Court File No. CV-09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP (the "Applicants")

SUPPLEMENTARY MOTION RECORD OF PETER J. GRANT SR.

(re: Tax Refund Purchase and Sale Agreement)

[Returnable October 5, 2009]

October 2, 2009

BENNETT JONES LLP
Suite 3400
One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Richard B. Swan (LSUC No. 32076A)
Telephone: 416 777 7479
Facsimile: 416 863 1716
E-Mail: swanr@bennettjones.com

Lawyers for Peter Grant Sr.

TO: **FRASER MILNER CASGRAIN LLP**
1 First Canadian Place
100 King Street West
Toronto, ON M5X 1B2

Ross W. Walker
Telephone: 416 863 4742
Facsimile: 416 863 4592
E-Mail: ross.walker@fmc-law.com

Daniel R. Dowdall
Telephone: 416 863 4700
Facsimile: 416 863 4592
E-Mail: dan.dowdall@fmc-law.com

Alex L. MacFarlane
Telephone: 416 863 4582
Facsimile: 416 863 4592
Email: alex.macfarlane@fmc-law.com

Jane O. Dietrich
Telephone: 416 863 4467
Facsimile: 416 863 4592
E-Mail: jane.dietrich@fmc-law.com

Lawyers for the Applicants Grant Forest Products Inc., Grant Alberta Inc., Grant Forest Products Sales Inc., and Grant U.S. Holdings GP

AND TO: **ERNST AND YOUNG INC.**
P.O. Box 251
Ernst & Young Tower
Toronto-Dominion Centre
Toronto, ON M5K 1J7

Alex Morrison
Telephone: 416 941 7743
Facsimile: 416 864 1174
E-Mail: alex.morrison@ca.ey.com

Monitor

AND TO: **STIKEMAN ELLIOTT LLP**
5300 Commerce Court West
99 Bay Street
Toronto, ON M5L 1B9

Sean Dunphy
Telephone: 416 869 5662
Facsimile: 416 947 0866
E-Mail: sdunphy@stikeman.com

Kathy L. Mah
Telephone: 416 869 5652
Facsimile: 416 947 0866
E-Mail: kmah@stikeman.com

Lawyers for the Monitor

AND TO: **McCARTHYS LP**
Suite 4700
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Kevin McElcheran
Telephone: 416 601 7730
Facsimile: 416 868 0673
E-Mail: kmcelcheran@mccarthys.ca

Barry J. Ryan
Telephone: 416 601 7799
Facsimile: 416 868 0673
E-Mail: bryan@mccarthy.ca

Lawyers for the Toronto-Dominion Bank as agent for the First Lien Lenders

AND TO: **FASKEN MARTINEAU DuMOULIN LLP**
66 Wellington Street West
Suite 4200, Toronto Dominion Bank Tower
Box 20, Toronto-Dominion Centre
Toronto, ON M5K 1N6

Jonathan A. Levin
Telephone: 416 865 4401
Facsimile: 416 364 7813
E-Mail: jlevin@tor.fasken.com

Edmond F.B. Lamek
Telephone: 416 865 4506
Facsimile: 416 364 7813
E-Mail: elamek@tor.fasken.com

Lawyers for the Independent Directors of Grant Forest Products Inc.

AND TO: **BENNETT JONES LLP**
Suite 3400
One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Richard B. Swan
Telephone: 416 777 7479
Facsimile: 416 863 1716
E-Mail: swanr@bennettjones.com

Kevin J. Zych
Telephone: 416 777 5738
Facsimile: 416 863 1716
E-Mail: zychk@bennettjones.com

Lawyers for Peter Grant Sr.

AND TO: **LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**
2600-130 Adelaide Street West
Toronto, ON M5H 3P5

Peter J. Osborne
Telephone: 416 865 3094
Facsimile: 416 865 9010
E-Mail: posborne@litigate.com

Lawyers for Peter Grant Jr.

AND TO: **STONECREST CAPITAL INC.**
Suite 3130, Royal Trust Tower
77 King Street West
P.O. Box 33, Toronto-Dominion Centre
Toronto, ON M5K 1B7

Hap Stephen
Telephone: 416 364 0228
E-Mail: hstephen@stonecrestcapital.com

Sandra Rosch
Telephone: 416 364 0730
E-Mail: srosch@stonecrestcapital.com

Chief Restructuring Advisor

AND TO: **DEPARTMENT OF JUSTICE**
The Exchange Tower
130 King Street West
Suite 3400
Toronto, ON M5X 1K6

Diane Winters
Telephone: 416 973 3172
Facsimile: 416 973 0810
E-Mail: diane.winters@justice.gc.ca

AND TO: **HER MAJESTY THE QUEEN**
The Ministry of Revenue Insolvency Unit
33 King Street West, 6th Floor
Oshawa, ON L1H 8H5

Judy Babin
Telephone: 905 440 4210
Facsimile: 905 436 4524
E-Mail: Judy.Babin@ontario.ca

AND TO: **FINANCIAL SERVICES COMMISSION OF ONTARIO (FSCO) PENSION DIVISION**
5160 Yonge Street
P.O. Box 85, 4th floor
Toronto, ON M2N 6L9

Deana Stuckless
Telephone: 416 226 7890
E-Mail: deana.stuckless@fsco.gov.on.ca

AND TO: **CALEYWRAY**
Labour/Employment Lawyers
1600-65 Queen Street West
Toronto, ON M5H 2M5

Douglas J. Wray
Telephone: 416 366 3763
E-Mail: wrayd@caleywray.com

Lawyers for the Communications, Energy and Paperworkers Union of Canada

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TAB 1

Court File No. 09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP (the "Applicants")

REPLY AFFIDAVIT OF PETER J. GRANT SR.

(Sworn September 18, 2009)

I, **Peter J. Grant Sr.**, of the City of Temiskaming Shores, in the Province of Ontario, businessman, **MAKE OATH AND SAY:**

1. I am the Chairman and Chief Executive Officer of the applicant Grant Forest Products Inc. ("GFPI"). As such, I have personal knowledge of the matters to which I hereinafter depose. Where matters are not based on my personal knowledge, I have stated the source of my information and in all such cases verily believe it to be true.

Introduction

2. This affidavit is sworn in reply to the Affidavit of Benjamin Montgomery, a Vice-President and Director of TD Securities, sworn September 14, 2009 (the "Montgomery Affidavit"). I swore an earlier affidavit in this matter on September 8, 2009. I have used the defined terms that were employed in my September 8 affidavit in this affidavit.

3. In this reply affidavit, I have not commented on, or responded to, every statement in the Montgomery Affidavit, but should not be taken as necessarily agreeing with statements upon which I have not commented.

4. I am also obliged to say at the outset that I am not a lawyer and have not commented on the legal interpretation of agreements, or the purported legal effect of steps taken. I do not believe that Mr. Montgomery is a lawyer either, but must observe that he has in several paragraphs of his affidavit purported to interpret agreements. Even as a layman, I can observe that some of Mr. Montgomery's "legal conclusions" are inaccurate or are not "expressly stated" in the agreements to which he refers, despite his contentions. I note, for example, that, among others, the legal conclusions that he purports to draw in paragraphs 9(d), (h) and (i) are not "expressly stated" in the agreement to which he refers, nor are they at all apparent from the agreement.

Reply

5. In response to paragraph 6 of the Montgomery Affidavit, it is not clear to me why the non-core assets are relevant to the issue on this motion, but I am obliged to say that GFPI's decision to embark on the development of those assets was approved by the Board of Directors of GFPI on an unanimous basis, well before the First and Second Lien Credit Agreements, and were therefore fully known to the banking syndicates before they agreed to advance their funds.

6. In relation to paragraph 7 of the Montgomery Affidavit, I used the word "devised" in my first affidavit as a synonym for "developed", and I did not intend to say that there was anything clever or surreptitious vis-à-vis the banks. Indeed, the banks were fully aware of this agreement and, as described below, had input into its development.

7. Mr. Montgomery in paragraphs 8, 9, 13, 14, 23 and 24 of his Affidavit appears to be offering legal conclusions, in the absence of legal training. It is my understanding that that is the role of the Court on this motion.

8. As to paragraph 10 of the Montgomery Affidavit, which states that neither the Lien Agents nor banks were asked to approve or did approve the Agreement, I am informed by Ross Walker, the partner at Fraser Milner Casgrain LLP who drafted the Agreement, and believe, that the Lien Agents or their solicitors reviewed and commented upon drafts of the Agreement and provided specific input on the language of the Agreement. Moreover, the First and Second Lien Agents provided partial discharges in March 2008 and were clearly aware of and content with the Agreement at that time. I have no doubt that the First and Second Lien Agents, and the members of the banking syndicate, were also very content that GFPI would have the full use (commencing in March 2008) of the $20 million purchase price that I paid for the purchase of the Sold 2008 and 2009 Refunds.

9. As to paragraphs 12 and 18 of the Montgomery Affidavit, the statements therein do not appear consistent with, or in the very least give a misleading impression when compared with, what is stated in Mr. Lynch's email of June 19, 2009 which is attached as Exhibit "E" to my September 8 Affidavit.

10. As to paragraphs 19-22 of the Montgomery Affidavit, the term sheet he references was not approved by me, and I never agreed to have GFPI retain the 2009 Sold Refund.

11. In this regard, and in respect of the supposition made by Mr. Montgomery in paragraph 25 of his affidavit that I "must have participated" in the decision not to complete the transfer of the 2009 Sold Refund, I can state unequivocally that I was never asked and never

gave, and would never have given, my consent to the non delivery of the Transfer or of the 2009 Sold Refund.

My Discussions with Independent Directors of the Board of GFPI

12. I have also personally spoken with the independent Directors of GFPI who served at the time the tax refund arrangement was approved by the Board on March 27, 2008.

13. I am informed by Mike Harris, a director of GFPI and the former Premier of Ontario, and believe, that the tax refund arrangement was approved by the directors based on a clear understanding and direction that it was "iron clad" that the tax refunds when received by the Company would be paid over to me. Mr. Harris informs me, and I believe, that it was also his clear understanding that my right to receive the tax refunds stood in front of the banks.

14. I am informed by Jamie Wallace, a director of GFPI, and believe, that in the context of the Board approval of the proposed transaction, his understanding and indeed insistence was that my right to receive the tax refund I was purchasing would rank ahead of any claims of the banking syndicate.

15. I am also informed by William Stinson, a director of GFPI, and believe that Mr. Stinson recalls that Mr. Wallace was very obdurate in insisting that my right to receive the tax refunds should stand ahead of the bank's claims, and that was the basis of Mr. Stinson's approval of the transaction.

16. I am informed by Per Brunes, a director of GFPI, and believe that the directors' approval of the arrangement was accompanied by the direction of the Board that the transaction would only proceed if it was a certainty that I would receive the relevant portions of the tax refunds

when they were received by the Company, in priority to any other claims. The transaction was a means of getting money into the Company to assist it with cash-flow, before the tax refunds were actually received.

17. My own comprehension of what was communicated to and by the Board of Directors in respect of the tax refund arrangement is the same as that of the directors described above, and it was on that basis only that I entered into the transaction.

18. This affidavit is sworn in respect of my motion concerning the Agreement, and for no improper purpose.

SWORN BEFORE ME at the City of Temiskaming Shores, in the Province of Ontario, this 18th day of September, 2009.	
A COMMISSIONER FOR OATHS in and for the Province of Ontario	PETER J. GRANT SR.

Monique Marie Plante, a Commissioner, etc.,
District of Timiskaming
for Grant Forest Products Inc. and its associated companies.
Expires May 7, 2011.

IN THE MATTER OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C. 1986, c. C-36, as amended;
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC. GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP (the "Applicants")

Court File No. 09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF PETER J. GRANT SR.
(Sworn September 18, 2009)

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Richard B. Swan (LSUC No. 32076A)
Telephone: (416) 777-7479
Facsimile: (416) 863-1716

Lawyers for Peter J. Grant Sr.

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TAB 2

NETWORK
REPORTING & MEDIATION

One First Canadian Place
100 King Street West, Suite 800
Toronto, ON M5X 1E3

Court File No. CV-09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

--- This is the Cross-Examination of BENJAMIN MONTGOMERY, the Deponent herein, on an Affidavit sworn September 14, 2009, taken at the offices of Network Reporting & Mediation, One First Canadian Place, 100 King Street West, Suite 800, Toronto, Ontario, M5X 1E3, on Friday the 25th day of September, 2009.

APPEARANCES:

RICHARD B. SWAN	]For Peter J. Grant Sr.
MICHAEL BEEFORTH, s-a-l]	
KEVIN P. McELCHERAN	For the Toronto-Dominion Bank

ALSO IN ATTENDANCE:

JANE DIETRICH	Observer
KATHY MAH	Observer

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(NONE)

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--- UPON COMMENCING AT 9:42 AM.

BENJAMIN MONTGOMERY: Affirmed.

MR. SWAN: This is a cross-examination on an Affidavit filed in a motion in a proceeding in the Ontario Superior Court, court file CV-09-8247-00CL in re Grant Forest Products Inc. and related companies.

The cross-examination is a cross-examination on the Affidavit of Benjamin Montgomery which was sworn on the 14th of September 2009 and filed on behalf of the First Lien Credit Agent, I believe, in opposition of the motion of Peter Grant, Sr. in respect of a certain agreement which is described as a Tax Refund Purchase and Sale Agreement from March of 2008.

CROSS-EXAMINATION BY MR. SWAN:

1 Q. Can you state your full name for the record?

A. Benjamin Peter Montgomery.

2 Q. How old are you, Mr. Montgomery?

A. 36.

3 Q. What's your current position?

A. Vice president director TD Securities in the corporate credit group in Vancouver.

4 Q. Can you tell me what your post-secondary education is?

A. Bachelor of Commerce.

5 Q. When did you obtain that?
A. 1999.
6 Q. You're not a lawyer?
A. I am not a lawyer.
7 Q. And you have no legal training?
A. I do not.
8 Q. Can you tell me very briefly what your employment history is post-1999 when you graduated with your B. Com?
A. I've worked in banking since I graduated. All of that time has been spent in credit. First, a few years in commercial banking --
9 Q. With which organization?
A. TD Bank.
10 Q. Have you been with the TD family throughout?
A. I've been with TD just over ten years. I have a few years in commercial, the balance in corporate banking, commercial banking as part of our retail bank. TD Securities is part of our wholesale bank but all of that time spent in credit.
MR. McELCHERAN: It may be easier for the reporter if you speak a little louder and don't put your hand near your face.
THE DEPONENT: Sure.

BY MR. SWAN:

11 Q. Let me just go back a little bit. We have -- among the documents that are potentially relevant to this proceeding is what's been described as the First Lien Credit Agreement which dates from 2005, specifically October 26th, 2005.

And were you involved, in any way involved, with the First Lien Credit Agreement?

A. Yes.

12 Q. What TD entity were you with in October of 2005?

A. TD Securities.

13 Q. So you have since -- at least since 2005 you've been with TD Securities continuously?

A. Yes.

14 Q. And TD Securities Inc.?

A. No.

15 Q. TD Securities?

A. TD Securities is the wholesale banking division of the Toronto Dominion Bank. TD Securities Inc. is a separate --

16 Q. Separate entity?

A. Separate entity, yes.

17 Q. So the TD Securities that you are with is not TDSI; it is a wholesale bank and is a bank under the Bank

Act?

A. I believe it's a trade name of the TD Bank.

18 Q. Oh, it's just a trade name?

A. I believe so. It's referred to as the wholesale banking division in, you know, public, like, reporting and that sort of thing.

19 Q. But it's a division?

A. That's what it's referred to. I can't answer that for sure.

20 Q. It's not a separate legal entity?

A. It's not TD Securities Inc., which is a separate entity.

21 Q. But it's also not a separate entity from the TD Bank; it's part of the TD Bank?

A. Correct.

22 Q. And you are, in fact, an employee of the TD Bank?

A. Yes.

23 Q. Do you have a copy of the First Lien Credit Agreement?

A. Not in front of me.

MR. McELCHERAN: We didn't bring the whole thing. As you know, the Affidavit excerpts some parts of it. But we didn't bring the whole -- if you have the whole --

MR. SWAN: I do. And you have no objection if the whole thing goes in the record?

MR. McELCHERAN: Absolutely not.

THE DEPONENT: Thanks.

BY MR. SWAN:

24 Q. Sir, can you tell me what role you played in respect of what we call the First Lien Credit Agreement from October of 2005?

A. With -- I was directly involved in the negotiation of the Credit Agreement in TD's capacity as a lender under the agreement as well as an agent under the Credit Agreement.

25 Q. And you were involved on behalf of the TD Bank in both capacities both as a lender as part of the syndicate and as an agent?

A. My primary function is as a lender. We have a separate agency group. So my primary involvement was as a lender.

26 Q. Would you turn to page 84 of the document, and I think you'll find that page 84 is replicated three takes because they are counterpart signature pages?

A. Yes.

27 Q. I just want to obtain a little bit clearer understanding of the different roles that both TD and TD entities and you were playing?

A. Sure.

28 Q. You are, and your counsel may wish to answer this question, but as I understand it, you are being proffered as a witness on behalf of the First Lien Agent; is that correct?

MR. McELCHERAN: He is a representative of the TD Bank. He, as he stated in his testimony, was involved in it from the context of the lending part of it but also as part of the agent representative, as a representative of the agent. So he's here in both capacities.

MR. SWAN: But, Mr. McElcheran, you act for the First Lien Agent or do you act for the TD Bank as well as a lender?

MR. McELCHERAN: I act for TD Bank as lender as well.

MR. SWAN: In both capacities?

MR. McELCHERAN: Yes.

BY MR. SWAN:

29 Q. And you're opposing the motion in both capacities?

MR. McELCHERAN: And on behalf of all of the lenders. That is, all of the First Lien Lenders.

BY MR. SWAN:

30 Q. All of the First Lien Lenders. So you represent all of the First Lien Lenders and all of them are opposing?

MR. McELCHERAN: Right.

BY MR. SWAN:

31 Q. Both through the agent and in their individual capacity?

MR. McELCHERAN: Right.

BY MR. SWAN:

32 Q. And looking on page 84, the TD is listed as the Canadian administrative agent, and a Mr. Shiplow has signed the document on behalf of the bank. Do you know who he is?

A. Yes. He works in our agency group.

33 Q. In your Toronto agency group?

A. Correct.

34 Q. You've been in Vancouver continuously since 1999?

A. No.

MR. McELCHERAN: You'll need to say verbal answers.

MR. SWAN: The head shakes don't do it.

THE DEPONENT: Right. Got it.

I've been in Vancouver since 2005.

BY MR. SWAN:

35 Q. So predating this agreement?

A. When this agreement was done, I was in Vancouver.

36 Q. And it looks like you were involved because I see your name listed as a secondary contact for the Canadian revolver?

A. Yes.

37 Q. So you were involved primarily for the TD Bank in its capacity as lender pursuant to the revolver?

A. Correct.

38 Q. And Mr. Shiplow was involved on behalf of TD as administrative agent?

A. Correct, yes.

39 Q. And then another TD entity was involved as U.S. administrative agent?

A. Yes.

40 Q. TD Bank Texas LLC. And the other name that is listed along with yours in terms of the revolver facility is a Frazer Scott. Turn ahead to the third counterpart of page 84.

MR. McELCHERAN: He means the third -- this is copied three times.

THE DEPONENT: Oh, right.

MR. McELCHERAN: And the third one has got this.

THE DEPONENT: Right.

BY MR. SWAN:

41 Q. So who was Frazer Scott?

A. Frazer Scott works with me in Vancouver. He works on the corporate credit side as a -- directly with me.

42 Q. Okay. Is he your boss?

A. We have separate reporting lines. He's more involved on the origination side of the business.

43 Q. On the origination side?

A. On the origination side. But we both work for the same entity.

44 Q. And at this point, back in 2005, was he your boss?

A. No.

45 Q. He was not?

A. No.

46 Q. What was your title in 2005?

A. Vice president.

47 Q. Vice president of what?

A. Corporate credit.

48 Q. And Mr. Scott's?

A. Vice president and director of corporate credit.

49 Q. Vice president and director of corporate credit. So he was, if not your boss, he was at least senior to you?

A. Yes, he was senior to me.

50 Q. And remains so?

A. Yes.

51 Q. And he's still with the bank in Vancouver?

A. Yes.

52 Q. And then the agreement is also signed by Glen Gibson as managing director?

A. Yes.

53 Q. Who was he?

A. He would have, or he is Frazer's boss.

54 Q. So he is the managing director of what?

A. Managing director of TD Securities.

55 Q. TD Securities across the country?

A. Just managing director of TD Securities.

MR. McELCHERAN: What's the significance of the word "managing --"

THE DEPONENT: There's many managing directors within TD Securities.

BY MR. SWAN:

56 Q. And he is --

A. He is the head of credit origination for TD Securities.

57 Q. Head of credit origination for TD Securities?

A. Mm-hmm.

58 Q. All right. And is he still with the bank?

A. Yes, he is.

59 Q. And do you know why it is that you have been put forward as a witness as opposed to Mr. Scott?

A. Mr. Scott is no longer involved with this file.

60 Q. You have continued involvement and he has not?

A. Correct.

61 Q. When did he cease to be involved with the Grant company?

A. I'd say January of this year.

62 Q. And just for the sake of the record so that this is clear, TD, as the what we have described as the First Lien Agent, is authorized, and you might just turn to -- I interrupt that question to turn you back to the beginning of this agreement that lists the parties?

A. Yes.

63 Q. The TD Bank and entities have a number of different roles in respect of this agreement. They were both co- -- TD Securities was a co-lead arranger?

A. Yes.

64 Q. TD was also the book -- TD Securities was also the book manager?

A. Correct.

65 Q. TD Bank was the First Lien Agent, or is the First Lien Agent?

A. Correct.

66 Q. TD Texas is the U.S. Lien Agent?

A. Was.

67 Q. Was? Who is now?

A. Bank of New York.

68 Q. Bank of New York. And the TD Bank is one of the lead lenders as part of the banking syndicate?

A. Correct.

69 Q. And remains so today?

A. Correct.

70 Q. And you told me that when this agreement was drawn up, you participated on behalf of TD, TD Bank, in its capacity as a significant lender?

A. Yes.

71 Q. Have you now taken a role in respect of the TD's capacity as First Lien Agent?

A. No.

72 Q. Someone else has that role?

A. There is a separate agency group.

73 Q. In Toronto here?

A. Yes.

74 Q. That was Mr. Shiplow's group?

A. Mr. Shiplow is a part of that group. There's other people within that group that are also -- I believe Ron Kowpak is the primary agent on this file right now.

75 Q. Ron Kowpak?

MR. McELCHERAN: K-o-w-p-a-k.

THE DEPONENT: Yes. There's a "w" in there.

BY MR. SWAN:

76 Q. All right. So you are not a representative of the First Lien Agent per se?

MR. McELCHERAN: Well, okay, remember that what's going on here is the Toronto-Dominion Bank --

MR. SWAN: Yes. Yes, the Toronto-Dominion Bank.

MR. McELCHERAN: Is the agent.

BY MR. SWAN:

77 Q. Let me put that question differently. You personally haven't had any involvement as a representative of the First Lien Agent. You have been speaking for the TD Bank principally as a lending party as part of the syndicate; that's been your involvement at the very least?

A. I have involvement when -- if TD is for -- I do have involvement when TD makes decisions as an agent.

78 Q. You do have involvement?

A. Yes.

79 Q. And you're consulted?

A. I'm consulted. I do not sign as TD as agent. I would only sign as TD as a lender. So if I was executing this agreement, I would be signing for TD as a lender, not as agent.

80 Q. Okay.

A. But the agency group does -- we do communicate regularly and I would be involved in decisions --

81 Q. Right. And just --

A. -- that TD would make in its agency capacity.

82 Q. Just so we're clear about that, there are no walls between TD as agent and TD as lender; there's a free flow of communication between those parties?

A. Generally. There may be times when walls are necessary, but generally speaking, no.

83 Q. And as far as you know in this case there was no wall established?

A. That's correct.

84 Q. And just so that we have this for the sake of the record, the agent is authorized to speak on behalf of the syndicate, isn't it?

MR. McELCHERAN: Well, that is a legal question. The agency role in this -- the lenders in the CCAA process, because this goes outside the document, in the

CCAA process, it's our position that each of the lenders has a right to appear as a creditor in the process.

So there's agency issues which are directed to the role of the agent within the document, and that's set out within the document, and there's -- otherwise, the lenders are entitled to participate in the CCAA process, to vote and appear in court and do all those things.

MR. SWAN: That wasn't really where I was going, but thank you for that.

BY MR. SWAN:

85 Q. My question for you, Mr. Montgomery, is this, that the purpose for having an agent is to deal with administrative matters and to speak on behalf of the syndicate?

A. I agree the agent is to deal with administrative matters. To speak on behalf of the syndicate, I'm not sure I agree with that.

86 Q. I see. Well, we'll come to this a little bit later, but a discharge was given --

A. Yes.

87 Q. -- in March of 2008, and that was given by the agent on behalf of the syndicate, wasn't it?

A. Correct.

88 Q. And it wasn't necessary for each of the participating members of the syndicate to provide that

discharge?

A. Correct.

89 Q. The agent was authorized to speak on behalf of the syndicate?

MR. McELCHERAN: Well -- okay --

BY MR. SWAN:

90 Q. In that case?

MR. McELCHERAN: The fact is that a discharge was given by the agent. What the agent needed to do in order to be authorized to deliver a specific document is an issue that is a different point.

BY MR. SWAN:

91 Q. Right. But the agent did purport to speak on behalf of the syndicate at that point?

A. Yes.

MR. McELCHERAN: I mean you're -- I don't want to mince words. I just want to make sure that you're clear. Speaking for, articulating, a position, that's different from delivering a document, which is not speaking for; it's delivering a document.

THE DEPONENT: I'm delivering a document on behalf of the lenders.

BY MR. SWAN:

92 Q. Just so that there's no confusion about my question, --

A. Sure.

93 Q. -- in that case, what was required of the First Lien Lenders or what was sought from them was this discharge document; correct?

A. No.

94 Q. No?

A. The first -- all -- there was nothing required of the lenders. The only --

95 Q. Right. That's why I changed my question. It wasn't required but it was provided?

A. By the agent.

96 Q. By the agent. And the agent was providing that on behalf of the syndicate?

A. Yes.

97 Q. Thank you. And the TD -- I don't know that this is particularly pertinent, but just so that we have it clear, the TD Bank was also the Second Lien Agent for a time until May of '09?

A. Yes.

98 Q. And that role has now been taken over by...?

A. Bank of New York.

99 Q. Let's mark the First Lien Credit Agreement as Exhibit 1 to this cross-examination. So Exhibit 1 is what we have described as the First Lien Credit Agreement that bears the date October 26th, 2005?

EXHIBIT NO. 1: First Lien Credit Agreement dated October 26th, 2005.

BY MR. SWAN:

100 Q. When did you, Mr. Montgomery, first hear of or have any involvement with a proposed tax refund purchase arrangement between Grant Forest and Mr. Grant Sr.?

A. March 2008.

101 Q. And can you tell me how that arose? Your involvement, that is.

A. We received a proposal -- not a proposal. I guess we were advised that Grant Forest Products was going to breach it's liquidity covenant, and in order to avoid doing that, the shareholders intended to inject capital in a manner that wouldn't breach the Credit Agreement, and we received a structure from the client and their counsel as to how they intended to do that.

102 Q. Who did you get that from?

A. I don't recall.

103 Q. Do you know who received it at the bank; was it sent to you?

A. I suspect Frazer Scott at the time, and I would suspect it came from Peter Lynch, but I mean I'm not -- I don't know for sure.

104 Q. And did it come from Peter Lynch or did it

come from the company's counsel?

A. I don't know.

105 Q. And your belief is that it was sent to you as a draft agreement or as a structure form of termsheet -- not a termsheet but an outline of structure?

A. I don't recall if it started as a proposed structure or if it started off as here's the draft agreement. I don't recall.

106 Q. And that was sometime in March of 2008?

A. Yes.

107 Q. And you believe that was sent to Frazer Scott?

A. I believe it would have -- I believe, yes, yes, I do.

108 Q. And then how did you get involved in it?

A. Frazer would have brought -- we both managed the file together, so we would have --

109 Q. Let me just stop you there. You're saying he "would have." That suggests to me that would have been the practice but you may not actually remember that?

A. I think the reason I'm saying "would have" is that I don't know for sure that it came from Frazer.

110 Q. I see.

A. For all I know, I got it directly from Peter Lynch, but I don't recall. I think it probably came from

Frazer.

111 Q. So you think that's what happened but you're not certain?

A. Correct. I do know for sure I saw it.

112 Q. So you got it?

A. Yes.

113 Q. And can you produce to me the document that was sent to the bank that you're referring to?

MR. McELCHERAN: We don't have it here.

MR. SWAN: Yes. No, I understand that but --

MR. McELCHERAN: We can produce it.

--- UNDERTAKING

THE DEPONENT: I would suspect it's an email.

MR. SWAN: You'll have to keep your voice up just a bit.

THE DEPONENT: Sure.

MR. McELCHERAN: Counsel, could you help us by showing him one if you have a copy of it?

MR. SWAN: I don't have a copy of it.

MR. McELCHERAN: I'm not surprised at that.

BY MR. SWAN:

114 Q. Well, let me show you a document. There was a structure that was attached to certain minutes of the board of directors meeting of March the 27th, 2008 that's at tab A of Mr. Grant's Affidavit, pages 23 through 26 of

the record.

MR. McELCHERAN: I have that.

BY MR. SWAN:

115 Q. I, of course, have no idea what you got or saw, but I'm showing you this document simply because it is an outline of the structure --

A. Correct.

116 Q. -- to see if that reminds you what you might have received, whether it was an outline or whether it was an agreement. Go ahead.

A. I suspect you may be correct. What I recollect seeing was probably the summary of proposed sale.

117 Q. But you're not certain one way or the other?

A. No.

118 Q. You may have seen the agreement?

MR. McELCHERAN: We'll produce what he did get.

BY MR. SWAN:

119 Q. And what did you do?

A. We talked to lenders' counsel to ensure that it -- what was proposed did not breach the Credit Agreement.

120 Q. When you say "we" talked to lenders counsel, who is "we"?

A. Frazer and I.

121 Q. You and Frazer. You're certain Frazer was involved in that conversation?

A. Yes.

122 Q. And who did you speak to? Did you speak to Linda Pieterson at McCarthys or did you speak to Matt O'Meara?

A. Both Linda and Matt were involved.

123 Q. Because I see their names on an email that you approved?

A. They were both involved in those discussions.

124 Q. And Linda Pieterson is a corporate lawyer, corporate partner, at the McCarthy Tetrault firm in Toronto?

A. Yes.

125 Q. And Matt O'Meara is a lawyer in United States?

A. With Winston Straun.

126 Q. In New York?

A. Yes. No, In Chicago.

127 Q. In Chicago?

A. Yes.

128 Q. So you and Mr. Scott spoke with both of them?

A. Either spoke to or received correspondence from them by email.

What I'm trying to get at is either we spoke to them or we confirmed by email that it didn't breach the Credit Agreement.

129 Q. So you're not sure if you spoke to them. You communicated with them?

A. Communicated with them.

130 Q. Either orally or by email?

A. Correct.

131 Q. And the conclusion of that was that this proposed structure, this proposed transaction, did not breach the First Lien Credit Agreement?

A. And the Second Lien Credit Agreement.

132 Q. Or the Second Lien Credit Agreement?

A. Correct.

133 Q. And do you have an email or other piece of correspondence in which that view is expressed?

A. TD -- in expressing it internally? Or counsel expressing it?

134 Q. Well, either one.

MR. McELCHERAN: Okay. I don't know whether we do or not here. What I will -- of course there's an issue of privilege relating to that and I want to review it to see.

I recognize in this context that in this examination you've asked -- he's given an answer, that he received advice of a specific nature, and so I think it's fair that you get production of that advice, but -- and I think the privilege with respect to that's waived, but there may be other elements of that communication which are not waived.

So what we'll do is I'll undertake to produce that portion of that communication that's in the documentary record that confirms the statement he made and excise any other advice on the basis of privilege.

--- UNDER ADVISEMENT

MR. SWAN: Well, I'll have to see what you give me before I tell you whether I agree with what you've done or not.

MR. McELCHERAN: Fair enough.

BY MR. SWAN:

135 Q. Now, when you were having those discussions with Mr. Scott and with your counsel, you were doing so in your capacity as a lender? When I say "you," let me put that question more precisely since there are so many different related entities here.

When you were having that conversation, you were doing so on behalf of TD Securities, i.e. TD Bank, in your capacity as a lender as part of the lending syndicate?

A. No.

136 Q. In what capacity were you having that discussion?

A. It would be in the capacity as agent. Because the lenders were not required to consent, so we were working with the agent to ensure that the agent was authorized -- had the ability to execute the document.

137 Q. So in this case, you were, in effect, assisting TD as agent or acting in that capacity?

A. That's fair.

138 Q. And did you have discussions with Mr. Shiplow or anyone else at 77 King Street?

A. I don't specifically recollect but Mr. Shiplow -- and I also don't know if it was Mr. Shiplow or Mr. Kowpak, but whomever signed -- actually, I think it's part of the exhibit here.

MR. McELCHERAN: The witness is ref-- which exhibit are you referring to?

THE DEPONENT: This one here.

BY MR. SWAN:

139 Q. Tab D. Tab D of Mr. Grant's first --

A. So this was signed by Mr. Kowpak and Mr. Murray. Mr. Kowpak was representing TD Bank as agent and

Mr. Murray, TD Texas as agent.

We would have -- either myself or Frazer would have had discussion with them to confirm that it is our view that this transaction as proposed did not breach the Credit Agreement.

Lenders -- the agent, I presume, would have -- when we provide the confirmation from lender's counsel, that would have been what the agent relied on in order to execute it.

140 Q. And, presumably, there would have been some communication between your office in Vancouver and Mr. Kowpak's office in Toronto?

A. Yes.

141 Q. Can you produce that communication or those communications to me?

A. If it was in writing. It may have been by phone.

--- UNDERTAKING

142 Q. And if it -- okay. Thank you. If it's in writing, I'll wait to see them. If it was by phone, the thrust of what -- was it you that would have had the communication or you don't remember?

A. I don't recall. It would have been -- definitely would have been Frazer or I. I suspect Frazer.

143 Q. And the thrust of what would have been communicated was this Tax Refund Agreement is compliant with the two Lien Credit Agreements?

A. Yes.

MR. McELCHERAN: And, Counsel, if it can be of any help, you asked us to produce documents or correspondence for the time periods, and one of the documents that I brought is an email which has got -- which -- one of the people in the chain is Mr. Kowpak, and it's in response to a request for a check into what happened around the $20 million injection, and it includes -- I've given it to you. The email is dated February 10th of 2009 from Mr. Kowpak. So if that's of any help, it has a description of the transaction as an insert.

MR. SWAN: I will come to that in a moment. Thank you.

MR. McELCHERAN: Sure.

BY MR. SWAN:

144 Q. And what communication was there between your office and TD Texas LLC as U.S. agent?

A. I don't recall.

145 Q. Presumably there would have been some?

A. Yes, presumably.

146 Q. If that is in writing, either correspondence

or email, can you produce that to me?

A. Sure.

--- UNDERTAKING

BY MR. SWAN:

147 Q. Mr. Murray is based in New York?

A. Toronto now.

148 Q. At the time though?

A. I believe he was in Toronto at the time as well. There was a time that he was in Texas. I believe he's -- I believe -- I'd have to get back to you to confirm that.

149 Q. All right. In any event -- I don't really need to know that, but he was acting as representative of TD Texas?

A. Yes.

150 Q. And what other members of the syndicate were involved in this discussion? Not that discussion but any of these communications taking place in March of '08?

A. None.

151 Q. And why was that?

A. There was no need to consult lenders provided that it complied with the Credit Agreement.

152 Q. And that was the view you held?

A. Yes.

153 Q. And so, therefore, you didn't consult them?

A. Correct.

154 Q. Now, you've said a couple of times that this discharge wasn't required, this partial discharge, in 2008. Why do you say that? I just want to understand your evidence on that point.

A. Can you --

MR. McELCHERAN: I'm not sure that you're correctly stating what he said.

THE DEPONENT: Can you point me to where I said what you're referring to?

BY MR. SWAN:

155 Q. Well, I'm not referring to anything in the document.

A. Okay.

156 Q. What I'm referring to is in your oral evidence here this morning --

A. Yes.

157 Q. -- you have, I thought, said a couple of times that a partial discharge was not required.

A. Not required for what?

158 Q. I thought that was your evidence?

A. I don't recall saying that.

159 Q. Was a partial discharge required?

A. For what?

160 Q. Well, it was given.

A. Yes.

161 Q. And why was it given?

A. Because we were requested to provide it.

162 Q. But in your view -- I thought you had said in your view, given that this was on-side the credit agreements, it wasn't required, from your perspective?

A. I think it's consent that was not -- lender consent was not required.

163 Q. I see.

A. So we didn't need to canvass -- the lenders did not need to vote on is what is not required.

If it was in breach of the Credit Agreement, then that would be something where you require lender consent.

164 Q. So because -- just so we're clear about that then, because the Tax Refund Purchase and Sale Agreement was compliant and not in breach of either the First or Second Lien Credit Agreement, there was no need to canvass the lending syndicate?

A. Correct.

165 Q. And you say that the partial discharge was given simply because it was requested by the company?

A. Yes. We would not have provided the discharge if not asked to do so.

166 Q. All right. And what communications did you have, you or the bank have, with the company in March of

2008? You told me that you were provided with either an outline of the agreement or the agreement itself.

A. Mm-hmm.

167 Q. What other communications did the bank or entities affiliated with the bank have with GFPI in March of 2008?

A. I don't recall specifically.

168 Q. Were there any?

A. There would have been some discussion. As to what, you know, the form of those discussions and what was communicated, I don't recall specifically.

169 Q. Were any of them in writing?

A. Likely.

170 Q. Would you look for those and produce them to me?

A. Yes.

MR. McELCHERAN: So let's be clear. I want to make sure I write down the undertaking correctly. So the undertaking is to review correspondence with -- who?

MR. SWAN: Between the bank -- and when I say the "bank," let's define --

MR. McELCHERAN: You mean all parts of the bank?

MR. SWAN: All parts of the bank. And representative of Grant Forest Products, and also between solicitors for the bank and solicitors for Grant Forest

Products

MR. McELCHERAN: Okay. Including counsel for each. And during what period?

MR. SWAN: At this point, March of 2008.

MR. McELCHERAN: During March 2008.

MR. SWAN: And I suppose if there is --

MR. McELCHERAN: Obviously relevant to --

BY MR. SWAN:

171 Q. Relevant to the tax refund Purchase and Sale Agreement.

And I say March because the discharge was given in March. If there was a little bit of hang-over correspondence in the first couple of weeks in April, I ask for that as well.

A. I suspect there wasn't.

MR. McELCHERAN: Okay.

--- UNDERTAKING

MR. McELCHERAN: Okay. All right.

BY MR. SWAN:

172 Q. And do you know if your solicitors were involved, the bank's solicitors were involved, in March of 2008 other than the one conversation you had?

A. Involved in what?

173 Q. Involved in respect of this Tax Refund Purchase and Sale Agreement.

A. They were involved to the extent that they confirmed to the agent that there was -- that it was in compliance with the Credit Agreement.

174 Q. And they would have reviewed the agreement?

A. They would -- yes, they would have reviewed the agreement.

They also were relying on -- and I believe counsel for the borrower also confirmed that that was their view.

175 Q. So they reviewed the agreement. And do you know whether they provided input into any language in the agreement?

A. I don't know. I don't believe that they did though.

176 Q. Can you look at Exhibit C to your Affidavit?

A. Yes. Is that the email?

177 Q. Yes. This is the email from Mr. Walker to Ms. Pieterson and Mr. O'Meara?

A. Yes.

178 Q. And I think Mr. McElcheran name is on the top merely because he was the individual who printed the email?

MR. McELCHERAN: Yes, it was sent to me for the purpose of including it in the record.

BY MR. SWAN:

179 Q. So, it appears, looking at your Exhibit C, that Mr. Walker, who was solicitor for the company, GFPI, sent an email to Ms. Pieterson and Mr. O'Meara, who were the solicitors for the bank, TD Bank?

A. For the lending syndicate.

180 Q. For the lending syndicate. And the email says:

"In accordance with your request, Mr. Walker confirms his view that the Tax Refund Agreement does not contravene either of the Lien Credit Agreements." [as read]

Do you know how that request was made?

A. No, I don't.

181 Q. If it was made in writing, could you produce it to me? I suspect it's captured --

MR. McELCHERAN: Yes, it's already captured by the previous undertaking.

BY MR. SWAN:

182 Q. And it includes -- "it" being this email at tab C, Exhibit C to your affidavit -- concludes by saying, Mr. Walker saying, "Please confirm that the foregoing also reflects your views" -- "your" being solicitors to the syndicate. Do you know whether they responded to Mr. Walker?

A. No, I don't.

MR. McELCHERAN: Again, it will be covered by the undertaking so -- if they communicated in writing. But just so we're clear, Counsel, because I'm confused about this line of questioning, there's no doubt that our position is that the agreement -- there's no disagreement about -- with the statement that's made in the Affidavit as far as -- in this email.

MR. SWAN: Thank you.

MR. McELCHERAN: We're not in any way debating whether this complies or doesn't comply. We agree that it does.

BY MR. SWAN:

183 Q. Okay. And that correspondence looks like if there was a response to this, it probably was right at the beginning of April since this was sent the last day in March?

A. That's true.

184 Q. Now, you have brought with you some emails this morning, and one of them is an email from February the 10th, 2009?

A. Yes.

185 Q. That you wrote to Bill O'Connor?

A. Yes.

186 Q. And it's found at the bottom of an email from

Mr. Kowpak to Mr. O'Connor, copied to you?

MR. McELCHERAN: Yes. This is the one.

THE DEPONENT: Yes.

MR. McELCHERAN: It starts off with Kowpak, O'Connor, Montgomery.

THE DEPONENT: Right.

BY MR. SWAN:

187 Q. So you received this email chain?

A. I initiated it.

188 Q. And you ultimately received the email on the top?

MR. McELCHERAN: This one.

THE DEPONENT: The one from Ron, yes. Mr. Kowpak, yes.

BY MR. SWAN:

189 Q. So let's mark then as the next exhibit, I believe it's Exhibit 2, an email chain which has as its last email an email from Mr. Kowpak to Mr. O'Connor copied to Mr. Montgomery and others on February 10, 2009, at 6:45 p.m.

EXHIBIT NO. 2: Email Chain, the Last Email being from Mr. Kowpak to Mr. O'Connor dated February 10, 2009, at 6:45 p.m.

BY MR. SWAN:

190 Q. And let's begin with the email that began

this chain. And we're a little bit out of context or out of time line here because there are some events that happened between March of 2008 and February of 2009, but I refer to this email at this point because it appears to contain a summary prepared by the TD Bank of the Tax Refund Purchase and Sale agreement that appears at page 2 and on to page 3 of the email that we just marked as Exhibit 2; correct?

A. Correct.

191 Q. And focussing on that summary, it looks like that summary has been drawn from or cut and pasted from another document that was prepared in 2008?

A. Yes.

192 Q. Is that correct?

A. That is correct.

193 Q. And what was that other document?

A. It was an internal credit.

MR. McELCHERAN: Okay, internal credit, maybe you have to expand what "internal credit" means.

BY MR. SWAN:

194 Q. What do you mean by that?

A. It's an internal document -- it's a document prepared for internal use that the bank will use to opine on credit -- well, it could just be a general update. So there could be no internal approvals -- it's just the way

we used to document credit issues or to make credit decisions or to provide updated material.
195 Q. So it's an internal memorandum that records facts that are relevant to a particular borrowing?
A. Facts and opinions.
196 Q. Facts and opinions that are relevant to a particular loan or a particular credit facility?
A. Yes.
197 Q. And who prepared the -- this internal credit memorandum that we see excerpted here in Exhibit 2?
A. Myself and an associate that works with me.
198 Q. Who was that?
A. Chris Sfikas.
199 Q. That's spelled S-f-i-k-a-s?
A. Yes.
200 Q. He works under you?
A. Yes.
201 Q. And when was that credit memorandum prepared?
A. I don't know the exact date but prior to March 31st. So I would suspect sometime in March.
202 Q. March 31, 2008?
A. Yes.
203 Q. And the context is that you have been provided with the Tax Refund Agreement or an outline of

the agreement?

A. Yes.

204 Q. And then you have provided a summary and opinion in relation to it?

A. Summary and opinion from?

205 Q. From you.

A. I -- well, you were saying I was provided.

206 Q. No. You provided?

A. Yes, I provided a summary and opinion.

207 Q. And is this memorandum addressed to anyone in particular or does it just go in the file?

A. It's not addressed to anybody in particular. It would have gone to our risk management group.

208 Q. In Toronto or Vancouver?

A. Toronto.

209 Q. Would it have been sent to Frazer Scott?

A. No.

210 Q. He didn't see it?

A. He may have seen it but he wouldn't -- it would not have been sent to him.

211 Q. Might he have seen it before it was sent to your risk management group?

A. He may have.

212 Q. Might he have commented on it and edited it?

A. He may have.

213 Q. You don't recall one way or the other in this case?

A. I don't recall.

214 Q. Can you produce to me that original internal credit memorandum?

MR. McELCHERAN: Yes.

--- UNDERTAKING

BY MR. SWAN:

215 Q. And did this credit memorandum play any role in the TD Bank's conclusion that the Tax Refund Agreement was compliant with the First and Second Lien Credit Agreements?

A. No. We relied on counsel for that opinion.

216 Q. So was there a specific purpose for this credit memorandum or was it simply to document the bank's perspective on the matter?

A. It would have been provided just as an update to the file as to what's going on.

217 Q. And when it was sent to your risk management group, why is it sent to them?

A. That's where all of these -- the whole purpose of this is to be keep our risk management group up to date. So any credit memorandum that's produced would ultimately go to our risk management group.

218 Q. Would you have received a response from the risk management group?

A. Yes, I would have.

219 Q. What did they say to you?

A. I don't recall. I'd have to produce it. But it could be anywhere from "noted" to "authorized," depending on what the nature of the -- I don't recall exactly if there was other elements to this credit.

MR. McELCHERAN: We'll produce it and we'll see what it says when we get it.

MR. SWAN: Thank you.

THE DEPONENT: But there would have been some sort of a response.

BY MR. SWAN:

220 Q. And was an affirmative response from them necessary before you in effect signed off on this?

A. No. We just needed a confirmation from lender's counsel that it was in accordance with the agreement -- lender's counsel.

MR. McELCHERAN: In looking at the document, there's no request.

MR. SWAN: We only have an excerpted version.

MR. McELCHERAN: Right. You're absolutely correct. So when we see the whole document, we'll see whether or not there's a request and a response to the request.

BY MR. SWAN:

221 Q. So looking at your summary, the second bullet point indicates that the capital will be injected in a manner that does not require any consents from the lenders. And were you in effect recording what you had been told by your counsel or was that your own conclusion?

A. A little bit of both. I mean that was -- I agreed with the opinion from our counsel.

222 Q. And in the third bullet point you note that the capital will not be injected as equity?

A. Yes.

223 Q. And that was your perspective at that time?

A. Yes.

224 Q. And remains your perspective today?

A. Can you rephrase that?

225 Q. You haven't changed your mind on that point?

MR. McELCHERAN: Okay, there's a question -- I think the confusion is because there's a subsequent events which is causing confusion in the witness's mind. You're asking about this transaction, whether this transaction was equity?

MR. SWAN: Yes.

BY MR. SWAN:

226 Q. This transaction, the tax refund purchase transaction, was not equity?

A. I never viewed it as equity.

227 Q. And you continue not to view it as an equity injection?

A. Yeah, that's correct.

228 Q. And your understanding now, looking at the fourth bullet point, and specifically item Roman II under the fourth bullet point, your understanding at the time that you prepared this credit memorandum was that the borrower -- that's GFPI; correct?

A. There's other borrowers but that's the primary.

229 Q. The primary borrower being Grant Forest broadly defined?

MR. McELCHERAN: And it is -- that borrower has the returns.

THE DEPONENT: Right.

MR. McELCHERAN: That GFPI's borrower has the tax returns.

THE DEPONENT: Yes. When we refer to the "borrower," it's --

BY MR. SWAN:

230 Q. And the purchaser is Mr. Grant Sr.?

A. Yes.

231 Q. And looking then at the bullet point 4 Roman sub five, at the time you prepared this memorandum, it was your expectation that the purchaser, Mr. Grant, would receive the proceeds of the 2008 tax refunds in late 2008?

A. Yes.

232 Q. And that Mr. Grant would receive the proceeds of the monetized '09 tax refunds in 2009?

A. In 2009 I don't recall if I had a sense of timing.

233 Q. Well, you say late 2009.

A. Okay, then there it is.

234 Q. And you note in the sixth bullet point at the bottom, towards the bottom of the page, that the structured -- you call it the "highly structured nature of this transaction is not so that the shareholders can avoid injecting straight equity." [as read]

That was not the purpose of this structure?

A. Actually, I believe that's a typo.

235 Q. You believe the word "not" should not be there?

A. Yes.

MR. McELCHERAN: The reason for that conclusion is the next sentence is inconsistent with it.

THE DEPONENT: Right.

BY MR. SWAN:

236 Q. And one of the -- while we're on this point, one of the reasons that this was done in two phases was that the $10 million figure, the maximum U.S. $10 million figure, each year was necessary to stay on-side the First Lien Credit Agreement?

A. And the Second Lien.

237 Q. And the Second Lien Agreement. So you couldn't do both transactions, both $10 million tranches, in one calendar year?

A. Correct.

238 Q. And the reason that the second tranche was on January 2nd, the first business day of '09, was simply to have that mechanic of putting it in the second calendar year?

A. Yes.

239 Q. Correct?

A. Yes.

240 Q. And then can you read the last bullet point?

A. "TD as Agent (for both 1st and 2nd lien) will provide the partial discharge of security (refer (ii) above) referred to above..."

241 Q. Carry on.

A. "... the basis of an opinion from lenders' counsel that the structure does not conflict with the credit agreement."

242 Q. And indeed you got that confirmation, didn't you?

A. I assume that we did.

243 Q. And it was your personal view that this structure didn't conflict either of the Lien Credit Agreements. You've already told me that; right?

A. Yes.

244 Q. Now, if you look at paragraph 7 of your Affidavit, you make reference to this language that Mr. Grant had used in his Affidavit, that the Tax Refund Agreement was devised and structured in a particular way?

A. Yes.

245 Q. But just to be clear about this, before March 31, 2008 the bank knew how the agreement -- on or before March 1st, 2008 the bank knew how the agreement was structured, didn't it?

A. It knew how it would. It hadn't been closed at that point. So we knew how it would be structured.

246 Q. In fact, it was closed on March 1, 2008?

A. But we knew how it would be structured, yes.

247 Q. And the bank got a copy of the agreement?

A. We have to -- we will produce -- whether it was a draft or the final form, I don't recall.

248 Q. But you knew what the structure was?

A. Yes.

249 Q. And you don't think that the agreement itself -- I take it you're not asserting that the agreement itself is inconsistent with the structure that you were told about?

A. I'm not, no.

250 Q. And so this reference to the fact that the agreement was devised and structured to comply with the credit agreements, that was something -- the manner in which it was structured was something the bank knew about at the time, wasn't it?

A. Yes.

251 Q. And having reviewed that, came to the view that this was compliant with the credit agreements?

A. Yes.

252 Q. And the bank certainly didn't say to the company, "Do not do this"?

A. We didn't have the ability to say that.

253 Q. Well, whether you had the ability or not, you didn't say it?

A. No.

254 Q. And the bank, as agent, provided discharges on March 31, 2008?

A. Yes.

255 Q. And just looking at those discharges, they're in Mr. Grant Sr.'s Affidavit at tab D. We looked at them earlier. Those discharges specifically reference the Tax Refund Purchase and Sale Agreement as of March 31, 2008 in the "re" line, don't they?

A. Yes.

256 Q. Can you provide me, and I think this is probably captured by the earlier undertaking, but can you provide me with either the email or the letter that enclosed these discharges?

MR. McELCHERAN: I will.

--- UNDERTAKING

MR. SWAN: I think it's probably captured, but no sense in not being specific.

BY MR. SWAN:

257 Q. So looking at paragraph 7 of your Affidavit, the bank, in fact, had no objection to the manner in which this agreement was structured, did it?

A. No, I don't think that's -- we didn't have an opinion one way or another. Our focus was solely that it was in compliance with the credit agreement. We didn't have the ability to object to it, so.

258 Q. Well, you at no point communicated any objection to the company about this agreement?

A. That's true.

259 Q. Now, in paragraph 8 of your Affidavit you refer to an excerpt of certain parts of the Credit Agreement that may be relevant to the issues on this -- on this motion. Was it you that identified these four elements that you thought were relevant or was it somebody else?

A. For which purpose?

260 Q. For the purpose of your Affidavit?

A. It was me.

261 Q. You went through the agreement and identified those four elements?

A. Yes.

262 Q. But you weren't purporting to give a legal opinion or anything like that?

A. No. I was just identifying areas that I think are relevant here.

263 Q. And then in respect of paragraph 9, who identified these elements of the agreement; did you do that or did somebody else?

A. Do which?

264 Q. For the purpose of your Affidavit, who identified these elements at A through I of sub 9; was it

you or was it somebody else?

A. I mean McCarthys was involved in drafting this. I don't recall if --

265 Q. Well, did you say, "I want to refer to these eight or nine elements of the agreements" or did someone else sort of prepare that for you and you looked at it?

A. It certainly was prepared and I looked at it. I had opinion on it as to what should be included. I don't specifically recall which ones, if I specifically said this is missing and I want to include it.

266 Q. Just take a look at paragraph (h), for example, 9(h). It refers to the fact, or it says, that the obligation to deliver the transfer was not secured such that any loss suffered by Mr. Grant was an unsecured claim against GFPI?

A. Correct.

267 Q. You're not purporting to express a legal opinion there, are you?

A. No. This is my interpretation of the agreements.

268 Q. Right. But you're not a lawyer?

A. I am not a lawyer.

269 Q. And it's really for the court to decide what is a secured and unsecured claim, isn't it?

A. Agreed.

MR. SWAN: Why don't we take a five-minute break.

--- Recess taken at 10:44 AM.

--- Upon resuming at 10:53 AM.

BY MR. SWAN:

270 Q. So as of March 31, 2008, the bank was content with this Tax Refund Purchase and Sale Agreement structure?

A. I don't know if that's fair. The bank believed the structure was in compliance with the credit agreement.

271 Q. Right. And presumably the bank was not unhappy that $20 million went into the company as a form of cash flow?

A. I think that the fact that $20 million was necessary to be injected to maintain compliance with covenants was a great concern for the bank.

272 Q. But the fact that it went in as opposed to didn't go in was something that the bank would have been pleased with?

A. Not necessarily.

273 Q. You'd rather that the money hadn't gone in?

A. I think at the time, you know, to be honest, we might have been happier if the loan had simply been repaid rather than, you know, if they were going to default on it.

274 Q. Aside from the loan being repaid, if the options were status quo no $20 million, status quo plus 20 million, you're happier with status quo plus $20 million, presumably?

A. Not necessarily.

275 Q. Not necessarily?

A. If they breach a covenant and they have to come back for waivers, I have the ability -- the lenders may have an option to review pricing, to review other terms of the facility.

276 Q. Anyway, you told me you didn't object to it; right?

MR. McELCHERAN: You didn't object.

BY MR. SWAN:

277 Q. Didn't object?

A. The bank did not object.

278 Q. Right. Let's move forward. In the fall of 2008, the company receives its 2008 tax refund and it pays out approximately U.S. $10 million to Mr. Grant. The bank became aware that?

A. I don't think we were ever advised.

279 Q. But you expected that was going to happen?

A. Yes.

280 Q. And you knew that was the structure?

A. Yes.

281 Q. And then this mechanic of the 2009 closing for January 2, '09 is coming up. And when did the bank, TD Bank, became re-engaged in any issues concerning the Tax Refund Purchase and Sale Agreement?

A. What are you -- can you explain "engaged" I guess.

282 Q. When did you next hear or to your knowledge anyone in the bank next hear of any matter, issue or otherwise concerning the Tax Refund Sale Agreement after March of 2008?

A. When we got the notice from Peter Grant -- when Peter Grant filed the -- what do you call it? This. (Indicating) .

MR. McELCHERAN: The motion.

THE DEPONENT: Yes, when the motion was filed.

BY MR. SWAN:

283 Q. Maybe you're taking my question too literally. Did you have any involvement or any knowledge of any issues involving the tax refund purchase and sale agreement in the latter part of 2008?

A. I think I need you to explain what you mean by "issues."

284 Q. Well, did you do anything in the latter part of 2008 that was in any way connected with this Tax Refund Purchase and Sale Agreement?

anything more limited than that.

A. Okay.

292 Q. When did you next -- after March 31, 2008, when did you next think about --

A. So you're wondering --

293 Q. Let me finish and then you can speak.

A. Sure.

294 Q. When did you next think about or have any involvement with this agreement after March 1, 2008?

A. Okay. So the clarification is helpful because I think it's -- I didn't have any involvement but I did start thinking about it in early February of 2008. Nine, sorry, early February 2009.

295 Q. Nothing before then?

A. I think I started discussing it internally with in my colleagues in February. I may have thought about it prior to that.

296 Q. Were there any communications between the company and the bank in December or January -- December 2008 or January 2009 that were in any way connected with the Tax Refund Purchase and Sale Agreement?

A. Not that I'm aware.

297 Q. Could you look and advise me, and if there were, produce them?

MR. McELCHERAN: Yes.

A. No.

285 Q. And do you know to your knowledge did anyone else in the bank do anything that was in any way connected with this Tax Refund Purchase and Sale Agreement?

A. I'm not aware and I don't believe so.

286 Q. What about any other lenders in the lending syndicate?

A. I couldn't answer that. I'm not aware.

287 Q. So there are some emails that you have given me in the very least in the early part of February, Exhibit 2?

A. Yes.

288 Q. Is an email from you to Bill O'Connor?

A. Right.

289 Q. That -- dated February 10, 2009, that provides Bill O'Connor with a summary of this Tax Refund Purchase and Sale transactions?

A. Yes.

290 Q. So obviously the issue surfaced again and came into your consciousness, didn't it?

A. Yeah, it surfaced internally. So I was taking your question as being was I involved with anything -- yes, we were thinking about it internally.

291 Q. Okay. I didn't intend my question to suggest

--- UNDERTAKING

BY MR. SWAN:

298 Q. And do you know anything about a request for a discharge in late December or early Jan-- late December 2008 or early January 2009?

A. I know from our agent that no request was ever received.

299 Q. Who told you that?

A. Ron Kowpak.

300 Q. When did you learn that?

A. There's an email included in the exhibits here.

301 Q. It may be Exhibit 2.

A. Dated September the 10th where I asked Ron to confirm that.

302 Q. September the 10th?

MR. McELCHERAN: It is the one that's Exhibit 2, I believe.

THE DEPONENT: So this email Ron did confirm, probably September 13th or 14th, somewhere in that area, that he never did receive a request.

BY MR. SWAN:

303 Q. I see. So looking at Exhibit 2, on February 10th, 2009, you asked Mr. O'Connor -- sorry, Mr. O'Connor asked Mr. Kowpak to see if security was discharged, and

Mr. Kowpak writes back to Mr. O'Connor and copies you and says -- this is again in Exhibit 2 -- by email February 10 --

A. Yes.

304 Q. -- 2009 that the only discharge was the one from March of '08 and he hadn't received a request on the '09 to this point?

A. Correct. And he reconfirms that in September. So subsequent to February 10th he had not received such a request.

305 Q. Now, when did Mr. O'Connor become involved in the GFPI matter?

A. January of 2009.

306 Q. And is he in a special department of the bank?

A. He's in the same department that I'm in.

307 Q. Why did he become involved?

A. He has restructuring experience.

308 Q. And how did it come about that you prepared this email to Mr. O'Connor on February 10th? What preceded this email?

A. We were in the process of developing a termsheet that would be used as a means, I guess, for the First Lien Lenders to consider restructuring their credit facilities to enable the company to continue to operate as a going concern.

309 Q. Keep your voice up.

A. Yes.

310 Q. Who made that request of you?

A. When I think of request, I think of an official request. We never received any official request to do that.

311 Q. This is a lower case "R" request?

A. Yes. So we were working with Peter Lynch primarily. That would be the primary.

312 Q. Was Hap Stephen involved? H-a-p S-t-e-p-h-e-n.

MR. McELCHERAN: Yes, it's p-h.

THE DEPONENT: Those would be the two primary people that we were developing the term sheet with.

BY MR. SWAN:

313 Q. When did that process start either informally or formally?

A. So informally talking about it.

314 Q. Yes.

A. January, I would say.

315 Q. Middle January?

A. Probably middle, yes. Early to middle.

As far as putting a termsheet together, I'm going by the date of these emails. I believe the first cuts to the termsheet would have been in early February.

316 Q. Can you look at Exhibit E to Mr. Grant's first Affidavit?

MR. McELCHERAN: Hang on. "E" is...?

MR. SWAN: It's an email from Mr. Lynch.

THE DEPONENT: Yes.

BY MR. SWAN:

317 Q. -- dated June 19th, 2009 and he deep briefly described some facts?

A. Right.

MR. McELCHERAN: Just so you know, Counsel, this is clearly hearsay. It was prepared '09, June of '09. So description here, it's fine to ask him some questions about whether he agrees or doesn't agree with statements here, but in my point of view, without confirmation from another source, I would have said this is hearsay. But let's -- with that qualification, ask away.

MR. SWAN: You can, of course, take whatever position you would like on the motion, and, indeed, we've looked at a number of documents written by other people, haven't we?

MR. McELCHERAN: Yes.

BY MR. SWAN:

318 Q. So, Mr. Lynch says:

"Following the end of the financial quarter in which the 2008 tax rebate transaction was closed, the company and the agent received strong objections to the transaction from two of our lenders who felt that it should not have been proceeded with nor the releases given by the agent without the express consent of the lenders themselves." [as read] ."

Do you know whether that in fact happened?

A. I am not aware.

319 Q. You don't know one way or the other?

A. No.

320 Q. You told me earlier that your perspective was that the consent of the lenders and the syndicate wasn't required; right?

A. In March of 2008 with respect to the 2008 return.

321 Q. Keep your voice up. And he then goes on to say in the next paragraph:

"The issue of executing the transfer of a portion of the 2009 tax rebate to Peter Grant Sr. and the discharge of security was discussed in Q1 2009 by both myself, Mr. Lynch, and our CFO, Eric Davis, with the first and Second Lien Agent. We were advised that the agent would not provide the discharges without the direct authority of the requisite number of First and Second Lien Lenders." [as read]

What do you say about that?

A. I was not involved in those discussions.

322 Q. You had nothing to do with that?

A. No.

323 Q. But I take it you don't have any information to contradict that statement?

A. Correct.

MR. McELCHERAN: Well, the statement is a statement made in June '09 by a person who is not an affiant, not under oath, describing discussion that happened before in January or whenever, some other time in '09. I object to its -- the document itself as being evidence.

Now, whether or not -- and we can take that position on the motion or whatever, but the point is this witness isn't in a position to confirm either one of those statements.

324 Q. You don't know one way or the other?

A. Whether the statement was made?

325 Q. Whether that happened. The statement was made but -- made in this email, but you don't know whether in fact this happened -- you don't know one way or the other whether the agent would not provide the

discharge without the direct authority of the requisite number of First or Second Lien Lenders.

Do you know whether or not that happened?

A. I suspect he's referring to a discussion with Bill O'Connor, but I was not party to those discussions.

326 Q. Do you know about that discussion?

A. Well, no, I don't.

327 Q. Have you been told about that discussion?

A. I do know from Bill that this -- that this would have been our position.

328 Q. What did Bill tell you in this regard?

A. That as -- you know, in order to -- in order to continue to support the company and, you know, put a structure in place that would allow it to continue to operate, that the lenders would look for the 10 million to remain in the company --

329 Q. Okay.

A. -- in order to induce the lenders to continue to fund, or to continue to forebear, I guess, or continue to re -- to restructure the credit facilities to allow it to continue to operate.

330 Q. But the sentence that we just referred to says, "We were advised that the agent" --

A. Right.

331 Q. -- "would not provide" -- and the agent at

that time, both agents, was the TD Bank?

A. Yes.

332 Q. The agent would not provide discharges without the requisite direct -- the direct authority of the requisite number of first and Second Lien Lenders. Did Mr. O'Connor tell you anything about that?

A. No.

333 Q. So you don't know whether that's accurate one way or the other?

A. I think it's fair that Bill may have told him that that's TD's position. Whether the agent specifically said that, I don't -- I have no idea.

334 Q. Okay. Well, the agent was TD?

A. Yes. Sorry, I -- when I -- I typically think of the agent itself as Mr. Kowpak, or his group.

335 Q. And you haven't spoken to Mr. Kowpak about what he said in this specific context?

A. Well, other than that he'd never received a request to release.

336 Q. Right. But about this specific issue about not providing discharges without the requisite number of First and Second Lien Lenders?

A. I haven't spoken to him about that.

337 Q. And indeed your view that you told me earlier in the context of the March 2008 events was that the

consent of any number of members of the syndicate wasn't required; they weren't entitled to a vote?

A. Yes.

338 Q. And this document then goes on to say: "TD Bank also indicated that in its position as one of the First Lien Lenders it would not be supportive of the request"? [as read]

A. Right.

339 Q. Now that's something that you probably do know about?

A. That's something the bank certainly -- TD, as a lender, in the -- in putting together a termsheet, I guess, or a set of terms, that the banks may consider amending their facilities to continue to allow the company to operate, you know, that the 10 million was important, the company needed it from a liquidity perspective, and TD as a lender, you know, in order to extend our term and to relax covenants, that is certainly one of the things we would have looked for to -- would have looked for the 2009 tax refunds to remain in the company in order to execute on the proposed termsheet.

340 Q. So, in effect, the bank was saying to the company, "Don't pay him the money"?

A. Well, the company was showing us that they needed the money from a liquidity perspective and in their forecasts and budgets and in the termsheets we provided them, that was one of the terms that was -- keeping the 2009 tax refunds in the company was a covenant within the proposed terms and...

341 Q. In effect, I think you say in your Affidavit that the bank required the company to keep --

A. Yes.

342 Q. -- the $10 million?

A. That was an express term in the -- or that was a covenant in the draft termsheet.

343 Q. That was something the bank required the company to do?

A. In the context of a restructuring.

344 Q. And --

A. So this is not in context as -- this is in context if we go out and amend the credit facilities, this is something that we look for to happen.

345 Q. But this sentence is a little bit different. It says TD Bank also indicated that in its position as one of the First Lien Lenders, it would not be supportive of the request?

A. Yes.

346 Q. So the TD did not support the request that the discharge be given?

A. I don't recall ever getting a request for a discharge. In fact, I know from the agent we never did.

MR. McELCHERAN: I think -- I've given you a lot of liberty in cross-examining him about somebody else's hearsay statement, but you've got as far as I think you can on that.

MR. SWAN: Well, I'm just using this as a point of reference. I'm really interested in what his evidence is.

THE DEPONENT: Yes.

BY MR. SWAN:

347 Q. And that is the bank wanted the 10 million bucks to stay in the company?

A. In the context of a restructuring, yes.

348 Q. What about not in the context of a restructuring?

A. I don't think that matters one way or another. You know not in the context of restructuring, there's contracts in place that we, you know -- we weren't talking -- we were talking -- the discussion at the time was with respect to a termsheet. It wasn't with respect to a request to release security on the 2009 taxes.

349 Q. Well, and in fact the bank wasn't in a position to -- or was it in a position to compel the

company to retain the money?

A. We were in a position to compel them to the extent that in order to entice lenders to restructure the credit facilities we thought it would be in their best interests to keep it in company and, in fact, that is what they were showing in their budgets as was needed.

350 Q. And that is ultimately what you required in the straw man termsheet?

A. Yes, there was a covenant in the termsheet.

351 Q. I think this is already covered by a prior request. I asked you for correspondence and emails in December '08, January '09, but I'd like to see whether there are any communications in respect of the bank's position on providing a discharge in respect of the '09 refund?

MR. McELCHERAN: Well, the -- yes, we'll give you the undertaking. I just want to be clear about it. The communications regarding -- from the bank?

MR. SWAN: Well, exchange between the two of them, bank and company or bank's solicitors and company.

MR. McELCHERAN: Regarding a request for a discharge?

MR. SWAN: Yes. Well, in which the bank's position.

(REPORTER'S NOTE: Telephone rings.)

MR. SWAN: Go ahead.

--- Discussion off the record.

MR. McELCHERAN: So the communications between TD and --

MR. SWAN: Company.

MR. McELCHERAN: Company, GFPI, or counsel --

MR. SWAN: Or counsel.

MR. McELCHERAN: Requesting or --

MR. SWAN: Not requesting?

MR. McELCHERAN: Not requesting --

MR. SWAN: But dealing with.

MR. McELCHERAN: Dealing with --

MR. SWAN: Either partial discharge transfer document or the bank's position on whether it wanted the monies, the $10 million, retained by the company.

MR. McELCHERAN: Okay. Well, we have given you stuff about the termsheet which says that.

MR. SWAN: Yes.

MR. McELCHERAN: So bank's position... And of course we're talking about refunds that still haven't been received; right?

MR. SWAN: Yes.

--- UNDERTAKING

BY MR. SWAN:

352 Q. So you had told me earlier, Mr. Montgomery, that there were informal discussions in -- starting at some point in January of 2009 that Mr. Lynch might have been involved in, that Mr. Stephen might have been involved in. Do you recall being part of any of those discussions?

A. Yes.

353 Q. And was the tax refund discussed in any of those January '09 discussions?

A. No.

354 Q. It was not?

A. No.

355 Q. How did it arise internally at the bank?

A. I was preparing the draft termsheet.

356 Q. Yes?

A. I thought about the issue and -- I thought about the issue, I put in a negative covenant that it remain in there, and we provided that termsheet. Bill and I were preparing that termsheet. That termsheet was provided to Hap Stephen and Peter Lynch.

After the term sheet was provided, I don't recall ever having any discussion on it.

357 Q. Now, looking at Exhibit 2 again, Exhibit 2 doesn't reference a termsheet. So does this email of February 10 --

A. Yes.

358 Q. Does that predate your preparation of a draft termsheet?

A. No. This would have been -- at the time I was preparing the termsheets, Bill had not been involved in -- had no knowledge of the issue.

359 Q. "The issue" being the tax refunds?

A. "The issue" being the tax refunds. So to give him some background, I sent him this email to give him some insight as to why I was putting that negative covenant into the termsheet.

360 Q. Now, you say in this email, "I didn't --" I'm looking at the one that was sent at 4:22 p.m. on February 10, 2009?

A. Yes.

361 Q. You say in the email: "I didn't bring it up on the call because not sure if Hap knows about it." [as read]

What does that mean?

A. I wasn't aware of whether Hap was aware of this structure or -- it had never been discussed before.

362 Q. The tax refunds?

A. The tax refunds had never been discussed in any discussions, so I didn't -- this is mentioned in the context that we didn't talk about it on the call but I was going to put it in the termsheet.

363 Q. And what was the call?

A. There were several calls, I guess, to discuss terms on which the lenders may look to -- or that TD, anyway, may be supportive of amending the credit facilities, and then take that out to the other lenders as a basis for which everybody would --

364 Q. So why didn't you want to bring up this tax refund issue about Hap Stephen?

A. I didn't know if he knew anything about it.

365 Q. So what?

A. The context was I was just going to stick it in the termsheet and see how they reacted.

366 Q. Why? Why did you decide to do that?

A. I wasn't sure if it was an issue or not. We'd find out if it was an issue after we gave them the termsheet and it never was discussed after that.

367 Q. And you say: "If we restructure, we would want to make sure that the shareholders do not take this payment -- take payment on this deposit"? [as read]

A. Right.

368 Q. Was that your -- did you instigate that thought?

A. Yes.

369 Q. That was your decision?

A. Yes.

370 Q. And prior to writing it in this email, had you discussed it with Mr. O'Connor or Mr. Scott?

A. Mr. Scott was not involved with the file at this time. Just Mr. O'Connor.

I had talked about it with Bill probably just prior to sending him this email, told him of the issue.

The point of this email was to give him some background on the structure.

371 Q. Well, you gave him some background on the structure but you also made a clear suggestion, proposals?

A. Yes.

372 Q. Two things: You didn't want to raise it with Hap Stephen because you thought it would be better to deal with this just by putting it in the termsheet; right?

A. Right.

373 Q. And, two, you wanted to communicate to Bill O'Connor that in your view --

A. Yes.

374 Q. -- the bank should insist that this stay in the company, this 10 million bucks?

A. In the context of a restructuring, yes.

375 Q. And if you would look at another document that you provided for me --

A. Yes.

376 Q. -- the substantive part of which is a February 12, 2009 email from Bill O'Connor --

A. Yes.

377 Q. -- to Glen Gibson and Adam Newman?

A. Yes.

378 Q. And you received a copy as well?

A. Yes. Okay.

MR. McELCHERAN: This is the February 12, '09?

MR. SWAN: February 12, '09.

BY MR. SWAN:

379 Q. February 12, '09, 2:25 p.m. from Mr. O'Connor to others.

And Mr. Newman and Mr. Gibson are?

A. So Mr. Gibson, we've already talked about his role. He's a managing director at TD Securities and he's head of credit origination.

Mr. Newman is also a managing director of TD Securities and he heads credit management. Both credit origination and credit management are subsets of corporate credit.

380 Q. And who is Grant Wice, W-i-c-e?

A. Grant Wice is managing director at TD

Securities. At the time he was -- he was who I would be reporting to at the time.

381 Q. And the context of this is an outline of a structure leading to a termsheet?

A. Yes.

382 Q. And on the third page I see that there is a reference to the tax refunds, although it says 20 million instead of 10 million?

A. Right.

383 Q. Is there any other reference to that tax-refund issue in here? I didn't see one but perhaps you can have a look.

A. Do you want me to look right now?

384 Q. Yes, please.

A. Sure. That is the only reference I see to it, to the tax refunds.

385 Q. Let's mark that email chain -- really, it's just one email, in effect, as Exhibit 3. It's the email of February 12, 2009 at 2:25 p.m. from Mr. O'Connor.

EXHIBIT NO. 3: Email dated February 12, 2009 at 2:25 p.m. from Mr. O'Connor.

BY MR. SWAN:

386 Q. All right. Moving from February 12, you've provided another email from Mr. O'Connor, this time to Hap Stephen at Stonecrest Capital, and you received a

copy of this dated February 20, 2009.

Mr. McElcheran, are we getting into a level of detail that this is a document that you would prefer to request be sealed?

MR. McELCHERAN: Let me just see -- because I haven't located -- February 20, okay, got it.

Okay, so February 20 attaches the draft termsheet.

THE DEPONENT: I think this would -- the prior email would also fall into that category, too.

MR. McELCHERAN: Exhibit 3 as well.

MR. SWAN: Okay.

MR. McELCHERAN: Okay. So the -- just to state it on the record, counsel have discussed this point. We had specifically not included the termsheet, which -- and discussions around the restructuring because of the potential effect it might have on ongoing marketing activities that the company is going through as being potentially prejudicial, and that we will be seeking an order sealing Exhibits 3 -- any exhibits which relate to that, to the termsheet, and the terms of the termsheet.

MR. SWAN: And just so that I -- I don't have any instructions on any of this, so I'm hearing what you're saying and I'll go away and do something reasonable.

MR. McELCHERAN: Yes. Well, on that basis we have brought them for production.

BY MR. SWAN:

387 Q. And is the document attached to the February 20, '09 email really the first draft of a new termsheet?

A. I'd have to check my email to know for sure. I suspect it is -- the first draft provided to the company.

388 Q. All right. Let's mark that then as Exhibit 4. Exhibit 4 is an email. The substantive part of it is an email from Bill O'Connor dated February 20, 2009, at 10:43 a.m.

EXHIBIT NO. 4: Email from Bill O'Connor dated February 20, 2009, at 10:43 a.m.

BY MR. SWAN:

389 Q. And did you have discussions with other members of the lending syndicate about this termsheet?

A. Not this particular draft but a final version of the termsheet.

390 Q. And did you have discussions with other members of the lending syndicate with respect to the treatment of the 2009 tax refund?

A. No.

391 Q. You had no discussions with them?

A. It was never raised as an issue.

392 Q. By any of the lenders?

A. Not -- a termsheet -- a termsheet that was substantially similar to this was eventually provided to the other lenders. That termsheet was discussed but the tax -- I don't recall the taxes being specifically discussed.

393 Q. The tax refund?

A. Right. The covenants in the termsheet that addressed the taxes.

394 Q. All right. I don't want to clutter up the record with all kinds of unnecessary paper. If there is any communications or correspondence with the other lenders in which there is reference made to the Tax Refund Agreement or the tax refund in the context of the termsheet discussions, I'd like to see those.

A. So that would consist of a notice from the -- it would have been that the term sheet provided, but we can provide the final term sheet that was provided. I think I'm fairly confident that that would be the only reference or the only reference to the taxes and anything provided to lenders.

MR. McELCHERAN: You need to speak louder.

For the purpose of the undertaking, just so we're clear, from the -- there is, in fact -- and the client probably knows this, there's a -- maybe not -- there's an interlink site where this document is posted. So that we can -- we'll certainly produce the note that advised lenders of that posting and any other correspondence in relation to the termsheet from the other lenders specifically in relation to this point.

If it doesn't relate to this point, we won't do so.

--- UNDERTAKING

BY MR. SWAN:

395 Q. You don't recall any discussion?

A. I don't recall any discussion.

396 Q. Or communication?

A. Or communication.

397 Q. All right. And I would ask you to produce to me the final termsheet?

MR. McELCHERAN: It's attached to an email that's included in this group.

THE DEPONENT: Now, what we have here -- we can produce it as an attachment to this email.

BY MR. SWAN:

398 Q. Which one is that?

MR. McELCHERAN: This is the one that's dated -- there's an exchange between Peter Lynch and Bill O'Connor that takes place on March 16th, and the attachment is not included with the email that I have here, which is the --

which is the difficulty I'm having at the moment.

THE DEPONENT: But I can dig it up.

MR. McELCHERAN: But we'll undertake to produce it.

--- UNDERTAKING

MR. McELCHERAN: So I think I gave you the email dated March 16th, '09?

MR. SWAN: Yes, I do have an attachment to the one that -- to that email.

MR. McELCHERAN: Maybe I'm --

MR. SWAN: But it doesn't have the look of a final document because it includes all of the --

MR. McELCHERAN: All the marking on the left.

MR. SWAN: Black line or the red line.

THE DEPONENT: We can produce the one that was put on Interlink, so that would -- we'll be able to get that to you.

BY MR. SWAN:

399 Q. Can you have a look at this copy though? I presume that it's close to a final one for the purpose of asking a couple of questions?

A. Yes.

400 Q. So in respect of the termsheet -- and this was ultimately signed, this termsheet?

A. I don't recall if it was signed. It was agreed to by Peter Lynch. I don't believe he signed it.

MR. McELCHERAN: The term sheet doesn't provide for a signature.

BY MR. SWAN:

401 Q. It was agreed to though?

A. Yes.

402 Q. On behalf of the bank?

A. Sorry?

403 Q. On behalf of the bank it was agreed to as well?

A. It's just a draft summary of terms and conditions. There's nothing --

404 Q. But it was one that the bank was prepared to proceed upon?

A. Subject to credit approval.

405 Q. And under the negative covenants in this copy, covenant 9 is a prohibition on rèpayment of the U.S. $10 million deposit against the sale of any portion of the 2009 tax refund.

So to put that in every-day language --

A. Yes.

406 Q. -- the bank was requiring -- I think you say this in your Affidavit -- the bank was requiring that the company not transfer that tax refund to Mr. Grant?

A. Again, this term sheet was not subject to credit approval. So the bank was not requiring anything.

We were signalling that if we were to agree to amend our credit facilities, that this is something that TD, as a lender, would look for.

407 Q. You weren't just signalling it. You were saying you required it?

A. We required, yes, we required that in connection with a restructuring of the credit facilities. But we were not credit-approved yet on this.

408 Q. And were you ultimately credit-approved?

A. It never got that far because the syndicate -- once it was posted to Interlinks, it didn't really get too far with the syndicate.

409 Q. The syndicate said no?

A. No, they never said yes or no. It's just other events unfolded that ultimately led to the filing.

But the broad restructuring of the credit facilities that this term sheet contemplated, we never got too far on that other than this termsheet.

410 Q. Can you look at your Affidavit for a moment?

A. Sure.

411 Q. Paragraph 13 and 14, just take a moment to read that.

You're not intending to express a legal opinion there, are you?

A. No. This is my own opinion.

412 Q. I may have covered this off, but I'd like to ensure that I have any correspondence between the TD Bank either in its capacity as agent or in its capacity as lender and any other members of the lending syndicate in respect of the Tax Refund Agreement or the tax refund, whether in the context of the termsheet or otherwise?

MR. McELCHERAN: Okay. Well, that's -- can you give me your parameters on time? Because it's going -- looking at every file is -- it's over a two-year period.

MR. SWAN: Let's say from November '08 to the present.

MR. McELCHERAN: November '08 to present. Okay.

--- UNDERTAKING

MR. McELCHERAN: I'm going to make an exception to that. I think the present is too long because it includes the time privilege period while the litigation is going on up to the time of your motion being served.

MR. SWAN: That's fine. Well, or if there are -- I see what you're saying, there may be litigation privilege.

MR. McELCHERAN: Right.

MR. SWAN: Up to the time the motion is served.

BY MR. SWAN:

413 Q. You were obviously watching GFPI's financial position through to this period?

A. Yes.

414 Q. And one of the factors that impacted on the company was a significant downturn in the U.S. housing market, wasn't it?

A. That's correct.

415 Q. And the Canadian housing market?

A. To a lesser degree, yes.

416 Q. But significantly a significant downturn in the U.S. housing market had a serious impact on the company's fortunes, didn't it?

A. Well, I think three things did. One was the downturn in the housing market. The other was the -- there was major cost overruns on the mills being constructed. And the third thing was, in hindsight, was our borrower was financing, you know, what we've come to call the non-core assets.

417 Q. Well, the non-core assets were approved and under way at the time the First Lien Agreement was signed; right?

A. We weren't aware of their existence until early this year.

418 Q. You weren't aware of their existence. Did

you not --

A. Sorry. We weren't aware that our borrower was paying for them.

419 Q. Did you not do due diligence before you undertook the loan?

A. We did.

420 Q. In any event, the downturn in the U.S. housing market was a significant factor, wasn't it?

A. It was.

421 Q. Is there some reason you don't mention that in your Affidavit?

A. I think that's already mentioned in the Affidavit from Mr. Grant. And I don't deny that the downturn in the housing market was a major contributor; my point is that it was not the only contributor.

422 Q. It was "the" major contributor, wasn't it?

A. No. It was "a" major contributor, not "the" only.

423 Q. Not the only. "The" major contributor. "The" most significant factor?

A. No, not necessarily. If there hadn't been cost overruns on the mills and our borrower had not paid for the non-core assets, I'm not sure that they would have filed. They may have had sufficient liquidity to continue operating.

424 Q. You haven't done that calculation, have you?

A. It's pretty subjective.

425 Q. You haven't done it, have you?

A. I have not done it, no.

426 Q. You make reference in your Affidavit to a "straw man termsheet," and you might just tell us so the court knows what a "straw man" termsheet is?

A. Sure. It was a termsheet that the company provided to Goldman Sachs as a set of terms and conditions that potential -- Goldman Sachs was mandated to raise equity or capital, and in order to entice an investor to put capital into the business, they would have needed existing lenders to consent to a set of amendments.

And this was -- the straw man termsheet is effectively a summary of terms and conditions that they should think -- you know, that might be a good indication of where the First Lien Lenders might look to do in order to agree to amendments to the credit agreement.

427 Q. Looking again at your Affidavit page 7, paragraph 23, you refer to Mr. Grant expressly obtaining no, legal or beneficial interest in the refund. Again, you're not meaning to express a legal opinion, are you?

A. Correct. That's my own opinion.

428 Q. And you're not a lawyer?
A. I am not a lawyer.
429 Q. And you have no legal training?
A. I have no legal training.
430 Q. And the same is true in respect to paragraph 24, isn't it?
A. That's correct. This is based on my own interpretation of the credit agreements and related documentation.
431 Q. In paragraph 25, you say:
"The fact that no transfer was delivered was not inadvertent or accidental. It was deliberate and a necessary step to preserve cash as the business struggled with tight liquidity." [as read]
A. Mm-hmm.
432 Q. You use "deliberate" to refer to whose actions there?
A. The company's.
433 Q. And you say it was a necessary step. Did you think it was a necessary step?
A. Yes.
434 Q. You then say --
A. I also believe the company thought it was a necessary step.
435 Q. Did you ask them?

A. No.

436 Q. That's just your own speculation?

A. Yes.

437 Q. And you say: "Mr. Grant as the CEO and a member of the board must have participated in a decision not to complete the transfer"? [as read] ?

I take it you've never been to a GFPI board meeting?

A. I have not.

438 Q. And you were not present when Mr. Grant had any involvement in any such decision?

A. No, I was not.

439 Q. And this is pure speculation on your part, isn't it?

A. Yes.

440 Q. And Mr. Grant in his Affidavit says that he did not participate and consent to such a decision, and you have nothing to suggest otherwise, do you?

A. No.

MR. SWAN: Those are all of my questions, subject to the fulfillment to the undertakings.

MR. McELCHERAN: I have only one tidy-up thing. I'm not sure that we marked the termsheet that was referred to in testimony.

MR. SWAN: Why don't we do that then.

MR. McELCHERAN: And I don't have any questions.

MR. SWAN: So while we're still on the record, just to facilitate this, I have no idea how much material you're going to produce. I ask you to produce it as quickly as you can.

MR. McELCHERAN: Yes.

MR. SWAN: It may not be necessary to put everything in the record.

MR. McELCHERAN: Agreed.

MR. SWAN: So why don't we deal with that when we see what is there.

MR. McELCHERAN: Okay. What I'm going to do -- fair enough. And we'll do that between counsel, select what will -- on the basis that I've done my -- you know, I think that there has to be an agreement, I think, about what goes in and what doesn't go in.

You've asked us for productions to produce, and I think at that point I think relevance should be the determination, rather than whether we like it or don't like it. But that's a discussion we can have later.

What I'm going to do with the termsheet for the moment, because this particular is mentioned in the transcript, I just want -- the one we're showing here has got some markings on the side of it. It appears not to be the final draft. So I'll mark it Exhibit A and what we'll do is part of our productions will include the one that was attached to that email.

EXHIBIT A: Termsheet with Markings on Side.

MR. SWAN: I guess the one other thing I should raise is, as I haven't seen what you're going to produce, it's possible that you might produce a document that requires a question, a follow-up question.

MR. McELCHERAN: Yes.

MR. SWAN: Hopefully we could do that in writing. Another alternative is by teleconference or video conference, if we need to.

You'll be in Vancouver next week?

MR. MONTGOMERY: Yes.

MR. SWAN: So let's just leave it at that.

Thank you.

MR. McELCHERAN: That's acceptable to me as well.

--- WHEREUPON THE EXAMINATION ADJOURNED AT 12:00 NOON.

I HEREBY CERTIFY THE FOREGOING
to be a true and accurate
transcription of my shorthand notes
taken to the best of my skill and ability.

Asper: Kathrine McMenemy

KATHRINE MCMENEMY, CSR
Computer-Aided Transcription

TAB 3

TAB A

Draft for discussion purposes: March 19, 2008

TO: **Frazer Scott**

RE: Possible Sale by GFPI of Income Tax Refund Claims to Improve GFPI's Liquidity

SUMMARY OF PROPOSED SALE

Objective: To improve GFPI's liquidity and to continue to comply with its liquidity covenants under the first lien credit agreement (Section 9.02(5)) and the second lien credit agreement (Section 9.02(4)).

Tax Refunds: Refunds under the *Income Tax Act* in an estimated amount:

1. in excess of Cdn $45 million, expected to be received by GFPI from September 1, 2008 to December 31, 2008 due to the overpayment of 2005-2006 tax (the "**2008 Tax Refund**"); and

2. in excess of Cdn $15 million, expected to be received by GFPI from Septemer 1, 2009 to December 31, 2009 due to overpayment of 2006 tax (the "**2009 Tax Refund**").

Method: Convert GFPI's tax refund claims to cash of GFPI before the tax refunds are received by GFPI by the following steps:

1. GFPI sells to a purchaser (the "**Purchaser**") related to GFPI, GFPI's interests in Canadian dollar equivalent of US $20 million of the tax refunds to be received by GFPI for a sale price of Canadian dollar equivalent of US $20 million (i.e. without a discount) as follows:

   (a) before March 31, 2008, sale of the Canadian dollar equivalent of US $10 million of the 2008 Tax Refund (the "**Sold 2008 Refund**") for sale price of the Canadian dollar equivalent of US $10 million paid in cash to GFPI in March, 2008; and

   (b) on January 2, 2009, sale of the Canadian dollar equivalent (as at January 2, 2009) of US $10 million of the 2009 Tax Refund (the "**Sold 2009 Refund**") for sale price of the Canadian dollar equivalent in March, 2008 of US $10 million paid in cash to GFPI in March, 2008 (i.e. purchase price prepaid but with an agreement to adjust price on January 2, 2009 for exchange rate fluctuations). The prepaid purchase price is not held by GFPI in trust and may be used by GFPI.

   If any of the Sold 2008 Refund is not received by the Purchaser by

December 31, 2008, the purchase price thereof would be adjusted, GFPI would refund a pro rata amount of the purchase price to Purchaser without interest or deduction and the Purchaser would remit to GFPI any of such unreceived refund if it were ever received by the Purchaser.

If any of the Sold 2009 Refund is not received by the Purchaser by December 31, 2009, the purchase price thereof would be adjusted, GFPI would refund a pro rata amount of the purchase price to Purchaser without interest or deduction and the Purchaser would remit to GFPI any of such unreceived refund if it were ever received by the Purchaser.

[NTD: US $10 million of refund sold in each of 2008 and 2009 to comply with the limitations on Dispositions pursuant to Section 9.04(1)(c) of the first lien credit agreement and Section 9.04(1)(c) of the second lien credit agreement.]

2. Each of applicable First Lien Agent and Second Lien Agent provides Purchaser with a partial discharge of its security to discharge the Sold 2008 Refund and the Sold 2009 Refund (collectively, the "**Sold Refunds**") from such security.

[NTD: See Section 10.04 of first lien credit agreement and Section 10.04 of second lien credit agreement.]

3. GFPI could direct CRA to pay the Sold Refunds to the Purchaser.

4. GFPI would agree to hold in trust for Purchaser, keep segregated and pay to Purchaser any amount of the Sold Refunds received by GFPI.

5. GFPI would not grant Purchaser any security for GFPI's obligations to Purchaser with respect to the Sold Refunds and would not pay any interest on prepaid sale price for the Sold 2009 Refund or any fee related to the refund sales.

6. Purchaser would file a financing statement against GFPI with respect to the sale of an account.

Documents Required:

A. March, 2008:

1. Agreement between GFPI and Purchaser re sales of Sold Refunds.

2. Transfer by GFPI to Purchaser of Sold 2008 Refund.

3. Partial discharge by First Lien Agent of the Sold Refunds from

security.

4. Partial discharge by Second Lien Agent of the Sold Refunds from security.

5. Financing statement filed by Purchaser re absolute transfer of an account.

6. Approval of independent committee of GFPI's board of directors.

[NTD: See Sections 9.04 (15) of first and second lien credit agreements.]

<u>B. January 2, 2009</u>:

1. Transfer by GFPI to Purchaser of the Sold 2009 Refund.

Ross Walker
Fraser Milner Casgrain LLP
March 19, 2008

TAB B

102

Pieterson, Linda

From: Pieterson, Linda
Sent: Monday, March 24, 2008 2:19 PM
To: Walker, Ross
Cc: 'O'Meara, Matthew'; Scott, Frazer
Subject: Grant

Ross, here is a reminder list of points discussed in our call this am:

1. Critical that the 2009 sale be structured such that it could not be considered a disposition in 2008. Nothing can indicate that the 2009 receivables have been assigned/transferred in 2008.

2. Re 2009 receivables, no partial discharge to be given in 2008, no rights to notify CRA and no PPSA registrations that could indicate a sale in 2008.

3. Consider FMV point re pricing

4. No purchase price adjustment clause

5. Confirm that no Encumbrance is being created as a result of PPSA registration

6. Confirm no Excess Cash Flow repayment requirements

7. Confirm no negatrive tax implications – any future tax liability

8. Timing - to be completed before March 31

Linda Pieterson
Partner
Financial Services
T:/Tél : 416-601-7587
F:/Téléc : 416-868-0673
E:/Courriel : lpieters@mccarthy.ca
McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.

Suite 5300
Toronto Dominion Bank Tower
Toronto, Ontario
Canada M5K 1E6
www.mccarthy.ca

TAB C

103

Pieterson, Linda

From: MacLaren, Sandi [Sandi.MacLaren@FMC-Law.com] on behalf of Walker, Ross [Ross.Walker@FMC-Law.com]
Sent: Tuesday, March 25, 2008 5:27 PM
To: O'Meara, Matthew; Pieterson, Linda
Cc: PLynch@GFP-inc.com; edavis@GFP-inc.com
Subject: Proposed Sale by GFPI of Income Tax Refund Claims
Importance: High
Attachments: TorDocs_5381929_18.DOC; TorDocs_5410428_1.DOC

Matt and Linda:

I enclose for your review a revised version of the summary.

The enclosed draft has not been reviewed by GFPI and is subject to any further comments it may have.

However please let me know if you have any further comments.

Best regards,

Ross Walker
Fraser Milner Casgrain LLP
1 First Canadian Place
100 King Street West
Toronto, ON M5X 1B2
Direct Line: 416-863-4742
Fax: 416-863-4592
ross.walker@fmc-law.com

Draft for discussion purposes: March 25, 2008

TO: **GRANT FOREST PRODUCTS INC.**

RE: Possible Sale by GFPI of Income Tax Refund Claims to Improve GFPI's Liquidity

SUMMARY OF PROPOSED SALE

Objective: To improve GFPI's liquidity and to continue to comply with its liquidity covenants under the first lien credit agreement (Section 9.02(5)) and the second lien credit agreement (Section 9.02(4)).

Tax Refunds: Refunds under the *Income Tax Act* in an estimated amount:

1. in excess of Cdn $45 million, expected to be received by GFPI from September 1, 2008 to December 31, 2008 due to the overpayment of 2005-2006 tax (the "**2008 Tax Refund**"); and

2. in excess of Cdn $15 million, expected to be received by GFPI from Septemer 1, 2009 to December 31, 2009 due to overpayment of 2006 tax (the "**2009 Tax Refund**").

Method: Convert GFPI's tax refund claims to cash of GFPI before the tax refunds are received by GFPI by the following steps:

1. GFPI sells to a purchaser (the "**Purchaser**") related to GFPI, GFPI's interests in that amount of the 2008 Tax Refund and that amount of the 2009 Tax Refund which together have, when sold, a fair market value equivalent to the Canadian dollar equivalent of US $20 million for a total sale price of the Canadian dollar equivalent of US $20 million as follows:

    (a) on March 31, 2008, sale of that portion of the 2008 Tax Refund (the "**Sold 2008 Refund**"), the present value of which on March 31, 2008 is the Canadian dollar equivalent of US $10 million (based on a discount rate equivalent to 90-day LIBOR on March 31, 2008) for the sale price of the Canadian dollar equivalent of US $10 million paid in cash to GFPI on March 31, 2008; and

    (b) on January 2, 2009, sale of that portion of the 2009 Tax Refund (the "**Sold 2009 Refund**"), the present value of which on January 2, 2009 is the Canadian dollar equivalent on January 2, 2009 of US $10 million (based on a discount rate equivalent to 90-day LIBOR on January 2, 2009) for the sale price of the Canadian dollar equivalent of US $10 million, with the estimated sale price (based on the exchange rate in effect on March 31, 2008) paid in cash to GFPI on March 31, 2008 (i.e. estimated purchase price prepaid but with an agreement to adjust price on January 2, 2009 using the then current exchange rate and with an agreement to adjust the amount of the Sold 2009 Refund based on the 90-day LIBO rate in effect on January 2, 2009). The actual sale proceeds received by GFPI are the Canadian dollar equivalent as at January 2, 2009 of US $10 million. The prepaid purchase price is not held by GFPI in trust and may be used by GFPI.

Purchaser would agree that it does not acquire any right, title or interest in the Sold 2009 Refund until it receives the transfer thereof from GFPI on January 2, 2009.

If it is subsequently determined by CRA that the purchase price paid for the Sold 2008 Refund or the purchase price paid for the Sold 2009 Refund was not fair market value, the Purchaser and GFPI shall, to the extent not prohibited by the provisions of the first lien credit agreement or the second lien credit agreement, adjust such purchase price so it is equivalent to such fair market value.

If any of the Sold 2008 Refund is not received by the Purchaser by December 31, 2008, to the extent not prohibited by the provisions of the first lien credit agreement or the second lien credit agreement, the purchase price thereof would be adjusted, GFPI would refund a pro rata amount of the purchase price to Purchaser without interest or deduction and the Purchaser would remit to GFPI any of such unreceived refund if it were ever received by the Purchaser.

If any of the Sold 2009 Refund is not received by the Purchaser by December 31, 2009, to the extent not prohibited by the provisions of the first lien credit agreement or the second lien credit agreement, the purchase price thereof would be adjusted, GFPI would refund a pro rata amount of the purchase price to Purchaser without interest or deduction and the Purchaser would remit to GFPI any of such unreceived refund if it were ever received by the Purchaser.

[NTD: US $10 million sale proceeds received by GFPI from sale of refunds in each of 2008 and 2009 at fair market value to comply with the limitations on Dispositions pursuant to Section 9.04(1)(c) of the first lien credit agreement and Section 9.04(1)(c) of the second lien credit agreement.]

2. GFPI would not sell to Purchaser any interest payable by CRA to GFPI with respect to the 2008 Tax Refund or the 2009 Tax Refund.

3. The Purchaser would pay income tax on its gain from the purchased refunds (based on the difference between the amount of the refunds it receives and the amount it paid to buy them).

4. Each of applicable First Lien Agent and Second Lien Agent provides Purchaser with a partial discharge of its security to discharge each of the Sold 2008 Refund and the Sold 2009 Refund (collectively, the "**Sold Refunds**") from such security (and to release any interest therein) when the applicable transfers are delivered.

[NTD: See Section 10.04 of first lien credit agreement and Section 10.04 of second lien credit agreement.]

5. GFPI may, after delivery to the Purchaser of the transfer of the Sold 2008 Refund, direct CRA to pay the Sold 2008 Refund to the Purchaser and may, after the delivery to the Purchaser of the transfer of the Sold 2009 Refund, direct CRA to pay the Sold 2009 Refund to the Purchaser.

6. GFPI would agree to hold in trust for Purchaser, keep segregated and pay to Purchaser any amount of the Sold Refunds received by GFPI.

7. GFPI would not grant Purchaser any security for GFPI's obligations to Purchaser with respect to the Sold Refunds and would not pay any interest on the prepaid sale price for the Sold 2009 Refund or any fee related to the refund sales.

8. Purchaser would file a financing statement against GFPI with respect to the sale of an account with respect to each transfer.

<u>Documents Required:</u>

<u>A. On or before March 31, 2008</u>:

1. Agreement between GFPI and Purchaser re sales of Sold Refunds.

2. Transfer by GFPI to Purchaser of Sold 2008 Refund.

3. Partial discharge by First Lien Agent of the Sold 2008 Refund from security.

4. Partial discharge by Second Lien Agent of the Sold 2008 Refund from security.

5. Financing statement filed by Purchaser re absolute transfer of an account with respect to the Sold 2008 Refund.

6. Approval of independent committee of GFPI's board of directors.

[NTD: See Sections 9.04 (15) of first and second lien credit agreements.]

B. January 2, 2009:

1. Transfer by GFPI to Purchaser of the Sold 2009 Refund.

2. Partial discharge by First Lien Agent of Sold 2009 Refund.

3. Partial discharge by Second Lien Agent of Sold 2009 Refund.

4. Financing statement filed by Purchaser re absolute transfer of an account with respect to the Sold 2009 Refund.

Ross Walker
Fraser Milner Casgrain LLP
March 25, 2008

TAB D

108

Pieterson, Linda

From:	Walker, Ross [Ross.Walker@FMC-Law.com]
Sent:	Friday, March 28, 2008 5:37 PM
To:	O'Meara, Matt; Pieterson, Linda
Cc:	PLynch@GFP-inc.com; edavis@GFP-inc.com; Scott, Frazer
Subject:	RE: Sale by GFPI to Peter Grant Sr. of Tax Refunds

Matt: The intention is that, if adjustments need to be made because the sold refund is not received by the purchaser, CRA determines that the sales were not made at fair market value, or the exchange rate is different on January 2, 2009 than on March 31, 2008, the adjustments can be made, at GFPI's option, by including in the sales an appropriate amount of post-2009 tax refunds rather than GFPI's refunding a portion of the purchase price.

I included this alternative to assist with Linda's concern about the perception that the purchaser has recourse to GFPI if GFPI has to return a portion of the purchase price as part of an adjustment.

Please give me a call if you wish to discuss further.

Best regards.

Ross Walker
Fraser Milner Casgrain LLP
Phone: (416) 863-4742
Fax: (416) 863-4592
E-Mail: ross.walker@fmc-law.com

From: O'Meara, Matt [mailto:MOmeara@winston.com]
Sent: Friday, March 28, 2008 5:26 PM
To: Walker, Ross; LPIETERS@MCCARTHY.CA
Cc: PLynch@GFP-inc.com; edavis@GFP-inc.com; Scott, Frazer
Subject: RE: Sale by GFPI to Peter Grant Sr. of Tax Refunds

Ross,
One question on the purchase agreement is the mechanism relating to the Post-2009 Tax Refund. What is the intent of this provision as it relates to the purchaser's rights in tax refunds that arise after 2009?
Matt

Matthew D. O'Meara
Winston & Strawn LLP
35 West Wacker Drive

109

Chicago IL 60601
Phone: (312) 558-7504
Fax: (312) 558-5700

From: MacLaren, Sandi [mailto:Sandi.MacLaren@FMC-Law.com] **On Behalf Of** Walker, Ross
Sent: Thursday, March 27, 2008 3:01 PM
To: LPIETERS@MCCARTHY.CA; O'Meara, Matt
Cc: PLynch@GFP-inc.com; edavis@GFP-inc.com
Subject: Sale by GFPI to Peter Grant Sr. of Tax Refunds
Importance: High

Linda and Matt:

I enclose for review draft copies of the following:

1. revised summary;
2. tax refund purchase and sale agreement;
3. transfer by GFPI of the Sold 2008 Refund;
4. partial discharge by the First Lien Agents of the Sold 2008 Refund;
5. partial discharge by the Second Lien Agents of the Sold 2008 Refund;
6. draft of the financing statement to be filed on closing with respect to the transfer of the Sold 2008 Refund; and
7. approval of the independent committee of GFPI's board of directors.

In order to help with the concern about the "non-recourse" issue, I have provided that, instead of adjustments requiring a refund by GFPI of either purchase price, the adjustments can be made, at GFPI's option, by increasing the amount of the refund sold to include post-2009 income tax refunds. I have also included an overriding provision that, in the event any adjustment contravenes either of the credit agreements, the adjustment will be deferred until it would no longer contravene either credit agreement.

The enclosed drafts have not yet been reviewed by GFPI and are subject to any comments it may have. However please let me know if you have any comments with respect to these drafts.

Best regards,

Ross Walker
Fraser Milner Casgrain LLP

1 First Canadian Place
100 King Street West
Toronto, ON M5X 1B2
Direct Line: 416-863-4742
Fax: 416-863-4592
ross.walker@fmc-law.com

<<TorDocs_5381929_22.DOC>> <<TorDocs_5418866_1.DOC>> <<TorDocs_5412303_5.DOC>> <<TorDocs_5413416_5.DOC>> <<TorDocs_5413401_6.DOC>> <<TorDocs_5417657_5.DOC>> <<TorDocs_5413661_3.DOC>> <<Draft Grant PPSA Reg'n.pdf>>

TAB E

111

Pieterson, Linda

From: Pieterson, Linda
Sent: Saturday, March 29, 2008 2:26 PM
To: 'Walker, Ross'; 'Scott, Frazer'; 'O'Meara, Matt'
Subject: Grant

Attachments: Document.pdf

Document.pdf (177 KB)

Ross, a couple of comments on the smaller docs are attached.

Also, on the revised purchase and sale agreement, you likely wish to add "heirs, executors" into section 9.07.

Could you send a draft of the partial release filing that you propose to make. I would like the wording to be very clear that it relates only to the 2008 refunds. There can't be any implication at all that it relates to the 2009 refunds.

Linda Pieterson
Partner
Financial Services
T:/Tél : 416-601-7587
F:/Téléc : 416-868-0673
E:/Courriel : lpieters@mccarthy.ca
McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.

Suite 5300
Toronto Dominion Bank Tower
Toronto, Ontario
Canada M5K 1E6
www.mccarthy.ca

-----Original Message-----
From: TOR-CMFP52-091 [mailto:TOR-CMFP52-091@mccarthy.ca]
Sent: Saturday, March 29, 2008 2:12 PM
To: Pieterson, Linda
Subject: PDF Document from McCarthy Tétrault LLP

TAB F

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Pieterson, Linda

From: Pieterson, Linda
Sent: Monday, March 31, 2008 3:41 PM
To: 'Walker, Ross'
Subject: RE: Tax Refund Purchase and Sale Agreement dated as of March 31, 2008 between Grant Forest Products Inc. as vendor and Peter Grant Sr. as purchaser

I actually think you should just leave the last paragraph out. It muddies things unnecessarily.

Also, you don't need to formalize it in a letter - an email would be fine.

Linda Pieterson
Partner
Financial Services
T:/Tél : 416-601-7587
F:/Téléc : 416-868-0673
E:/Courriel : lpieters@mccarthy.ca
McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.

Suite 5300
Toronto Dominion Bank Tower
Toronto, Ontario
Canada M5K 1E6
www.mccarthy.ca

From: MacLaren, Sandi [mailto:Sandi.MacLaren@FMC-Law.com] **On Behalf Of** Walker, Ross
Sent: Monday, March 31, 2008 3:16 PM
To: Pieterson, Linda
Subject: Tax Refund Purchase and Sale Agreement dated as of March 31, 2008 between Grant Forest Products Inc. as vendor and Peter Grant Sr. as purchaser
Importance: High

Linda:

I enclose for your review a draft copy of the confirmation you requested.

Please let me know if it is satisfactory to you.

If it reflects your views, I will forward it to you so that you could respond to indicate that you agree with the confirmation.

Please give me a call if you wish to discuss further.

Best regards,

Ross Walker
Fraser Milner Casgrain LLP
1 First Canadian Place

100 King Street West
Toronto, ON M5X 1B2
Direct Line: 416-863-4742
Fax: 416-863-4592
ross.walker@fmc-law.com

<<RWW Email to L Pieters.pdf>>

TAB G

Pieterson, Linda

From: O'Meara, Matt [MOmeara@winston.com]
Sent: Monday, March 31, 2008 11:35 AM
To: Montgomery, Ben; Pieterson, Linda
Cc: Scott, Frazer
Subject: RE: Sale by GFPI to Peter Grant Sr. of Tax Refunds

Ben,
Please find this email as confirmation that the sale of certain tax refunds by GFPI to Peter Grant Sr. and the corresponding release of the security interest in such refunds complies with Section 9.04 and 10.04 of the Second Lien Credit Agreement. TD as second lien agent should execute the release which has been prepared by company counsel and to which Linda referred in her previous email. Please don't hesitate to call me with questions.
Regards, Matt

Matthew D. O'Meara
Winston & Strawn LLP
35 West Wacker Drive
Chicago IL 60601
Phone: (312) 558-7504
Fax: (312) 558-5700

-----Original Message-----
From: Montgomery, Ben [mailto:Ben.Montgomery@tdsecurities.com]

Sent: Monday, March 31, 2008 9:15 AM
To: O'Meara, Matt; 'LPIETERS@MCCARTHY.CA'
Cc: Scott, Frazer
Subject: RE: Sale by GFPI to Peter Grant Sr. of Tax Refunds

Linda / Matt - the Cdn and US Agents will be looking for some guidance from you on how to document the release of security. Perhaps it makes sense to have a call with the Agents once they have had a chance to read your opinions?

Matt - did you provide the confirmation with respect to 9.04 / 10.04 that Frazer was looking for?

-----Original Message-----
From: Scott, Frazer
Sent: March 29, 2008 8:51 AM
To: 'MOmeara@winston.com'; 'LPIETERS@MCCARTHY.CA'

Cc: Montgomery, Ben
Subject: Re: Sale by GFPI to Peter Grant Sr. of Tax Refunds

Thanks Matt - it will be helpful if you can also confirm that the disposition is permitted under section 9.04 and therefore release of the security under section 10.04 is ok.

This will help the agent(s) understand the exact provision.

Linda - I am hoping McCarthys can do a similar confirmation.

----- Original Message -----
From: O'Meara, Matt <MOmeara@winston.com>
To: Scott, Frazer
Sent: Fri Mar 28 20:01:53 2008
Subject: FW: Sale by GFPI to Peter Grant Sr. of Tax Refunds

Frazer,
Per our conversation I wanted to send this email to you to confirm that based on our conversations with Linda and Ross and my review of the Second Lien Credit Agreement I feel that the proposed transactions regarding the tax refund comply with the terms of the Second Lien Credit Agreement.
Best, Matt

Matthew D. O'Meara
Winston & Strawn LLP
35 West Wacker Drive
Chicago IL 60601
Phone: (312) 558-7504
Fax: (312) 558-5700

From: MacLaren, Sandi [mailto:Sandi.MacLaren@FMC-Law.com] On Behalf Of Walker, Ross
Sent: Friday, March 28, 2008 5:05 PM
To: LPIETERS@MCCARTHY.CA; O'Meara, Matt
Cc: PLynch@GFP-inc.com; edavis@GFP-inc.com; Steeves, Christopher
Subject: Sale by GFPI to Peter Grant Sr. of Tax Refunds
Importance: High

Linda and Matt:

I enclose for your review revised draft copies of the following:

1. summary; and

2. tax refund purchase and sale agreement.

The enclosed drafts have not yet been reviewed by GFPI and are subject to any comments it may have. However please let me know if the revised documents are satisfactory to you.

Thank you.

Ross Walker
Fraser Milner Casgrain LLP
1 First Canadian Place
100 King Street West
Toronto, ON M5X 1B2
Direct Line: 416-863-4742
Fax: 416-863-4592
ross.walker@fmc-law.com

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TAB H

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Pieterson, Linda

From: O'Meara, Matt [MOmeara@winston.com]
Sent: Monday, March 31, 2008 4:36 PM
To: Pieterson, Linda; Ross.Walker@FMC-Law.com
Subject: Re: Tax Refund Purchase and Sale Agreement dated as of March 31, 2008 between Grant Forest Products Inc. as vendor and Peter Grant Sr. as purchaser

I confirm as well.

Matthew D. O'Meara
Winston & Strawn
35 West Wacker Drive
Chicago IL 60601
Phone: (312) 558-7504
Fax: (312) 558-5700

----- Original Message -----
From: Pieterson, Linda <LPIETERS@MCCARTHY.CA>
To: Walker, Ross <Ross.Walker@FMC-Law.com>; O'Meara, Matt
Sent: Mon Mar 31 15:32:04 2008
Subject: RE: Tax Refund Purchase and Sale Agreement dated as of March 31, 2008 between Grant Forest Products Inc. as vendor and Peter Grant Sr. as purchaser

I confirm as well.

Linda Pieterson
Partner
Financial Services
T:/Tél : 416-601-7587
F:/Téléc : 416-868-0673
E:/Courriel : lpieters@mccarthy.ca
McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.

Suite 5300
Toronto Dominion Bank Tower
Toronto, Ontario
Canada M5K 1E6
www.mccarthy.ca <http://www.mccarthy.ca/>

From: MacLaren, Sandi [mailto:Sandi.MacLaren@FMC-Law.com] On Behalf Of Walker, Ross

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Sent: Monday, March 31, 2008 4:21 PM
To: Pieterson, Linda; O'Meara, Matthew
Subject: Tax Refund Purchase and Sale Agreement dated as of March 31, 2008 between Grant Forest Products Inc. as vendor and Peter Grant Sr. as purchaser
Importance: High

Linda and Matt:

In accordance with your request, I confirm my view that the transactions contemplated by the above-noted agreement do not contravene the First Lien Credit Agreement dated as of October 26, 2005, as amended, or the Second Lien Credit Agreement dated as of March 21, 2007, assuming that:

1. the tax refunds being sold are being sold for fair market value; and

2. the total amount of the gross proceeds derived from all Dispositions (as defined by each of the Credit Agreements) made by Grant Forest Products Inc. and the other Restricted Parties (as defined by such Credit Agreements) in any single fiscal year of Grant Forest Products Inc. does not in the aggregate exceed US $10 million.

Please confirm that the foregoing also reflects your views.
Thank you.
Ross Walker
Fraser Milner Casgrain LLP
1 First Canadian Place
100 King Street West
Toronto, ON M5X 1B2
Direct Line: 416-863-4743
Fax: 416-863-4592
sandi.maclaren@fmc-law.com

we recommend that our clients use encryption software when they communicate with us by e-mail.

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disclosure of such personal information in accordance with our privacy policy
available at www.mccarthy.ca .

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TAB I

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Pieterson, Linda

From: Kowpak, Ron [Ron.Kowpak@tdsecurities.com]
Sent: Monday, March 31, 2008 4:37 PM
To: Pieterson, Linda; Montgomery, Ben; Scott, Frazer
Cc: O'Meara, Matthew
Subject: RE: Grant - Confirmation

I have no issues.

Ronald J. Kowpak
Loan Syndications - Agency
THE TORONTO-DOMINION BANK, as Agent
Royal Trust Tower
77 King Street West, 18th Floor
Toronto, Ontario, Canada M5K 1A2
T: 416 944-5046 F: 416 982-5535
ron.kowpak@tdsecurities.com

From: Pieterson, Linda [mailto:LPIETERS@MCCARTHY.CA]
Sent: Monday, March 31, 2008 4:34 PM
To: Montgomery, Ben; Kowpak, Ron; Scott, Frazer
Cc: O'Meara, Matthew
Subject: Grant - Confirmation

All:

Winston & Strawn

Based on our conversations with ~~Shearman & Sterling~~ and GFPI and the documentation to be delivered at closing, it is our view that GFPI's proposed transactions regarding the refund comply with the covenant in respect of dispositions in Section 9.04 of the First Lien Credit Agreement and that accordingly, TD, as Agent, can discharge, at this time, the Sold 2008 Refund in accordance with Section 10.04.

At this time, we are waiting for Grant to deliver signed copies of the documentation at which time TD's pages can be sent over to Grant, subject to any additional comments or issues that any of you have.

Linda Pieterson
Partner
Financial Services
T:/Tél : 416-601-7587
F:/Téléc : 416-868-0673
E:/Courriel : lpieters@mccarthy.ca

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McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.

Suite 5300
Toronto Dominion Bank Tower
Toronto, Ontario
Canada M5K 1E6
www.mccarthy.ca

TAB J

Wille, Kathy

From: Montgomery, Ben
Sent: Tuesday, September 29, 2009 1:01 PM
To: Wille, Kathy
Subject: FW: Grant - Liquidity Discharges

Attachments: Liquidity Discharges 03-31-08.pdf

Liquidity Discharges 03-31-08....

Undertaking #3

-----Original Message-----
From: Kowpak, Ron
Sent: Monday, March 31, 2008 12:37 PM
To: Pieterson, Linda
Cc: Montgomery, Ben; Murray, Ian E
Subject: Grant - Liquidity Discharges

Linda, attached please find pdf copies of discharges which have been executed by The Toronto-Dominion Bank as Agent and Toronto Dominion (Texas) LLC. These discharges are delivered to you in escrow pending confirmation that the transaction complies with the 1st Lien Credit Agreement. Do you require original copies of the discharge to be delivered to you and if so how many. Please advise. Thanks!

Ronald J. Kowpak
Loan Syndications - Agency
THE TORONTO-DOMINION BANK, as Agent
Royal Trust Tower
77 King Street West, 18th Floor
Toronto, Ontario, Canada M5K 1A2
T: 416 944-5046 F: 416 982-5535
ron.kowpak@tdsecurities.com

TAB K

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Yoon, Jamie

From: Montgomery, Ben [Ben.Montgomery@tdsecurities.com]
Sent: Tuesday, February 10, 2009 6:56 PM
To: Kowpak, Ron; O'Connor, Bill
Cc: Sfikas, Chris
Subject: RE: Grant - shareholder loan

Thanks Ron – appreciate it if you could let us know if you get a request to discharge this security interest

---

From: Kowpak, Ron
Sent: Tuesday, February 10, 2009 3:45 PM
To: O'Connor, Bill
Cc: Montgomery, Ben; Sfikas, Chris
Subject: RE: Grant - shareholder loan

Bill, the only discharge that was signed was back in March 2008 wherein we discharged our interest in $10MM 2008 Tax Refund. The second $10MM represented a deposit on the purchase of the 2009 refund. I have not been requested to discharge our security interest in the 2009 Tax refund to this point.

Ronald J. Kowpak
Loan Syndications - Agency
THE TORONTO-DOMINION BANK, as Agent
Royal Trust Tower
77 King Street West, 18th Floor
Toronto, Ontario, Canada, M5K 1A2
T: 416-944-5046 F: 416-982-5535
ron.kowpak@tdsecurities.com

From: O'Connor, Bill
Sent: Tuesday, February 10, 2009 4:42 PM
To: Kowpak, Ron
Subject: Fw: Grant - shareholder loan

Ron can you check on this issue and let me know. Thanks.

From: Montgomery, Ben
To: O'Connor, Bill
Cc: Sfikas, Chris
Sent: Tue Feb 10 16:22:35 2009
Subject: Grant - shareholder loan

Bill,

Below is a summary of how the $20MM was injected in Q1 F08 (credit dated Mar 28/08). An addition $25M was subsequent injected as straight equity.

Presumably they haven't yet received the $10MM relating to 2009 tax refunds (I'm not sure).

I didn't bring it up on the call b/c not sure if Hap knows about it.

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If we restructure we would want to make sure that shareholders do not take payment on this "deposit"

We should check with Ron to see if we have discharged security on the $10MM deposit re: the 2009 tax refund

++++++++++++++++

- The shareholders are intending maintain compliance with the liquidity covenant by injecting ~$20MM of capital into the Borrower. From a timing perspective we believe that the new capital will be injected prior to March 31, and therefore the liquidity covenant would not technically be breached. In the event the new capital is not injected by March 31, and the liquidity covenant is breached, the shareholders would have 30 days to inject the capital to prevent an EOD from occurring on the credit facility (30 day cure period).
- The capital will be injected in a manner that does not require any consents from the lenders.
- TD (as Agent) has been provided with a draft summary (that has been reviewed by both Borrower's and Lenders' counsel) on how the shareholders intend to inject the capital. The capital will not be injected as equity. The shareholders intend to take advantage of the asset disposition basket (US$10MM per annum) to inject the capital. The capital will effectively be a monetization of future tax refunds ($10MM in F08 and $10MM in F09), and the shareholders will look to pull their capital back out when the tax refunds come in.
- The proposed structure is summarized as follows:
    i. on [March 31/08] a related company outside our the restricted group which we understand will be a holdco above our Borrower (the "Purchaser") will acquire US$20MM of the Borrower's 2008 and 2009 tax refunds
    ii. on [March 31/08] the Borrower will receive US$20MM from the Purchaser consisting of:
        a. US$10MM on the sale of a portion of the Borrower's 2008 tax refunds received between Sept 1/08 - Dec 31/08
        b. US$10MM deposit against the sale of a portion of the Borrower's 2009 tax refunds
    iii. on Jan 2/09 the Borrower will sell $10MM of its 2009 tax refund received between Sept 1/09 to Dec 31/09 to the Purchaser (consideration coming from (ii)(b))
    iv. the Agent (1st and 2nd lien) will provide the Purchaser with a partial discharge of its security with the respect to: (ii)(a) in March/08, and (ii)(b) in Jan/09
    v. the Purchaser will receive the proceeds of the monetized 2008 tax refunds in late 2008, and the proceeds of the monetized 2009 tax refunds in late 2009; the Borrower may direct CRA to pay the monetized 2008 and 2009 refunds directly to the Purchaser, or alternatively, to the extent the Borrower receives the monetized tax refunds from CRA, the Borrower will agree to hold in trust and segregate the proceeds of the monetized refunds for the Purchaser
    vi. the proceeds of the of the monetized tax refunds in 2008 and the 2009 will be greater than the US$20MM purchase price as the Purchase is buying the tax refunds at a discount (at the rate of 90 day LIBOR); the discounted purchase price is to ensure that the transaction does not conflict with the credit agreement, which sets out that such dispositions must be done at fair market value
- While it is contemplated that the Purchaser will pay the US$20MM to the Borrower in advance of March 31, they have until April 30 (30 day cure period) to do so in order to avoid an EOD in the credit agreement with respect to the liquidity covenant.
- The highly structured nature of this transaction is not so that the shareholders can avoid injecting straight equity. If the Borrower were to inject straight equity, it would be swept against the 1st lien debt, and therefore it would not be available to satisfy the liquidity covenant.
- Lenders' counsel believes that this structure will not require any consents under the 1st and 2nd lien credit agreements, however, there are still some technicalities that need to be

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worked out by Borrower's and lenders' counsel. In the event that it is determined that this structure conflicts with either the 1st or 2nd lien credit agreements, we believe that the shareholders would be highly motivated to seek another option to inject the necessary capital to maintain compliance with the liquidity covenant. We believe that another option open to the shareholders to inject new capital is to increase the postponed s/h loans (currently $50MM), the proceeds of which would not be swept.

- TD as Agent (for both 1st and 2nd lien) will provide the partial discharge of security (refer (ii) above) on the basis of an opinion from lenders' counsel that the structure does not conflict with the credit agreement.

Ben Montgomery, Vice President & Director
Investment Banking - Corporate Credit

TD Securities
700 West Georgia Street, Suite 1700
Vancouver, B.C. V7Y 1B6
T: 604.654.3525 F: 604.654.3166
ben.montgomery@tdsecurities.com

Court File No.: CV-09-8247-00CL

IN THE MATTER OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP (the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

SUPPLEMENTARY MOTION RECORD
(Re: Tax Refund Purchase and Sale Agreement)
[Returnable October 5, 2009]

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Richard B. Swan (LSUC No. 32076A)
Telephone: 416 777 7479
Facsimile: 416 863 1716

Lawyers for Peter Grant Sr.