



No. FOS-S-S-24867  
Fort St. John Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE BANK OF NOVA SCOTIA

Petitioner

AND:

GRABHERS LAST STAND BISON RANCH LTD., DWAYNE GRABHER  
and CHELSEA GRABHER also known as CHELSEA FOILLARD

Respondents

**SECOND REPORT OF THE COURT APPOINTED  
RECEIVER AND MANAGER OF GRABHER'S LAST STAND BISON RANCH LTD.**

**DATED NOVEMBER 2, 2020**

**PREPARED BY DELOITTE RESTRUCTURING INC.**

ADDRESS FOR SERVICE AND  
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## INTRODUCTION

- 1) Pursuant to an Order (the "**Receivership Order**") of the Supreme Court of British Columbia (the "**Court**") dated February 3, 2020 (the "**Date of Receivership**"), Deloitte Restructuring Inc. was appointed as receiver and manager (the "**Receiver**"), without security, of all assets, undertakings and property of Grabher's Last Stand Bison Ranch Ltd. ("**GLS**" or the "**Company**"), and the assets listed on Schedule "A" of the Receivership Order of Dwayne Grabher ("**Mr. Grabher**") and Chelsea Grabher, also known as Chelsea Fouillard ("**Ms. Fouillard**"), acquired for, or used in relation to a business carried on by GLS, including all proceeds thereof (collectively, the "**Property**"). The Court proceedings in which the Receiver was appointed are referred to herein as the "**Receivership Proceedings**".
- 2) The Receivership Order was granted pursuant to an application by The Bank of Nova Scotia ("**BNS**") in which BNS stated that it was owed approximately \$6,559,719 by GLS as at January 21, 2020 pursuant to various credit facilities. BNS holds various registered and first-ranking security over the Property, including a general security agreement dated July 27, 2017, a collateral mortgage registered August 1, 2017, and personal guarantees from Mr. Grabher and Ms. Fouillard (collectively, the "**BNS Security**").
- 3) The Receiver's independent legal counsel, Lawson Lundell LLP ("**Lawson**"), has performed an independent review of the validity and enforceability of the BNS Security and has advised that it is valid and enforceable and ranks in priority to the unsecured creditors of GLS and to any subsequently appointed trustee in bankruptcy (the "**Security Opinion**").
- 4) Following the issuance of the Receivership Order, the Receiver issued a statutory Notice and Statement of the Receiver for GLS (the "**Notice to Creditors**") pursuant to subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**").
- 5) On July 28, 2020, the Receiver issued its first report to Court (the "**First Report**"). The First Report was filed in support of the Receiver's application filed on July 30, 2020 for an order approving the sale of the ranch property owned by GLS located at 5088 230 Road, Taylor, BC (the "**Ranch Property**") to Justin and Zoe Newton (the "**Ranch Transaction**").
- 6) On August 10, 2020, the Court granted an Order (the "**Vesting Order**") approving the Ranch Transaction.
- 7) This is the Receiver's second report to the Court (the "**Second Report**" or "**this Report**").
- 8) The Receivership Order, together with the Notice to Creditors, the First Report and Vesting Order, have been posted on the Receiver's website at <http://www.insolvencies.deloitte.ca/en-ca/Pages/Grabhers-Last-Stand-Bison-Ranch-Ltd.aspx>. The Second Report will also be posted to the Receiver's website after it has been filed with the Court.
- 9) Unless otherwise provided, all other capitalized terms not defined in this Report are as defined in the Receivership Order.

## Purpose of the Second Report

- 10) The Purpose of this Second Report is as follows:
- a) To report on the closing of the Ranch Transaction;
  - b) To provide the Court with an overview of the Receiver's activities since the First Report; and
  - c) To support the Receiver's application (to be filed) for an Order:
    - i) approving the Receiver's activities as set out in the First Report and this Report;
    - ii) approving the Receiver's statement of receipts and disbursements since the Date of Receivership to October 30, 2020 (the "**Receiver's R&D**"), a copy of which is attached hereto as Appendix "**A**";
    - iii) approving and authorizing the Receiver to pay the BNS Distribution (as that term is defined in paragraph 61(a) of this Report);
    - iv) approving and authorizing the Receiver to pay the WorkSafeBC Lien Claim (as that term is defined in paragraph 41 of this Report);
    - v) approving and authorizing the payment of the Receiver's fees and disbursements; and
    - vi) approving and authorizing the payment of the fees and disbursements of Lawson.

## Terms of reference

- 11) In preparing this Report, the Receiver has relied upon unaudited financial and other information prepared by the Company's former bookkeeper and accountants, the Company's books and records, and discussions with Mr. Grabher.
- 12) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of this information.
- 13) All dollar amounts in this Report are in Canadian dollars, unless otherwise indicated.

## BACKGROUND

- 14) GLS is a company registered pursuant to the laws of the Province of British Columbia ("**BC**") with a registered office at Suite 2, 928-103 Avenue, Dawson Creek, BC.
- 15) GLS was the owner and operator of a bison ranch located in Taylor, BC. GLS bought, bred and sold bison (either for slaughter and processing, or to other bison farmers). At the Date of Receivership, there were approximately 628 bison located at the Ranch Property.

- 16) GLS also acquired, reconditioned and sold pipe to the oil and gas industry. However, the Receiver understands that this constituted only a minor portion of the Company's revenues.
- 17) Mr. Grabher was the sole director of GLS and was the manager of the ranch. GLS employed approximately eight people. The Receiver understands that all employees were terminated on or around November 30, 2019, and that from this date, Mr. Grabher was solely responsible for the operations of the ranch.
- 18) Due to a number of reasons, including the decline in bison prices, GLS began to experience financial difficulties in early 2019. In June 2019, GLS failed to remit payment on its credit facilities and was in default of its loan agreements with BNS.
- 19) In September 2019, Mr. Grabher retained a financial advisor to attempt to refinance the GLS credit facilities. Ultimately, this process was not successful and throughout October and November 2019, Mr. Grabher failed to provide various information to BNS related to the inventory of bison and assets held by GLS, and other related financial information. Based on the receivership application materials filed by BNS, and the subsequent investigations by the Receiver, it is apparent that Mr. Grabher also entered into various potentially fraudulent transactions related to bison and assets owned by GLS.
- 20) On November 26, 2019, BNS demanded payment of the obligations under its loan agreements with GLS. Subsequently, on December 31, 2019, Mr. Grabher, on behalf of GLS, applied for protection pursuant to subsection 5(1)(b) of the *Farm Debt Mediation Act* ("**FDMA**"). On January 15, 2020, based upon the request of BNS, Melinda McKie of Deloitte Restructuring Inc. was appointed as the non farmer guardian (in such capacity, the "**Guardian**") pursuant to the FDMA.
- 21) On January 3, 2020, BNS wrote to the administrator of the GLS FDMA application and requested that the stay of proceedings be terminated immediately owing to the conduct of Mr. Grabher.
- 22) On January 22, 2020, the stay of proceedings pursuant to the FDMA was terminated and Mr. Grabher did not appeal. Subsequently, on January 24, 2020, BNS commenced an action to appoint a receiver over GLS to take possession of the Property for the benefit of all the creditors of GLS.
- 23) Subsequently, by Order pronounced February 3, 2020, the Honourable Mr. Justice Branch granted the Receivership Order.

## **CLOSING OF THE RANCH TRANSACTION**

- 24) As set out in the First Report, on July 3, 2020 the Receiver entered into a purchase and sale agreement (the "**Ranch Property PSA**") with Justin and Zoe Newton (the "**Purchaser**").
- 25) Pursuant to the Ranch Property PSA, the Purchaser agreed to purchase, and the Receiver agreed to sell, all of the Company's right, title and interest in and to the Ranch Property, free and clear of all encumbrances (other than certain permitted encumbrances), for cash consideration of \$1,850,000 plus applicable taxes (the "**Purchase Price**") and subject to customary closing adjustments.
- 26) The Receiver closed the Ranch Transaction on September 9, 2020. Proceeds of \$1,807,145 were paid to the Receiver representing the Purchase Price, less \$38,850

in realtor commission (inclusive of GST), less \$4,005 in closing adjustments (primarily related to the Purchaser's share of certain pipeline lease revenue).

## **RECEIVER'S ACTIVITIES SINCE THE FIRST REPORT**

- 27) In addition to closing the Ranch Transaction, the Receiver has, among other things:
- a) Organized the removal of certain third-party owned household effects, and equipment from the Ranch Property to deliver up vacant possession;
  - b) Liaised with Plateau Pipeline Ltd. to collect certain pipeline lease revenue and arrange for the assignment and novation of related agreements to the Purchaser;
  - c) Arranged for the extension of insurance coverage related to the Ranch Property to provide coverage until possession was taken by the Purchaser;
  - d) Continued investigations as to the existence and location of the Company's assets and bison (refer to paragraphs 28 to 35 for further details);
  - e) Liaised with and responded to enquiries of the Trustee in Bankruptcy of Mr. Grabher's personal bankruptcy estate;
  - f) Corresponded with legal counsel for Mr. Pimm and entered into a settlement agreement (refer to paragraphs 46 to 49 for further details); and
  - g) Prepared and filed goods and services tax ("**GST**") returns.

## **UPDATE ON THE RECEIVER'S INVESTIGATIONS**

- 28) As outlined in the First Report, the Receiver has undertaken various investigations as to the existence and location of the Company's equipment and bison, and reviewed certain transactions that occurred prior to the Date of Receivership.
- 29) The Receiver has prepared a summary of its findings, which are detailed in the following paragraph, and provided a copy of this document to BNS, being the primary economic stakeholder that would stand to benefit from any potential recovery action, and who would also bear the costs of any such action.

### **Bison sales by GWG Trucking**

- 30) As a result of its investigations, the Receiver has identified two transactions in which GWG Trucking, a partnership incorporated by Mrs. Judy Grabher ("**Mrs. Grabher**", the mother of Mr. Grabher) and her late husband, Mr. Terry Grabher, purported to sell 91 bison (the "**Sold Bison**") belonging to GLS for sale proceeds of \$169,498, without evidence of valid or sufficient consideration paid to GLS.
- 31) The Receiver also identified that a 2011 Hammerhead river boat and a 2013 Jayco Eagle 32 foot travel trailer (together, the "**Boat/Trailer**") were transferred from GLS

to Mr. Grabher and then immediately to Mrs. Grabher without evidence of valid or sufficient consideration paid to GLS.

- 32) The evidence obtained by the Receiver indicates that Mr. Grabher on his own behalf and on behalf of GLS, along with Mrs. Grabher on her own behalf and on behalf of GWG Trucking, fraudulently transferred the Sold Bison and Boat/Trailer, knowing that:
- a) there was no or insufficient consideration being paid to GLS for the Sold Bison and Boat/Trailer;
  - b) the effect of such transfers would be to defeat, delay, or hinder the creditors of GLS, and intending that result;
  - c) to the extent Mr. Grabher or GWG Trucking were creditors, the effect would be to prefer them over other creditors, and intending that result; and
  - d) GLS was either insolvent at the time, or that such transfers would render GLS insolvent.
- 33) On June 1, 2020, counsel for the Receiver wrote to GWG Trucking outlining its findings related to the Sold Bison and requesting an explanation of the transactions, along with payment of the sale proceeds. GWG has failed to respond to this letter.
- 34) After discussing its findings with BNS, on September 15, 2020, the Receiver filed a Notice of Civil Claim against Mrs. Grabher and GWG Trucking in relation to the Sold Bison and Boat/Trailer seeking various relief for the benefit of the GLS receivership estate (the "**GWG Action**").
- 35) The GWG Action is ongoing, and the Receiver will provide an update to the Court in due course, or as further directed by the Court.

## **CREDITORS AND SECURED CHARGES**

### **Charges and statutory interests**

- 36) The BNS Security is subject to certain prior ranking Court-Ordered charges and statutory interests, which include:
- a) the Receiver's Charge (as that term is defined in the Receivership Order);
  - b) the Receiver's Borrowing Charge (as that term is defined in the Receivership Order); and
  - c) certain deemed trust and priority claims.
- 37) Pursuant to paragraph 20 of the Receivership Order, the Receiver and Lawson, as its legal counsel, are the beneficiaries of the Receiver's Charge, which is a first-ranking charge over the Property to secure payment of their fees and disbursements incurred in the Receivership Proceedings.
- 38) Pursuant to paragraph 23 of the Receivership Order, the Receiver is authorized to borrow up to \$300,000 without further approval of the Court for the purpose of carrying out its duties and powers. As at the date of this Report, the Receiver has utilized funds on hand at the Date of Receivership and has not required any borrowing facility.

- 39) At the Date of Receivership, GLS was current with all GST remittances. The Receiver arranged for the filing of the GST return for the pre-receivership period of January 1 to February 3, 2020 which resulted in a refund in the amount of \$2,500. The Receiver has also set up a new post-filing GST account for the period February 3, 2020 onwards and continues to file returns as required.
- 40) The Receiver understands that GLS terminated all its employees on November 30, 2019 and the Receiver is not aware of any CRA related deemed trust claims in respect of payroll source deductions, or any other similar priority claims.
- 41) The Receiver has received a notice that a final examination of GLS's account has been completed by WorkSafeBC and claiming a statutory lien on all property or proceeds of property used or produced by GLS in the amount of \$1,375.77 (the "**WorkSafeBC Lien Claim**") and relating to the period ending on the Date of Receivership. The Receiver proposes to make payment of the WorkSafeBC Lien, subject to Court approval.
- 42) As noted previously, BNS is the principal secured creditor of GLS, and was owed \$6,559,719 as at January 21, 2020 pursuant to various loan agreements. BNS has valid and enforceable security (as reported in the Security Opinion). Interest continues to accrue on this amount.
- 43) Based on the available books and records of GLS, the Receiver is aware of several creditors with purchase money security interests in certain equipment leased by GLS. The Receiver has disclaimed its interest in all of the leased equipment.
- 44) As noted in the First Report, the Receiver is aware of various builder's lien claims filed in respect of certain portions of the Ranch Property. The lien claims were all registered after the date of the BNS collateral mortgage, and are therefore subordinate to BNS in respect of the proceeds from the sale of the Ranch Property.

### **Bison claims**

- 45) On February 10, 2020, the Receiver was contacted by Black Willow Bison Inc. ("**Black Willow**") who sought to assert a claim in relation to certain bison purportedly in the possession of GLS. Black Willow has not registered any security against the bison owned by GLS, and has not provided the Receiver with any information in order to identify any bison as belonging to Black Willow. Accordingly, the Receiver's counsel has advised that any claim that Black Willow may have as against the proceeds of sale from the Company's bison, if any such claim exists, would be subordinate to the BNS Security.
- 46) In early February 2020, the Receiver was contacted by Mr. Pat Pimm ("**Mr. Pimm**"), who sought to assert a claim (the "**Pimm Claim**") in relation to certain bison purportedly in the possession of GLS and supplied by Kristi Pimm and 0811754 (together, the "**Vendor**") pursuant to an unsigned agreement dated February 24, 2017 between GLS and the Vendor (the "**Pimm Supply Agreement**").
- 47) As outlined in the First Report, the Receiver has had extensive correspondence and several conversations with Mr. Pimm and Mr. Pimm's legal counsel in relation to the Pimm Claim. Mr. Pimm was able to supply the Receiver with information, including radio frequency identification tag numbers that enabled the Receiver to identify certain of the bison purportedly belonging to Mr. Pimm.
- 48) The Receiver assessed the Pimm Claim in light of the provisions of the Pimm Supply Agreement and the BIA and held back a portion of the bison sale proceeds pending final determination of the Pimm Claim. Following various correspondence between



Lawson and Mr. Pimm's legal counsel, the Receiver agreed to settle the Pimm Claim by making payment of \$10,000 to Mr. Pimm in full and final settlement of all claims against GLS and the Receiver.

- 49) The Receiver believes that this settlement payment is justified and appropriate in the circumstances given the nature of Mr. Pimm's claim and to prevent further costs from being incurred by the Receiver and its counsel.

### **Unsecured claims**

- 50) As at the Date of Receivership, the available books and records of GLS reported unsecured creditors with claims of approximately \$1,684,404.
- 51) Given that BNS, the secured creditor, is expected to suffer a large shortfall, the Receiver has not reviewed the claims of the unsecured creditors. The Receiver has, however, provided ad-hoc updates on the status of the Receivership Proceedings to certain unsecured creditors as and when it has been contacted.

### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

- 52) Attached as Appendix "A" to this Second Report is the Receiver's R&D.
- 53) As at October 30, 2020, the Receiver's gross receipts amounted to \$3,045,607, and the Receiver has made disbursements totalling \$258,162. The net balance held by the Receiver amounts to \$2,787,445.
- 54) The more significant transactions included in the Receiver's R&D since the First Report are as follows:
- a) Collected \$1,850,000 in respect of the Ranch Transaction;
  - b) Collected \$4,344 in respect of pipeline lease revenues;
  - c) Collected \$6,575 in GST;
  - d) Paid \$37,000 in realtor commission fees; and
  - e) Paid \$10,000 in respect of the settlement payment to Mr. Pimm.

### **PROFESSIONAL FEES**

- 55) The Receiver and its counsel, Lawson, have maintained detailed records of their professional time and costs throughout the Receivership Proceedings.
- 56) The Receiver's invoiced costs for the period from the Date of Receivership to October 23, includes fees in the amount of \$152,907, plus disbursements in the amount of \$13,016, and GST in the amount of \$8,296. These costs are more fully described in Affidavit #1 of Melinda McKie, to be sworn and filed in the Receivership Proceedings.
- 57) As outlined in note 1 to the Receiver's R&D, a portion of the Receiver's invoiced costs have been paid directly by BNS, rather than being drawn from the estate proceeds.
- 58) Lawson's invoiced costs for the period from the Date of Receivership to October 29, includes fees in the amount of \$30,662, plus disbursements in the amount of \$1,870,

and GST/PST in the amount of \$3,739. These costs are more fully described in Affidavit #1 of Kimberley Robertson, to be sworn and filed in the Receivership Proceedings.

- 59) As outlined in note 2 to the Receiver's R&D, a portion of Lawson's invoiced costs have been paid directly by BNS, rather than being paid from the estate proceeds.
- 60) The Receiver is of the view that the work performed by the Receiver and its legal counsel was necessary and appropriate in the circumstances of the receivership, and that the rates charged are reasonable and in keeping with the rates charged by other licensed insolvency trustees and lawyers in the market performing similar work.

### **PROPOSED DISTRIBUTIONS**

- 61) Subject to Court approval, the Receiver proposes to make payment of:
  - a) An interim distribution to BNS in the amount of \$2,687,000 (the "**BNS Distribution**"); and
  - b) The WorkSafeBC Lien Claim in the amount of \$1,375.77.
- 62) After payment of these distributions, the Receiver will retain a balance on hand of approximately \$99,069.

### **REMAINING MATTERS TO BE COMPLETED IN THE RECEIVERSHIP PROCEEDINGS**

- 63) Subject to the Court approving the payment of the BNS Distribution and the WorkSafeBC Lien Claim, the remaining matters to be completed by the Receiver include:
  - a) Continuing the GWG Action and any other investigations;
  - b) Dealing with certain GST matters;
  - c) Payment of a final distribution to BNS upon the conclusion of the Receivership Proceedings; and
  - d) Other administrative matters incidental to the Receivership Proceedings.

### **CONCLUSIONS AND RECOMMENDATIONS**

- 64) Based on the foregoing, the Receiver respectfully requests that the Court grant the order cited at paragraph 10(c) of this Report.

All of which is respectfully submitted at Vancouver, BC this 2<sup>nd</sup> day of November, 2020.

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court-Appointed Receiver and Manager of  
Grabher's Last Stand Bison Ranch Ltd.,  
and not in its personal capacity



Per: Melinda McKie, CPA, CMA, CIRP, LIT  
Senior Vice-President



Paul Chambers, FCA(UK), CIRP, LIT  
Senior Vice-President

## Appendix "A"

### Receiver's statement of receipts and disbursements for the period from February 3, 2020 to October 30, 2020

In the Matter of the Receivership of  
Grabbers Last Stand Bison Ranch Ltd.

#### Receiver's Interim Statement of Receipts and Disbursements For the period from February 3, 2020 to October 30, 2020

Description	Notes	Total
<b>Receipts</b>		
Cash in bank		\$ 11,864
Livestock sale proceeds		541,831
Plant and equipment sale proceeds		201,850
Accounts receivable		418,760
Ranch land and buildings		1,850,000
GST collected/refunds		9,283
Bank interest		3,518
Misc. other realizations		8,501
<b>Total receipts</b>		<b>\$ 3,045,607</b>
<b>Disbursements</b>		
Bank charges		177
Outside services/consulting:		
Appraisal fees		8,656
Accounting services		619
Transport services		3,000
HAAB Homes / other		33,401
Receiver's fees and disbursements	(1)	111,524
Legal fees and disbursements	(2)	10,467
GST/PST paid		9,764
Realtor and auction commissions		47,035
Insurance		19,064
Utilities		3,232
Settlement of bison claim		10,000
Misc. disbursements		1,223
<b>Total disbursements</b>		<b>\$ 258,162</b>
<b>Excess of receipts over disbursements</b>		<b>\$ 2,787,445</b>

#### Notes

(1) In addition to the Receiver's fees and disbursements shown above (paid for from estate proceeds), The Bank of Nova Scotia has paid Receiver's fees and disbursements directly totalling \$54,399 covering the period Apr 1 to Oct 23, 2020 (exclusive of GST).

(2) In addition to the legal fees and disbursements shown above (paid for from estate proceeds), The Bank of Nova Scotia has paid legal fees and disbursements directly totalling \$22,065 covering the period Apr 4 to Oct 29, 2020 (exclusive of GST/PST).