



June 18, 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 Distribution, Discharge and Other Relief
June 30, 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 so that this motion is properly returnable on June 30, 2021;
- approving the actions of the Receiver;
- taxing and approving the accounts and expenses of the Receiver and its legal counsel;
- authorizing distribution of funds; and
- discharging the Receiver, subject to conditions.

Filed in support of this motion is the following:

- a) Receiver’s Third Report dated June 18, 2021 (the “Third Report”); and

*1815 Upper Water Street
Suite 500, P.O. Box 115,
Halifax, NS B3J 2Y6*

*By: [Signature] s/ [Name]
[Firm Name]
[Address]*

b) affidavit of Marc Dunning sworn on June 18, 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-generation facility, including a Power Purchase Agreement (“PPA”) with Nova Scotia Power Inc. (“NSPI”).

CIBC is owed approximately \$6.6 million and holds first ranking security over all of the Company assets with the exception of one vehicle secured by a third party, VFS Canada Inc. (“VFS”).

On January 22, 2021, following resignation of all of the Company’s officers and directors, this Court granted the emergency motion of the Plaintiff, Canadian Imperial Bank of Commerce (“CIBC”) 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”).

On April, 29, 2021, the sale to MacAdam closed. The sale of NSPI closed on May 3, 2021. Since that time, the Receiver has completed various activities as set out at paragraph 11, page 2 of its Third Report, including:

- dealing with Canada Revenue Agency (“CRA”) with respect to Canadian Emergency Wage Subsidy (“CEWS”) applications and working to schedule a trust audit;
- participating in discussions with creditors and stakeholders;
- working to conclude transactions to sell the few 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
- continuing to administer the Company’s bankruptcy.

The Receiver has determined that the likelihood of any claim from CRA is low and the magnitude of any potential claim that may exist will not be material.

The Receiver intends to sell the few remaining assets of the Company pursuant to its authority under s. 3(m)(i) of the Receivership Order and after obtaining releases from CIBC of its security interest in the assets. CIBC is the only creditor who will receive a distribution from the proceeds of these sales.

The Receiver is currently holding \$3,456,109 in trust with anticipated adjustments for future professional and legal fees and other costs to be incurred up to the time of discharge of \$11,890.

Out of an abundance of caution the Receiver is proposing to withhold \$100,000 to account for any potential CRA claim.

The Receiver proposes an interim distribution of \$3,344,219 to CIBC and the remainder to CIBC subject to either obtaining a clearance certificate from CRA or the completion of CRA trust audit and payment of any amounts owing to CRA.

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 *Bankruptcy and Insolvency Act* ("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 Third Report describes the activities carried out by the Receiver. 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 and its legal counsel, Wickwire Holm, are set out in Appendix "C" of the Third Report and the affidavit of Marc Dunning sworn on June 18, 2021. Those fees are, approximately:

	Receiver	Legal Counsel
Fees	\$180,000	\$30,000
Expenses	\$10,000	\$737
HST	\$16,000	\$5,000
Total	\$206,000	\$36,000

As set out in the Third 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. As such we request that they be taxed and approved by the Court.

D. Distribution of Funds

The Receiver is holding \$3,456,109 in trust. CIBC is the first priority secured creditor and is owed in excess of \$6.6 million. The only creditor who will be paid in this receivership is CIBC.

The Receiver proposes a distribution to CIBC of \$3,344,219, representing the amount held in trust less anticipated adjustments for future fees and costs to be incurred to the time of discharge of \$11,890 less the proposed \$100,000 CRA holdback. The Receiver proposes a final distribution to CIBC after carrying out all remaining tasks of the receivership as set out in paragraph 33 of the Third Report including dealing with any CRA claim.

The Receiver has determined that the potential for any CRA claim is low and that if there is a claim the amount will not be material. Still, out of an abundance of caution the Receiver is proposing to withhold \$100,000 to deal with any CRA claim. This is a conservative approach and will ensure that the Receiver will have sufficient funds to pay any CRA claim that may arise.

In the circumstances, we submit that the proposed distribution 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.

The tasks carried out by Receiver are set out in the Third Report and previous reports filed with the Court.

All major and material assets of the Company have been liquidated and conveyed to NSPI and MacAdam pursuant to the Sale Approval and Vesting Orders. Although a few assets remain, specifically the scaffolding, the "Hefler Forest Products" name and the Company's interest in a share of Westfor, these are minor assets and their value is such that they can

be conveyed by the Receiver pursuant to s. 3(m)(i) of the Receivership Order upon obtaining security releases from CIBC.

The Receiver is proposing that its discharge be conditional upon carrying out the above and various other incidental duties as set out in paragraph 33 of the Third Report including issuing a Receiver's Certificate in the form attached as Schedule "A" to our draft order confirming that these duties have been completed.

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

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MD/

Encl.

cc : client
Service List