017, to July 18, 2024,[34] in the amount of $526,892.63 (including HST), as described in the affidavit of Brian Pukier, affirmed July 29, 2024.[35]

30. The Receiver estimates that it will incur additional fees and disbursements in the amount of $50,000 (inclusive of HST) from July 1, 2024, to the date of its discharge, and Stikeman Elliott estimates that it will incur additional fees and disbursements in the amount of $50,000

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[31] *Ibid* at para 64, Motion Record at Tab 2.
[32] *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161, Motion Record at Tab 2 – Appendix "F".
[33] Affidavit of Allen (Liang) Yao at para 6, Motion Record at Tab 2 – Appendix "G".
[34] Stikeman Elliott's accounts include one docket entry from April 17, 2017 (i.e. prior to May 6, 2017). Stikeman Elliott is seeking to have that one docket entry from April 17, 2017, approved as part of the current motion. All of the time entries that Stikeman Elliott is otherwise seeking to have approved as part of the current motion relate to the period from May 6, 2017, to July 18, 2024. Any references to Stikeman Elliott's accounts for the period from May 6, 2017, to July 18, 2024, in this factum should be read to include that single docket entry from April 17, 2017.
[35] Affidavit of Brian Pukier at para 6, Motion Record at Tab 2 – Appendix "H".

(inclusive of HST) from July 19, 2024, to the date of the Receiver's discharge (such fee estimates together, the "**Fee Estimates**").[36]

31. The proposed Distribution and Discharge Order provides that the Receiver and Stikeman Elliott are not required to pass their accounts in respect of the period from July 1, 2024 (in the case of the Receiver) and July 19, 2024 (in the case of Stikeman Elliott), to the completion of these receivership proceedings (such period, the "**Final Fee Period**"), provided that their fees and disbursements do not exceed the Fee Estimates.

PART III: ISSUES

32. The sole issue on this motion is whether this Court should grant the Distribution and Discharge Order, and in particular whether this Court should:

(a) approve the Distributions;

(b) approve the Seventh Report and the Sixth Report and the activities of the Receiver described therein;

(c) terminate these proceedings and discharge the Receiver;

(d) grant a release in favour of the Receiver and Stikeman Elliott; and

(e) approve the fees and disbursements of the Receiver and Stikeman Elliott, including the fees and disbursements of the Receiver and Stikeman Elliott

[36] Seventh Report at paras 56-57, Motion Record at Tab 2; see also the Affidavit of Allen (Liang) Yao at para 10, Motion Record at Tab 2 – Appendix "G" and the Affidavit of Brian Pukier at para 10, Motion Record at Tab 2 – Appendix "H".

incurred and to be incurred during the Final Fee Period, provided they do not exceed the Fee Estimate.

PART IV: LAW AND ARGUMENT

A. The Proposed Distribution is Fair and Reasonable

33. The Receiver is seeking authorization to make the Distributions as set out in the Seventh Report. Orders granting distributions are routinely granted by Canadian courts in insolvency proceedings, including receiverships.[37]

34. In the present case, there are no secured creditors. The Distributions are proposed to go first to the fees and disbursements of the Receiver and Stikeman Elliott, and second to holders of the Accepted Claims in an amount up to 100% of their accepted value without any interest or penalties that might otherwise have accrued after August 20, 2014 (i.e., the date of the receivership). Any remaining funds after making distributions to holders of the Accepted Claims are to go to Hanfeng's shareholders on a *pro rata* basis, provided that no funds are to be distributed to Mr. Yu or Ms. Li. The Receiver expects shareholders to receive a distribution.[38]

35. The proposed Distribution to holders of the Accepted Claims does not include interest or penalties that may have accrued after August 20, 2014, because the Claims Procedure Order adopted the "interest stops rule". Pursuant to paragraph 8 of the Claims Procedure Order, interest on unsecured claims stopped accruing on the date the Receiver was appointed:

> 8. **THIS COURT ORDERS** that interest and penalties that would otherwise accrue after the Date of Receivership shall not

[37] *KingSett Mortgage Corporation v 30 Roe Investments Corp.*, 2023 ONSC 3323 at paras 86-87, 101, leave to appeal dismissed 2022 ONCA 479; see also *Windsor Machine & Stamping Limited (Re)*, 2009 CanLII 39772 at paras 8, 13 (Ont. Sup. Ct. J.); *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461 at paras 70-75.
[38] Seventh Report at paras 60-61, Motion Record at Tab 2.

> be included in any unsecured Claim. Amounts claimed in Assessments whether issued before or after the Date of Receivership shall be subject to this Claims Procedure Order and there shall be no presumption of validity or deeming of the amount due in respect of the Claim set out in any Assessment.[39]

36. The interest stops rule is a longstanding principle of insolvency law. As Blair J. wrote in *Canada (Attorney General) v Confederation Life Insurance Co.*:[40]

> One of the governing principles of insolvency law - including proceedings in a winding-up - is that the assets of the insolvent debtor are to be distributed amongst classes of creditors rateably and equally, as those assets are found at the date of the insolvency. This principle has led to the development of the "interest stops rule", i.e., that no interest is payable on a debt from the date of the winding-up or bankruptcy. As Lord Justice James put it, colourfully, in *Re Savin* (1872), L.R. 7 Ch. 760 (C.A.), at p. 764:
>
>> I believe, however, that if the question now arose for the first time I should agree with the rule [i.e. the "interest stops rule"], seeing that the theory in bankruptcy is to stop all things at the date of the bankruptcy, and to divide the wreck of the man's property as it stood at that time.

37. The interest stops rule has been adopted in section 122(2) of the *Bankruptcy and Insolvency Act*[41] and applied in proceedings under the *Companies' Creditors Arrangement Act*[42] and the *Winding-Up and Restructuring Act*.[43] In *National Bank of Canada v Twin Butte Energy Ltd*, Yamauchi J. held that the interest stop rule applies in a receivership, writing that it

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[39] Claims Procedure Order, *supra* note 21 at para 8, Motion Record at Tab 2 – Appendix "D".
[40] *Canada (Attorney General) v. Confederation Life Insurance Co.* (2001), 106 A.C.W.S. (3d) 245 at para 20 (Ont. Sup. Ct. J.).
[41] R.S.C. 1985, c. B-3: "If interest on any debt or sum certain is provable under this Act but the rate of interest has not been agreed on, the creditor may prove interest at a rate not exceeding five per cent per annum <u>to the date of the bankruptcy</u> from the time the debt or sum was payable, if evidenced by a written document, or, if not so evidenced, from the time notice has been given the debtor of the interest claimed" (emphasis added).
[42] R.S.C. 1985, c. C-36 [***CCAA***]; see e.g. *In the Matter of a Plan of Compromise or Arrangement of Nortel Networks Corporation et al.*, 2015 ONCA 681 at para 49.
[43] R.S.C. 1985, c. W-11; see e.g. *Canada (Attorney General) v. Confederation Life Insurance Co.*, *supra* note 40 at para 35.

would be "highly unusual to give interest in a receivership situation any different treatment than the courts have given in winding-up and arrangement scenarios."[44]

38. The proposed Distribution and Discharge Order includes a provision that authorizes the TSX Trust Company to assist the Receiver in making Distributions to Hanfeng's shareholders. Specifically, the proposed order authorizes TSX Trust Company to (a) facilitate and implement the distribution of the remaining funds to the shareholders; and (b) disclose personal information of identifiable individuals to the Receiver and its advisors and any other third party authorized by the Receiver to the extent required by make distributions to Hanfeng's shareholders. The Receiver believes that this authorization is necessary to ensure that the TSX Trust Company works with the Receiver to make distributions to shareholders. [45]

39. For the foregoing reasons, the Receiver respectfully submits that the proposed Distributions are appropriate in the circumstances and should be authorized in accordance with the proposed Distribution and Discharge Order.

B. The Receiver's Reports and Activities Should be Approved

40. This Court has the inherent jurisdiction to review and approve the activities of a court appointed receiver as set out in a receiver's reports.[46] The approval of a receiver's reports and activities is expressly contemplated by the Commercial List's model discharge order.

41. The Receiver is seeking approval of its Sixth Report and Seventh Report and the activities described therein. This Court has approved the Receiver's other reports.

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[44] *National Bank of Canada v. Twin Butte Energy Ltd.*, 2017 ABQB 608 at paras 35-36.
[45] Seventh Report at para 63, Motion Record at Tab 2.
[46] *Confectionately Yours Inc. (Re)* (2002), 219 D.L.R. (4th) 72 at para 36 (Ont.).

42. The activities undertaken and services provided by the Receiver in connection with these receivership proceedings as set out in the Sixth Report and the Seventh Report were prudent, reasonable and not arbitrary. They were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers and in the best interests of Hanfeng and its stakeholders generally.[47]

43. For these reasons, the Receiver's Sixth Report and Seventh Report and the activities described therein should be approved.

C. These Receivership Proceedings Should Be Terminated and the Receiver Discharged

44. Pursuant to the proposed Distribution and Discharge Order, the Receiver will be discharged as receiver and manager of Hanfeng upon serving the Receiver's Termination Certificate on the service list.

45. This Court has inherent jurisdiction to discharge a Court-appointed receiver upon the completion of its mandate.[48] In these circumstances, the Receiver submits that it is appropriate for this Court to exercise its jurisdiction to discharge the Receiver in the proposed manner given that:

(a) upon completing the Distributions and any remaining administrative matters, the Receiver will have no further tasks to complete in these receivership proceedings; and

[47] Seventh Report at para 48, Motion Record at Tab 2.
[48] *Yukon (Government of) v Yukon Zinc Corporation*, 2022 YKSC 58 at paras 27-28, citing *Ed Mirvish Enterprises Limited v. Stinson Hospitality Inc.*, 2009 CanLII 55113 and *Pinnacle v. Kraus*, 2012 ONSC 6376; see also *Rules of Civil Procedure*, RRO 1990, Reg 194, r. 41.06.

(b) approving the Receiver's discharge upon the filing of the Receiver's Termination Certificate prevents the need for a subsequent Court attendance, and therefore promotes both fiscal efficiency for the estate as well as the efficient use of the Court's time.

46. The Receiver therefore respectfully submits that the receivership proceedings should be terminated, and the Receiver should be discharged following the service of the Receiver's Termination Certificate.

D. The Receiver and Stikeman Elliott Should be Released

47. Pursuant to the proposed Distribution and Discharge Order, the Receiver, Stikeman Elliott, and each of their respective affiliates and officers, directors, partners, employees and agents (collectively, the "**Released Parties**") will be released from any and all claims:

(a) existing or taking place on or prior to the date of the proposed Distribution and Discharge Order, effective as of the date of the Distribution and Discharge Order;[49] and

(b) existing or taking place following the date of the Distribution and Discharge Order, effective upon the Receiver's Termination Certificate being served on the service list.[50]

48. Claims or liability arising out of any gross negligence or wilful misconduct on the part of the Released Parties are not released by the proposed Distribution and Discharge Order.

[49] For the precise wording of the proposed release, see paragraph 14 of the proposed Distribution and Discharge Order, Motion Record at Tab 3.

[50] For the precise wording of the proposed release, see paragraph 15 of the proposed Distribution and Discharge Order, Motion Record at Tab 3.

49. This Court has inherent jurisdiction to discharge a Court-appointed receiver upon the completion of its mandate.[51] The release of a receiver is a standard term in the Commercial List's model discharge order, and courts have found that releases ought to be issued in the "absence of any evidence of improper or negligent conduct on the part of the Receiver".[52] This Court has previously extended such releases to the Receiver's counsel where appropriate, such as in contentious receivership proceedings.[53]

50. In proceedings under the *CCAA*, the Court applies the following factors when considering the release of a party:[54]

(a) whether the parties to be released were necessary and essential to the restructuring of the debtor;

(b) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it;

(c) whether the restructuring could succeed without the releases;

(d) whether the parties being released contributed to the restructuring; and

(e) whether the releases benefit the debtors as well as the creditors generally.

51. It is not necessary for each of the factors to apply in order for the release to be granted.[55]

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[51] *Yukon (Government of) v Yukon Zinc Corporation*, *supra* note 48 at paras 27-28, citing *Ed Mirvish Enterprises Limited v. Stinson Hospitality Inc.*, *supra* note 48 and *Pinnacle v. Kraus*, *supra* note 48; see also *Rules of Civil Procedure*, RRO 1990, Reg 194, r. 41.06.
[52] *Pinnacle v. Kraus*, *supra* note 48 at para 47.
[53] *Ed Mirvish Enterprises Limited v. Stinson Hospitality Inc.*, *supra* note 48 at paras 5, 10-11, 15.
[54] *Re Green Relief Inc.*, 2020 ONSC 6837 at para 27.
[55] *Ibid* at para 28.

52. The Receiver respectfully submits that in the circumstances it is appropriate to grant a limited release in favour of the Released Parties. The Receiver and Stikeman Elliott have acted prudently, reasonably and in good faith throughout these receivership proceedings, which have spanned approximately a decade.[56] Stikeman Elliott has continuously assisted and advised the Receiver.[57] The receivership proceeding has been highly contentious and involved litigation in multiple jurisdictions.[58] It is through this litigation that the Receiver affirmed its entitlement to the Deposit, which represents all the funds left in Hanfeng's estate.[59]

53. The Receiver therefore respectfully submits that the Released Parties should be released in the manner proposed in the Distribution and Discharge Order.

E. The Fees and Disbursements of the Receiver and Stikeman Elliott are Fair and Reasonable

54. The Receiver is seeking approval of (a) the fees and disbursements of the Receiver for the period of April 29, 2017, to June 30, 2024; (b) the fees and disbursements of Stikeman Elliott for the period of May 6, 2017, to July 18, 2024; and (c) the fees and disbursements of the Receiver and Stikeman Elliott incurred and to be incurred during the Final Fee Period, provided they do not exceed the Fee Estimate.[60]

55. Pursuant to paragraphs 18 and 19 of the order appointing the Receiver, the Receiver and its counsel are entitled to be "paid their reasonable fees and disbursements, in each case at their standard rates and charges", and to "pass [their] accounts from time to time".[61]

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[56] Seventh Report at para 48, Motion Record at Tab 2.
[57] Affidavit of Brian Pukier at para 13, Motion Record at Tab 2 – Appendix "H".
[58] Seventh Report at paras 8-9, 20-27, 36, Motion Record at Tab 2.
[59] *Ibid* at para 42, Motion Record at Tab 2.
[60] *Ibid* at paras 51-57, Motion Record at Tab 2.
[61] *Re Hanfeng Evergreen Inc.* (20 August 2014), Toronto CV-14-10667-00CL (Ont Sup Ct [Comm List]) Order (Appointment Order) (Receiver's Website).

56. The Court regularly dispenses with the need for a receiver and its counsel to pass accounts for the final period of a receivership proceeding (like the Final Fee Period) provided that the fees and disbursements of the receiver and its counsel do not exceed a prescribed threshold.[62]

57. The test on a motion to pass accounts is to consider the "overriding principle of reasonableness", with the predominant consideration in such assessment being the overall value contributed by the Receiver and its counsel.[63] The Court is not to engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional service may not be instructive when looked at in isolation.[64]

58. In evaluating the fairness and reasonableness of a court-appointed officer's fees, the Court is to take into account (a) the nature, extent and value of the assets, (b) the complications encountered, (c) the degree of assistance provided by the debtor, (d) the time spent, (e) the receiver's knowledge, experience and skill, (f) the diligence and thoroughness displayed, (g) the responsibilities assumed, (h) the results of the receiver's efforts and (i) the cost of comparable services when performed in a prudent and economical manner.[65]

59. The Receiver respectfully submits that the fees and disbursements incurred by the Receiver and Stikeman Elliott, including the fees and disbursements of the Receiver and Stikeman Elliott incurred and to be incurred during the Final Fee Period, are fair and reasonable in the circumstances.[66] The fees and disbursements span a period of over seven years in a

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[62] See e.g. *Re SIF Amber (3.5) Projects LP et al.* (19 April 2024), London CV- 23-00001092-0000 (Ont Sup Ct) Ancillary Relief and Discharge Order (Receiver's Website) at para. 4; *Re 2th, Inc. et al.* (18 March 2024), Toronto CV-23-707066-00CL (Ont Sup Ct [Comm. List]) Ancillary Order (Receiver's Website) at para. 3.
[63] *Nortel Networks Inc.*, 2022 ONSC 6680 at para 10.
[64] *Ibid*; *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 45.
[65] *Bank of Nova Scotia v. Diemer*, *supra* note 64 at para 33; see also *Nortel Networks Inc.*, *supra* note 63 at para 10.
[66] Seventh Report at para 55, Motion Record at Tab 2.

receivership proceeding that has been on-going for approximately ten years. The receivership initially began with the goal of completing a corporate transaction, but it quickly morphed into a complex litigation matter in both Canada and China and involved multiple appeals.[67]

60. All of the fees and disbursements incurred by the Receiver and Stikeman Elliott were reasonable and necessary.[68] They contributed to the Receiver retaining the Deposit, which is now proposed to be distributed for the benefit of the estate.[69] The Receiver and Stikeman Elliott have at all times endeavored to provide their services in a prudent and economical manner.[70]

61. The fees and disbursements charged by the Receiver and Stikeman Elliott are consistent with those charged by similar firms in the Toronto market with similar levels of experience and expertise, and with the capacity to handle a file of similar size and complexity to the present file.[71]

62. Accordingly, the Receiver respectfully submits that the fees and disbursements of the Receiver and Stikeman Elliott should be approved on the terms proposed in the Distribution and Discharge Order.

F. Relief Requested

63. Based on the foregoing, the Receiver respectively requests that this Court grant the proposed Distribution and Discharge Order.

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[67] Affidavit of Brian Pukier at paras 13 and 19, Motion Record at Tab 2 – Appendix "H".
[68] Affidavit of Allen (Liang) Yao at para 14, Motion Record at Tab 2 – Appendix "G"; Affidavit of Brian Pukier at para 24, Motion Record at Tab 2 – Appendix "H".
[69] Affidavit of Allen (Liang) Yao at para 12, Motion Record at Tab 2 – Appendix "G"; Affidavit of Brian Pukier at para 12, Motion Record at Tab 2 – Appendix "H".
[70] Affidavit of Brian Pukier at para 14, Motion Record at Tab 2 – Appendix "H".
[71] Affidavit of Allen (Liang) Yao at para 15, Motion Record at Tab 2 – Appendix "G"; Affidavit of Brian Pukier at paras 25-26, Motion Record at Tab 2 – Appendix "H".

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of August 2024.

Stikeman Elliott LLP
Lawyers for the Ernst & Young Inc. in its capacity as the Court-appointed Receiver

SCHEDULE A
List of Authorities

Tab	Title	Pinpoints
1	*KingSett Mortgage Corporation v 30 Roe Investments Corp.*, 2023 ONSC 3323	86-87, 101
2	*Windsor Machine & Stamping Limited (Re)*, 2009 CanLII 39772 (Ont. Sup. Ct. J.)	8, 13
3	*AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461	70-75
4	*Canada (Attorney General) v. Confederation Life Insurance Co.* (2001), 106 A.C.W.S. (3d) 245 (Ont. Sup. Ct. J.)	20, 35
5	*In the Matter of a Plan of Compromise or Arrangement of Nortel Networks Corporation et al.*, 2015 ONCA 681	49
6	*National Bank of Canada v. Twin Butte Energy Ltd.*, 2017 ABQB 608	35-36
7	*Confectionately Yours Inc. (Re)* (2002), 219 D.L.R. (4th) 72 (Ont. C.A.)	36
8	*Yukon (Government of) v Yukon Zinc Corporation*, 2022 YKSC 58	27-28
9	*Ed Mirvish Enterprises Limited v. Stinson Hospitality Inc.*, 2009 CanLII 55113	5, 10-11, 15
10	*Pinnacle v. Kraus*, 2012 ONSC 6376	47
11	*Re Green Relief Inc.*, 2020 ONSC 6837	27-28
12	*Nortel Networks Inc.*, 2022 ONSC 6680	10
13	*Bank of Nova Scotia v. Diemer*, 2014 ONCA 851	33, 45

Unreported Authorities

14 *Re 2th, Inc. et al.* (18 March 2024), Toronto CV-23-707066-00CL (Ont Sup Ct [Comm. List]) Ancillary Order (Receiver's Website)

15 *Re Hanfeng Evergreen Inc.* (20 August 2014), Toronto CV-14-10667-00CL (Ont Sup Ct [Comm List]) Order (Appointment Order) (Receiver's Website)

16 *Re Hanfeng Evergreen Inc.* (22 September 2014), Toronto CV-14-10667-00CL (Ont Sup Ct [Comm List]) Order (Claims Procedure Order) (Receiver's Website)

17 *Re SIF Amber (3.5) Projects LP et al.* (19 April 2024), London CV- 23-00001092-0000 (Ont Sup Ct) Ancillary Relief and Discharge Order (Receiver's Website)

SCHEDULE B
Statutes

***Courts of Justice Act*, R.S.O. 1990, c. C.43 (CanLII)**

Injunctions and receivers
101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms
(2) An order under subsection (1) may include such terms as are considered just.

***Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (CanLII)**

Discharge
41.06 A receiver may be discharged only by the order of a judge.

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (CanLII)**

Claims provable in bankruptcy following proposal
122 (1) The claims of creditors under a proposal are, in the event of the debtor subsequently becoming bankrupt, provable in the bankruptcy for the full amount of the claims less any dividends paid thereon pursuant to the proposal.

Interest
(2) If interest on any debt or sum certain is provable under this Act but the rate of interest has not been agreed on, the creditor may prove interest at a rate not exceeding five per cent per annum to the date of the bankruptcy from the time the debt or sum was payable, if evidenced by a written document, or, if not so evidenced, from the time notice has been given the debtor of the interest claimed.

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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