

January 31, 2017

The Honourable Justice Glen G. McDougall in Chambers  
Supreme Court of Nova Scotia  
1815 Upper Water Street  
Halifax, NS B3J 1S7

My Lord:

**Re: Hefler Forest Products Limited, Hfx No. 453673**

We are the solicitors for Green Landers Limited, the Monitor (the "Monitor") in this CCAA matter. Please accept this as our written submission on the two Motions set to be heard before you on February 3, 2017, at 3 o'clock pm.

### **Preliminary Comments**

Hefler has now executed an Asset Purchase Agreement ("APA"). That document, with some redaction, is attached to the Affidavit of Floyd Gaetz, sworn January 30, 2017. The Monitor was involved in that negotiation process. Both Royal Bank of Canada ("RBC") and Business Development Bank of Canada ("BDC") were extensively consulted in the finalization of the APA. The execution of the APA, and the closing of the transaction described therein, has the support of Hefler, the Monitor, RBC and BDC.

Attached as Exhibit 2 to the Sixth Report of the Monitor dated January 30, 2017 is our firm's legal opinion on the RBC and BDC security. In succinct summary, that security is valid.

### **Modified Extension Order**

The first motion is for an Order Extending the Stay of Proceedings to March 31, 2017, and providing certain additional powers to the Monitor in relation to the proceeds of sale and other cash of Hefler on hand or in its bank account after closing.

The Monitor supports the extension of the stay to March 31, 2017, on the basis that this period of time will allow an adequate opportunity for this transaction to close. In addition, if it does not close, that amount of time allows Hefler an opportunity to come up with a plan as to what it wants to do next. Any creditor is entitled, within that extension period, to bring a motion to lift the stay. Further, the Monitor has an obligation to file a Notice of Material Adverse Change with creditors if any such event should occur. On that basis, the Monitor supports the extension requested to March 31, 2017.

The proposed form of Order also gives authority to the Monitor to receive funds from the sale (together with other surplus funds) and to pay certain obligations. On behalf of the Monitor, we submit that those additional powers are appropriate.

The Monitor is of the view that Hefler has acted and continues to act in good faith and with due diligence and the Monitor supports the issuance of the Modified Extension Order.

### **Sale Approval and Vesting Order**

The second Motion is for the issuance of a Sale Approval and Vesting Order in the form filed by Mr. Holm. We confirm that the Monitor is satisfied with, and supports, that form of Order.

CCAA Section 36 allows this Court to authorize a sale of assets outside the ordinary course of business provided certain conditions are met:

- a) That notice has been given to secured creditors who are likely to be affected - **This was done.**
- b) That the factors set out in Section 36 (3) have been met -**Those various factors have been met as set out in the Affidavit of Floyd Gaetz and the Sixth Report of the Monitor.**
- c) Whether the sale is to a related party - **That is not the case here.**
- d) That the proceeds of sale are to be held in favour of the creditors whose security is affected by the Order - **The proposed form of Order provides for this.**
- e) That certain employee related payments will be made - **The Monitor is satisfied that these payments will be made.**

There are some redactions from the APA. The most important one is the purchase price. Although the Court is not being told the exact dollar number, the Sixth Report of the Monitor tells the Court, at paragraph 3.7, that the selling price in the APA is not sufficient to pay out

the DIP loan, the RBC debt and the BDC debt. The Court is therefore being told that the sale price is less than \$15,650,000.

Why not disclose the actual purchase price?

- If the closing of this transaction does not occur, Hefler will want to explore what opportunity it might have to go into another negotiation. They should be able to do so without the world knowing the price in this negotiation or else this price will act like a cap.
- The purchaser has asked that the purchase price be redacted as being confidential to its business interests.
- There were other parties interested in buying this asset. Making the exact purchase price known creates an opportunity for one of the parties to come to Court and say they are prepared to pay a dollar more. If there are third parties that want to bring such a motion, they should have to do so on their own evaluation of the value of the asset, not with insider information.

The Monitor submits that the range of the purchase price has been adequately disclosed. The only parties prejudiced by a sale for less than the full amount of the secured debt (which is \$29,450,000 in aggregate) are the secured creditors, each of whom know what the purchase price is and are in favour of the transaction.

Despite not knowing the exact dollar amount, this Court must decide that the consideration in the APA is “reasonable and fair” taking into account the market value in accordance with CCAA Section 36 (3) (f). In that regard:

- The Monitor’s Sixth Report lists the extensive marketing efforts taken to sell these assets.
- In paragraph 3.3 of the Sixth Monitor’s Report, the Monitor provides its opinion that a valid market test was conducted to determine the present realizable value of the operating assets under the existing market circumstances, given the constraints facing Hefler.
- The Monitor’s Sixth Report also indicates at paragraph 3.5 there was only one Expression of Interest suggesting proceeds higher than the \$15,650,000 owed to the DIP lender, RBC and BDC, and that party decided not to proceed further.
- In the Monitor’s Sixth Report, at paragraph 8, the Monitor confirms his opinion that the sale proceeds under the APA are more beneficial to the creditors than the sale of the Hefler assets under bankruptcy.

The Monitor therefore submits that there is sufficient evidence before the Court to allow an Order under CCAA Section 36 to be issued.

With respect to the form of the Order, Carl Holm's written submissions of January 30, 2017, set out the CCAA sections and referred the Court to the *Crown Jewel* decision.

The Monitor submits that the draft form of Order is in accordance with CCAA and Nova Scotia practice for the following reasons:

- a) The Order of the Court "bars and forecloses", being the concept reinforced in *Crown Jewel*;
- b) The only interests that are affected are those of Hefler and the right and title of those claiming through Hefler, as is usual in a foreclosure or receivership;
- c) It is Hefler that is conveying. The conveyance of the real property arises from the deed delivered by Hefler. The conveyance of the personal property arises from the bill of sale and other conveyance documents signed by Hefler. The Monitor's Certificate does not purport to convey anything.

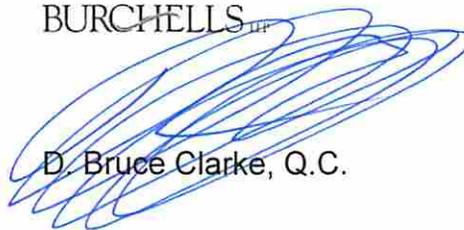
CCAA Section 36 (6) provides additional powers to the Court which do not exist in a receivership, the latter being the context of the *Crown Jewel* decision. We submit that the approach taken in Section 4 of the draft Order is consistent with both CCAA Section 36 (6) and Nova Scotia insolvency practice.

In light of all of the above, the Monitor submits that it will be appropriate to grant the Sale Approval and Vesting Order in the form provided to the Court.

All of which is respectfully submitted.

Yours very truly,

BURCHELLS



D. Bruce Clarke, Q.C.

CC: Service List