

NOV 12 2021

November 12, 2021

By Hand Delivery

67840-MD

The Honourable Justice Presiding in Chambers
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water Street
Halifax, NS B3J 1S7

Dear Presiding Justice:

**Re: CIBC v. 3304051 Nova Scotia Limited – Hfx No. 503367
Receiver’s Motion for Final Distribution, Discharge and Other Relief
November 25, 2021 at 9:30 a.m.**

We represent the moving party, Deloitte Restructuring Inc. (the “Receiver”), in its capacity as Court-appointed receiver of all of the assets, undertakings and properties of 3304051 Nova Scotia Limited (the “Company”).

This is Deloitte’s brief in support of its motion for an order:

- abridging the time for service, if necessary;
- approving the actions of the Receiver;
- taxing and approving the accounts of the Receiver and its legal counsel;
- authorizing final distribution of funds; and
- discharging the Receiver.

Filed in support of this motion is the following:

- Receiver’s Fourth Report dated November 12, 2021 (the “Fourth Report”);
- affidavit of Marc Dunning sworn on November 11, 2021; and
- affidavit of James Foran sworn on November 10, 2021.

I. Facts

The Company operated Hefler Forest Products at 230 Lucasville Road, Middle Sackville, Nova Scotia. Operations included a sawmill and biomass electric co-

1801 Hollis Street
Suite 300, PO Box 1054
Halifax, NS B3J 2N6

Tel: 902.429.4111
Fax: 902.429.8215
wickwireholm.com

generation facility, including a Power Purchase Agreement (“PPA”) with Nova Scotia Power Inc. (“NSPI”).

Canadian Imperial Bank of Commerce (“CIBC”) holds first ranking security over all of the Company’s assets with the exception of one vehicle secured by a third party, VFS Canada Inc.

On January 22, 2021, following resignation of all of the Company’s officers and directors, this Court granted CIBC’s emergency motion to appoint the Receiver as Interlocutory Receiver on the basis that the Company’s assets were left unsupervised.

On February 11, 2021, this Court granted a final Receivership Order, Bankruptcy Order and an Order Approving Sales Process approving the Receiver’s sale and investment solicitation process to sell the Company’s assets.

On April 27, 2021, this Court granted Sale Approval and Vesting Orders to sell the PPA to NSPI and the Company’s real property and substantially all of its personal property to MacAdam Construction Inc. (“MacAdam”). The sales to MacAdam and NSPI closed on April 29, 2021 and May 3, 2021, respectively.

On June 18, 2021, the Receiver filed a motion for distribution, approval of fees, discharge and other relief, to be heard on June 30, 2021. As a result of discussions with Maurice Chiasson, Q.C., counsel to the guarantors of CIBC’s debt, Hawthorne Capital Inc. and Thornridge Holdings Limited (the “Guarantors”), the Receiver sought and obtained an Order on June 30, 2021 that only taxed and approved the fees and disbursements of the Receiver’s legal counsel, Wickwire Holm, up to and including May 31, 2021, and authorized an interim distribution of \$3,344,219 to CIBC. The Guarantors raised concerns with respect to the Receiver’s fees and the parties sought additional time to address this issue.

Since June 30, 2021, the Receiver completed various activities as set out at its Fourth Report, including:

- dealing with Canada Revenue Agency (“CRA”) to complete a trust examination of the Company’s payroll source deduction account;
- concluding transactions to sell the remaining assets of the Company, being some scaffolding, the “Hefler Forest Products” name and the Company’s interest in a share of Westfor Management Inc.; and
- participating in discussions with Mr. Chiasson on behalf of the Guarantors and resolving concerns regarding the Receiver’s fees.

The Receiver currently holds \$112,208.60 in trust. Its remaining activities are minor and administrative and consist of filing and collecting excise tax returns, payment of outstanding invoices of the Receiver and its legal counsel, final distribution of funds

and filing of reports pursuant to s. 246(2) of the *Bankruptcy and Insolvency Act* (the "BIA").

As at November 3, 2021 CIBC was owed \$110,867.08 on its debt after receiving the interim distribution from the Receiver and payment from the Guarantors.

The Receiver proposes a final distribution to CIBC in the amount of \$112,208.60 less anticipated receipts and disbursements still to occur as set out in paragraph 26 and Appendix B of the Receiver's Fourth Report, for a final distribution of to CIBC of approximately \$81,883.

II. Law and Application of Law to Facts

A. Service and Notice

Rule 3 of the *Bankruptcy and Insolvency Act General Rules* (the "BIA Rules") confirms that service and notice of this motion must comply with those rules rather than the *Nova Scotia Civil Procedure Rules*:

3. In cases not provided for in the Act of these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

Neither the BIA nor the BIA Rules set out a specific notice requirement for this type of motion. As such, BIA Rule 6 applies, which requires notice at least four (4) days before the hearing of the motion where notice is served personally or sent by facsimile or email and at least ten (10) days before the hearing where notice is sent by mail or courier:

6 (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.

(2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules

(a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or

(b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.

(3) A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.

(4) The court may, on an *ex parte* application, exempt any person from the application of subsection (2) or order any terms and conditions that the court considers appropriate, including a change in the time limits.

[our emphasis]

The number of days are calculated by including Saturdays and holidays except where the period of time is less than six (6) days, per BIA Rule 4:

4 If a period of less than six days is provided for the doing of an act or the initiating of a proceeding under the Act or these Rules, calculation of the period does not include Saturdays or holidays.

We intend to serve the motion materials within the required time, although out of an abundance of caution have requested that time be abridged if necessary. We will file an affidavit of service prior to the hearing of the motion.

B. Approval of Receiver's Actions

The Receiver's First, Second, Third and Fourth Reports describe the activities carried out by the Receiver, including the following:

1. taking custody and control of the Company's assets;
2. performing a detailed inventory of the Company's assets;
3. completing a thorough review of the Company's books and records;
4. engaging former employees of the Company to protect the Company's assets;
5. developing and implementing a robust sales process to sell the Company's assets;
6. analyzing bids, conducting negotiations and entering into agreements to sell the Company's assets;
7. dealing with CRA with respect to Canadian Emergency Wage Subsidy applications and scheduling a trust audit; and
8. participating in discussions with creditors and stakeholders.

These activities are in accordance with the authority granted to the Receiver pursuant to the February 11, 2021 Receivership Order and previous orders of this Court. As such we submit that it is appropriate for the Court to approve the actions of the Receiver.

C. Taxing and Approval of Accounts

The accounts of the Receiver (since its court appointment to November 10, 2021) and its legal counsel, Wickwire Holm (since June 1, 2021) are set out in Exhibit "A" of the affidavit of James Foran sworn on November 10, 2021 and Exhibit "C" of the affidavit of Marc Dunning sworn on November 11, 2021, respectively. Those fees are:

	Receiver (Jan 22-Nov 10, 2021)	Legal Counsel (Jun 1-Oct 31, 2021)
Fees	\$227,261.00	\$9,018.00
Disbursements	\$16,729.11	\$160.25
HST	\$31,718.72	\$1,356.53
Total	\$275,708.83	\$10,534.78

As set out in the Fourth Report, the Receiver is of the view that the fees and disbursements of itself and its legal counsel are reasonable given the Company's assets and activities undertaken by the Receiver and its legal counsel and detailed in its First, Second, Third and Fourth Reports.

The Guarantors had concerns with respect to the magnitude of the Receiver's fees which has been addressed through discussions between Mr. Chiasson and the Receiver. No creditor or other stakeholder has raised any concerns with the Receiver's fees or the fees of its legal counsel throughout this receivership.

We submit that the fees are fair and reasonable and request that the Receiver's fees and the fees of its legal counsel be taxed and approved by the Court.

D. Distribution of Funds

The Receiver holds \$112,208.60 in trust.

CIBC is the first priority secured creditor and was initially owed in excess of \$6.6 million. As of November 3, 2021 CIBC was owed \$110,867.08 after receiving an interim distribution of \$3,344,219 from the Receiver and payment from the Guarantors.

The Receiver estimates further receipts and disbursements of \$30,227.14 to conclude the receivership as set out in paragraph 26 and Appendix B of its Fourth Report and proposes to a final distribution to CIBC of \$112,208.60 less those receipts and disbursements for a final distribution to CIBC of approximately \$81,883.

Where the proposed final distribution to CIBC will be less than what CIBC is owed we submit that it is reasonable and should be approved by the Court.

E. Discharge of Receiver

We rely on s. 77(a) of the *Companies Act*:

77 Upon an application by a receiver or receiver-manager, whether appointed by a court or under an instrument, or upon an application by any interested person, a court may make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;

...

We also rely on *Nova Scotia Civil Procedure Rule 73.11*:

73.11 A receiver who completes the task for which the receivership order was granted must make a motion for an order passing the receiver's accounts, approving fees and expenses not yet approved and discharging the receiver.

All assets of the Company have been sold.

The remaining activities for the Receiver are minor and administrative and consist of filing and collecting excise tax returns, paying outstanding invoices of the Receiver and its legal counsel, making final distribution to CIBC and filing reports pursuant to s. 246(2) of the BIA. The Receiver seeks discharge subject to completion of these activities.

III. Conclusion

We respectfully request that the Court grant the relief requested by the Receiver as per the enclosed draft order.

All of which is respectfully submitted.

Yours truly,

WICKWIRE HOLM



Marc Dunning

Direct Dial: 902.482.7017
mdunning@wickwireholm.com

MD/
Encl.

cc : client
Service List