

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

AND

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1995 C. B-3, as amended, section 101 of the *Courts Of Justice Act*, R.S.O. 1990 C. C.43 as amended, and Rule 14.05(3)(8) of the *Rules of Civil Procedure*

**SUPPLEMENTARY MOTION RECORD
(RETURNABLE MARCH 6, 2018)**

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AND TO: **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE**

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Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

MERIDIAN CREDIT UNION LIMITED

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and

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APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

**SUPPLEMENTARY REPORT OF ZEIFMAN PARTNERS INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER**

1. Pursuant to the Order of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 21, 2014 (the “**Initial Order**”, a copy of which is attached as Appendix “A” to the Seventh Report, filed), on the Application of the Applicant, Meridian Credit Union Limited (“**Meridian**”), Zeifman Partners Inc. was appointed as Receiver (in such capacity, the “**Receiver**”) of the Respondent, Vandermeer Greenhouses Ltd. (“**Vandermeer**”).

2. Vandermeer was a cut flower chrysanthemum grower located in Niagara-on-the-Lake, Ontario. Vandermeer's primary production area was a ground crop with a plant capacity of over 5.9 million stems. The property is 16.5 acres and includes a 275,000 square foot greenhouse and

two residences. Vandermeer also owned and operated an anaerobic digestion facility capable of producing over 8,000 kwh of electricity a day.

3. As set out in the Seventh Report, all of Vandermeer's property has been sold. The receivership is continuing for the sole purpose of completing the NFPPB Proceeding (as defined therein).

PURPOSE OF REPORT

4. This Report (the "**Supplementary Report**") is supplementary to the Seventh Report dated November 30, 2017 (the "**Seventh Report**"), filed in support of the Receiver's motion originally returnable December 6, 2017 (the "**December Motion**") and now returnable March 6, 2018. The Receiver files this Supplementary Report in order to:

- (a) Update the fees and disbursements of the Receiver for services rendered for the period between February 1, 2017 to January 31, 2018, for which the Receiver seeks Court approval in respect of;
- (b) Update the fees and disbursements of the Receiver's legal counsel, Miller Thomson LLP, for services rendered for the period between October 27, 2017 to February 26, 2018, for which the Receiver seeks Court approval in respect of, in addition to Miller Thomson LLP's fees set out in the Seventh Report;
- (c) Update the Receiver's R&D Statement (as defined below); and
- (d) Update the Court on the activities of Zirger Group (as defined in the Sixth Report, and attached as Appendix "B" to the Seventh Report, without appendices) with

respect to the within proceedings and the proceedings before the Normal Farm Practices Protection Board (the “**NFPPB**”).

TERMS OF REFERENCE

5. In preparing this Supplementary Report and making the comments herein the Receiver has relied upon information prepared or provided by the Respondent and information from other third-party sources (collectively, the “**Information**”). Certain of the information contained in this Seventh Report may refer to, or is based on, the Information. As the Information has been provided by various third parties or has been obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, has reviewed the Information for reasonableness. However, the Receiver has not audited 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 Canadian Institute of Chartered Accountants Handbook and accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

6. Unless otherwise stated, all dollar amounts set out in this Supplementary Report are expressed in Canadian dollars.

ADJOURNMENT OF DECEMBER MOTION

7. As noted above, the within motion was originally returnable December 6, 2017 and was intended to proceed on consent of the applicant creditor, Meridian Credit Union (“**Meridian**”).

8. For administrative reasons, the Receiver was unable to obtain the consent of Meridian at such time and the December Motion was adjourned.

9. Meridian has now provided its consent to this motion. Accordingly, the December Motion is now returnable March 6, 2018.

STATUS OF NFPPB PROCEEDING

10. The following sets out an update with respect to the NFPPB Proceeding and the activities of the Ziger Group since the filing of the Seventh Report.

i. Timeline for Final Submissions

11. As set out in the Seventh Report, final arguments in the NFPPB Proceeding were to be completed by mid-February 2018. The complications with respect to the delivery of transcripts has persisted.

12. On or about December 11, 2017, the Ziger Group delivered a request to review to the NFPPB with respect to the October 11, 2017 Order, attached as Appendix “D” to the Seventh Report (the “**December Request**”).

13. On December 19, 2017, and in response to the December Request, the NFPPB issued an Order indicating, *inter alia*, that it would be amending the timeline for final arguments, and as such, the timelines stated in its September 21, 2017 Order were no longer operative (the “**December Order**”). In that regard, the NFPPB ordered the Ziger Group to file an affidavit by January 10, 2018 with respect to what steps were taken in order to secure the transcripts and when those steps were taken. Attached hereto and marked as **Appendix “A”** is a copy of the December Order and as **Appendix “B”** is a copy of the September 21, 2017 Order referred to therein.

14. On January 10, 2018, the Zirger Group delivered a request to review to the NFPPB with respect to the December Order (the “**January Request**”). Attached hereto and marked as **Appendix “C”** is a copy of the January Request.

15. On January 19, 2018, and in response to the January Request, the NFPPB issued a further Order which, *inter alia*, addressed the issues put forth by the Zirger Group related to obtaining the transcripts from the court reporter, and clarified and affirmed the December Order requirement for an affidavit, to be filed by February 2, 2018 (the “**January Order**”). Attached hereto and marked as **Appendix “D”** is a copy of the January Order.

16. On or about February 2, 2018, the Zirger Group filed its affidavit in accordance with the December Order and January Order. Attached hereto and marked as **Appendix “E”** is a copy of said affidavit.

17. On February 22, 2018, the NFPPB issued a letter to counsel to the Zirger Group and counsel to the Receiver in the NFPPB Proceeding (*i.e.*, Fogler, Rubinoff LLP) setting out its review of the above-noted affidavit. As further described therein, the NFPPB found that no attempts by the Zirger Group or its counsel were made to contact the court reporter, despite the NFPPB’s instructions and the December Order, and described same as constituting a lack of due diligence (the “**February Letter**”). Attached hereto and marked as **Appendix “F”** is a copy of the February Letter.

18. Pursuant to the February Letter, the timeline for the final submissions will now be set upon filing of the confirmation of receipt of transcripts by the Zirger Group.

ii. Court Report's Fees

19. On February 13, 2018, counsel to the Zirger Group delivered a letter to counsel to the Receiver, Gregory Azeff of Miller Thomson LLP, inquiring about payments made to the court reporter in the NFPPB Proceeding. Attached hereto as **Appendix "G"** is a copy of said letter.

20. To date, the Receiver has not received any invoices from the court reporter, and as such, no payments have been made.

ZIRGER GROUP MOTION RE: COSTS

21. As noted in the Seventh Report, the Zirger Group brought a motion for costs (the "**Cost Motion**") against the Receiver ostensibly returnable October 26, 2017. The Zirger Group had not taken any steps with the Commercial List office to set down its Motion for October 26, 2017 and consequently, said motion did not proceed on that date.

22. In December of 2017, the Zirger Group corresponded with the Commercial List scheduling office and counsel to Meridian and the Receiver with respect to scheduling the Cost Motion. In this regard, both counsel to Meridian and counsel to the Receiver provided the Zirger Group with February 22, 2018 as an available date for the hearing of the Cost Motion. Attached hereto and marked as **Appendix "H"** is a copy of said email correspondence between December 6, 2017 to December 19, 2017.

23. Neither counsel to the Receiver nor counsel to Meridian received a response from the Zirger Group with respect to whether the February 22, 2018 date had been secured.

24. Based on its review of the Daily Court List and correspondence with counsel to Meridian, counsel to the Receiver understands that the Zirger Group again had not taken any steps with the

Commercial List office to set down the Cost Motion for February 22, 2018, and consequently, the Cost Motion did not proceed on that date.

25. The Receiver has not received any update or further information from the Zirger Group with respect to the status or scheduling of the Cost Motion.

RECEIPTS & DISBURSEMENTS

26. Attached hereto as **Appendix "I"** is a copy of an updated Receiver's statement of receipts and disbursements for the period between February 21, 2014 and February 26, 2018 (the "**R&D Statement**").

UPDATED FEES AND DISBURSEMENTS

27. As set out in the Second Report, the Receiver seeks approval of its fees and disbursements as well as those of its legal counsel. Since filing the Seventh Report and the fee affidavits contained therein, the Receiver and its counsel, Miller Thomson LLP, have incurred additional fees.

28. The Receiver has updated the fee affidavit contained in the Seventh Report. The Receiver's accounts for the period between February 1, 2017 to January 31, 2018 includes the amounts of \$48,109.25 plus disbursements of \$163.08 plus Harmonized Sales Tax ("**HST**") of \$6,275.41 totalling \$51,855.49 (the "**Receiver's Accounts**"). Attached hereto as **Appendix "J"** is the Affidavit of Allan Rutman of Zeifman Partners Inc. sworn November 28, 2017, incorporating copies of the Receiver's Accounts, as well as a summary of the personnel, hours and hourly rates of the Receiver.

29. The accounts of the Receiver's legal counsel, Miller Thomson LLP, for the period between October 27, 2017 and February 26, 2018 include the amounts of \$5,149.50 in respect of fees plus

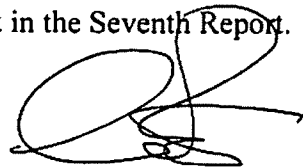
disbursements of \$160.00 and HST of \$669.44, for a total of \$5,978.94 (the “MT Accounts”). Attached hereto as **Appendix “K”** is the Affidavit of Alina Stoica of Miller Thomson LLP, sworn November 30, 2017, incorporating copies of the MT Accounts, as well as a summary of the personnel, hours and hourly rates

CONCLUSION

30. For all of the above reasons, the Receiver respectfully requests that this Honourable Court issue an Order:

- (a) Approving the activities and conduct of the Receiver and its counsel as disclosed in the Seventh Report and this Supplementary Report;
- (b) Approving the Receiver's R&D Statement;
- (c) Approving the Receiver's Accounts;
- (d) Approving the MT Accounts, as set out in the Seventh Report and this Supplementary Report; and
- (e) Approving the Fogler Accounts, as set out in the Seventh Report.

February 28, 2018



ZEIFMAN PARTNERS INC., in its capacity
as the Court-appointed receiver of Vandermeer
Greenhouses Ltd. and not in its personal or
corporate capacity

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-
VANDERMEER GREENHOUSES LTD.
Respondent

Court File No. CV-14-10443-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**SUPPLEMENTARY REPORT OF
ZEIFMAN PARTNERS INC., IN ITS
CAPACITY AS COURT-APPOINTED
RECEIVER**

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Lawyers for Zeifman Partners Inc. in its capacity as Court-
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Tab A

**Normal Farm Practices
Protection Board**

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**Commission de protection des
pratiques agricoles normales**

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Courriel: NFPPB@ontario.ca



December 19, 2017

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Re: Dell et al v Zeifman Partners Inc. – December 11, 2017 Request of C. Kirewskie

Dear Sir and Madam:

I have considered the December 11, 2017 request for review. This is a request for a review of the order of October 11, 2017, and that order was made as the second part of a two-part order on review of the August 4, 2017 original order. The first order made on that request for review is dated September 21, 2017. It is not contemplated in the Rules that there be multiple reviews of an order, or reviews of decisions on reviews, but these possibilities are also not precluded by the Rules. In addition to this being a request for a review of an order made on review, I note that this case is even more unusual in that the October 11, 2017 order granted in part the relief requested by the Applicants, that being the extension of time to file the final submission, that is now sought to be varied. As with the previous request for review, I have not consulted the hearing panel on this matter.

There is no doubt that there have been issues with the court reporter in this case. There was no contact for a period of time despite repeated attempts by staff to make contact, and when the court reporter finally did respond to the Board, they were slow in delivering transcripts. The Board does not know why the court reporter has conducted themselves in this manner. The orders of September 21 and October 11, 2017 were made considering that all transcripts were available and that obtaining them was the responsibility of the parties, as was previously ordered, whereas the order of August 4, 2017 was made considering that transcripts may not be forthcoming at all due to the court reporter not responding to the Board. Now the Applicant asserts that they do not have, and have been unable to get, all the transcripts they have ordered (the Applicants' materials use the phrase "record of proceeding", but I am proceeding as if they meant "transcripts"). Why the Applicant waited until the week before their submission was due to notify the Board of this raises concerns. If there were problems contacting the court reporter and receiving transcripts, this could have been communicated to the Board and Respondent earlier.

Aspects of the December 11 request for review go beyond any issues respecting the receiving of transcripts. The demands for disclosure from the Respondent and for information from the Board regarding when which transcripts were received have already been answered in writing. Other aspects of the December 11 correspondence, such as demands for explanations, the production of bench notes of members, or to reconvene the hearing to examine the court reporter, do not relate to an order or decision that has been made, and thus are not properly within the scope of a review request.

The late notice of the Applicants asserting that they do not have all the transcripts means that the timelines for the final submission will need to be changed again. Had the Applicants raised this issue sooner, this issue could have been addressed before the time for the final submission is upon us. However, the timelines for the final submission should not be changed (beyond what is necessary to address this latest request of the Applicants) without an evidentiary basis and an opportunity for the Respondent to make a submission, should they consider it necessary. I do recognize that this is the Applicants' application and that materials filed by the Applicants on the review requests indicate that the Respondent no longer operates the digester, and that the December 11 correspondence asserts that provincial approval to operate the site in the future may not be forthcoming. Thus, based on these assertions by the Applicants, there is no urgency to this matter.

Therefore, I will be amending the timelines for the final submission, to at least account for this request and the impending holiday season and possibly beyond. The timelines stated in the September 21, 2017 order are therefore no longer operative. In order to consider how to address the aspect of the request for review that pertains to the timeline for the final submission, an affidavit is needed indicating what steps were taken by the Applicants to secure the transcripts and when those steps were taken. Attempts at communication with the court reporter, including an indication of when requests for those transcripts that are outstanding were made; any responses provided by the court reporter; and the delivery dates of the transcripts that were received should be detailed. The Applicants must serve the Respondent and file with the Board their affidavit by January 10, 2018. The Respondent shall serve and file their response, if any, by January 26, 2018. As with the previous review request, submissions such as letters and emails outside of the submission process ordered above are not appropriate. I will issue another order after January 26, 2018. All other aspects of this request for review are denied for the reasons given above.

Yours truly,



Kirk W. Walstedt, Chair
Normal Farm Practices Protection Board

Tab B

Normal Farm Practices
Protection Board

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Commission de protection des pratiques
agricoles normales

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September 21, 2017

BY Courier

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Stanley Berger,
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Dear Sirs and Madam:

Re: Dell et al. v. Zeifman Partners Inc
Normal Farm Practices Protection Board No. 2015-02

I have reviewed the August 21, 2017 request for a review of the Board's order of August 4, 2017, denying leave to bring a motion to add a party and call new evidence. No procedure is set out in Rule 64 for conducting such a review. In this case, I have decided on most of the review request without inviting submissions from the Respondent.

For the reasons below, most of the request for review is denied. The issue of timelines for final submissions outlined in Parts C and F of the request for review is the only issue where I see some merit, and I am prepared to extend the timelines for the final written submission, subject to the respondent providing a written objection by Friday, October 6, 2017. If an objection is received, I will consider it and make an order according to the merits of the request and the reasons for the objection. I make this order considering that the remainder of transcripts have now been provided and are available from the court reporter.

I note that Part C argues that the Board should not depart from the January 13, 2017 directions on final submissions, while Part F argues to extend the time period in those directions by 90 days. I have focused on the arguments in Part F, despite Part C.

This matter featured a lengthy hearing with much evidence being presented. Additionally, the Applicants have indicated that there is no urgency to the Board issuing a decision due to changed circumstances from when the application was brought, and that rendering decision within the next few months is not required. Additional reasons are cited in the request for review based on counsel availability. Upon review of the request for a review and of the orders made in this matter thus far and related material, my tentative conclusion is that the Respondent would suffer no prejudice should the timelines to make the final submission be extended.

For these reasons, subject to any objection from the Respondent, I will extend the timelines for providing the final written submission to those set out below. The order extending the timelines is contingent on my consideration of any objection from the Respondent, which must be served on the Applicant and filed with the Board by Friday, October 6, 2017. Should an objection from the Respondent be received by the Board, I will consider the reasons offered for it and issue a further order regarding the final submissions.

Regarding Part A of the request for review, I find that a motion cannot be considered urgent if it has no reasonable prospect of success. There is no need to consider urgency if the desired motion has no reasonable chance of being granted. The argument of whether the correct test as to whether to grant leave to bring a motion in this case is one of urgency, rather than whether the motion has a reasonable prospect of success, ignores the key aspects of the decision on the leave request: that is, the motion to add a party and call new evidence does not have a reasonable prospect of success. The reasons given in the August 4, 2017 order and my reasons given below in response to the request for review which attempts to re-argue this issue address this point. There should be no need for further motions as the evidentiary portion of the hearing has concluded.

Parts B and G of the request for review are moot. Additionally, the request in Part G does not comply with Rule 39.

Part I, which is really about the desire to add a new party and call new evidence, is without merit. The desire to add a party is at this point an attempt to re-litigate the issue which has been the subject of an order from the Board, a denial of a request to review that order, and an application for judicial review made by the Applicants. The application for judicial review is pending before the Court. The Applicant takes issue with the Board's order of August 12, 2016, my decision on the request for review of September 22, 2016 and the order of August 4, 2017, and now is seeking a court ruling on the issue. There is no need to repeat the reasons for not adding a party at this stage of the proceedings again—the reasons have already been set out by the Board.

The argument for new evidence to be admitted is also without merit. The reasons given in the order of August 4, 2017 adequately address this point. To proceed as the Applicant desires would, if the operator did not change, raise the possibility of a never-ending hearing, as new disturbances could be alleged as soon as the evidence of previous disturbances was heard; with the case the Respondent has to respond to changing day by day. This is not an "unfounded

temporal restriction” that the Board is without jurisdiction to impose. Hearing additional evidence of alleged adverse effects occurring after the hearing of evidence concluded and while the parties and the Board were waiting for transcripts, or even beyond, would illustrate the problem described in the August 4 order as “The fact situation is not a moving target.” With a new operator who was not a party to these proceedings, and with multiple days of testimony on the disturbances alleged by the witnesses, re-opening the hearing at this point to hear of further alleged disturbances is not required.

With respect the evidence desired to be called regarding the greenhouse operation being shut down, the issue of whether the operation is or was an “agricultural operation”, as that phrase is defined in the Act, is subject to the same issues as described above regarding new witnesses. Argument as to the Board’s authority over the operation of the Respondent at the relevant times can be included in the final written argument.

Evidence of “witness tampering” is not needed, as the Applicants’ own materials on the leave request speak to the Respondent not calling witnesses who, in the view of the Applicant, could have testified that the facility was no longer an agricultural operation. I do not see how this would assist the Applicants in making their case before the Board, but at any rate, the Respondent is free to make their case as they see fit. Further argument as to alleged “witness tampering” found in the motion record on the request for leave is based on evidence of communications by representatives of the Respondent with witnesses only, which by itself does not suggest impropriety. This allegation is thus unsubstantiated and does not warrant re-opening this hearing.

Part H, which alleges a reasonable apprehension of bias because of the Board’s decision to proceed to the final written argument without transcripts, does not feature a cogent argument and is without merit. The only reason given in support of this allegation is “If the Board does not require transcripts of any of the experts the Applicants called to testify, has it already decided how it will rule in this case?”. Despite multiple attempts by Board staff to contact the court reporter, no contact was made for a significant period of time. At the time the August 4, 2017 order was made, it appeared quite likely that a complete transcript would never be provided by the court reporter. Issuing a decision without transcripts being available is not, without some persuasive reasons being argued, predisposed to one side or the other. There is no reasonable apprehension of bias as both parties would have been disadvantaged had transcripts not been received.

Parts D and E demand explanations from the Board and detailed disclosure from the Respondent as to when transcripts were received. Also requested are the steps taken by the Board to secure the transcripts. These demands are frivolous and not relevant to issues in this proceeding. The Board did not “interfere” with the court reporter – prior to the August 22, 2016 email cited by the Applicants, it was the Applicants’ counsel who raised concerns about the property being sold. The preparation of transcripts was requested to be put on hold pending confirmation that the matter would be proceeding. There was the potential for unnecessary costs to be incurred. Since the hearing ended, the court reporter was contacted several times, and several further unsuccessful attempts at contact were made, regarding the

transcripts. During the hearing, partial transcripts were produced for the purposes of making arguments. My understanding is that the Respondent ordered a portion of the transcripts and distributed them to the Board and the Applicants in that regard. Since the end of the hearing, direction was given that each party be responsible for ordering its own transcripts.

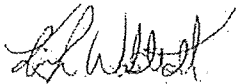
Part J, where it is argued that the Board's August 4, 2017 costs order should be cancelled, alleges that order does not address the failed food safety audit or the effect of the closure of the greenhouse. This is the new evidence that is addressed on p. 3 of the August 4, 2017 order, and is addressed again, above.

As final points related to the Applicant's desire to call new evidence on additional alleged disturbances and the nature of the operation, I note that with the Respondent being a receiver, and with a sale of the operation, the relief available to the Applicants, if any is granted in the final decision, would be limited such that additional evidence of alleged disturbances occurring after all the testimony was received is not needed. Also, I note that arguing for the re-opening of a hearing for purposes other than the matter at issue before the Board is not appropriate. The Applicant's position that the hearing should reconvene to examine whether the greenhouse was an "agricultural operation" or not after a certain date seems to indicate such a purpose.

For these reasons, except for the request to extend the timelines for the final written submission, I will not be ordering any changes to the Aug 4 order or granting any other relief. As stated above, I will consider any objection from the Respondent to the following timelines if received by October 6. If no objection is received, the timeline will remain as is in this order. If an objection is raised by the Respondent, I will issue another order. Any further order, if one is needed, will account for the fact that transcripts are now available, but the parties are awaiting a response from the Board on the request for review.

The tentative order is that the Applicants shall serve and file final argument by way of written submissions in accordance with the July 14, 2016 order on or before December 22, 2017. The Respondent shall serve and file final argument by way of written submissions in accordance with the July 14, 2016 order on or before February 2, 2018. The Applicants shall serve and file a reply to the Respondent's final argument, if any, in accordance with the July 14, 2016 order on or before February 16, 2018.

Sincerely,



Kirk W. Walstedt, Chair
Normal Farm Practices Protection Board

cc: Glenn C. Walker, Vice-Chair

Tab C



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January 10th, 2018

By fax
To the Board: 519-826-4232
To the Respondent: 416-941-8852

Chairman Walstedt
Normal Farm Practices Protection Board
Ministry of Agriculture, Food and Rural Affairs
1 Stone Road West
Guelph N1G 4Y2

Dear Mr. Chairman:

RE: James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, Dino Lavalle, Mary Lavalle, Dan Lavalle, Larry Bourk, Joan Bourk, Richard Zirger, Judi Zirger, Robert Zirger, Sharon Zirger, George Lepp, Cindi Lepp, Mark Lepp, Erica Lepp v. Zeifman Partners as operator of 2021 Four Mile Creek Road, Niagara on the Lake

Pursuant to Rule 64 of its *Rules of Practice and Procedure*, the Applicants request a review of the Board's December 19th, 2017 decision as it contains numerous errors, does not comply with Rule 39(4) and (5) and as such, is unfair to the Applicants.

While the Board finds our requests "unusual," and states in its decision that "letters and emails outside of the submission process ordered ... are not appropriate," the Board has also acknowledged that while it is "not contemplated in the Rules that there be multiple reviews of an order, or reviews of decisions on reviews, these possibilities are also not precluded by the Rules."

The Applicants submit that they have had to raise the same issue numerous times because the Board has issued orders pertaining to the delivery of final submissions that were unfair, do not reflect the record, and intentionally ignore the Applicants' submissions. We are of the view that the Board's decision not to consider the Applicants' extensive submissions of October 6th, 2017 amounts to a breach of natural justice. We suspect that the Board's decision not to consider those submissions is a direct cause of the Board's present misperceptions and failure to apprehend the uneven effect of its decision to move to the final submission stage at this time.

The issue which has underpinned all the Applicants' recent requests for review or reconsideration is the Board's decision to proceed to the final submission stage when the Applicants have repeatedly advised it that they do not have in their possession a copy of the entire record of the proceedings, that is, they do not have the transcripts of all the evidence and argument presented at the hearing as they ordered from the court reporter. In our view, the Board has compounded this lack of procedural fairness by treating the parties differently with respect to the receipt of the transcripts they ordered.

While the Applicants have repeatedly advised the Board that they have not received the transcripts they ordered from the court reporter, the Respondent has implicitly said that it has all the transcripts it needs to draft its final submissions. In any event, the Respondent has never complained about the court reporter's failure to deliver any of the transcripts it ordered from her. Moreover, as we advised in our submissions of October 6th, 2017, after we filed our August 21st, 2017 request for review, the Respondent filed a transcript in its submissions on the judicial review application which the Applicants ordered from the court reporter but she has not delivered.

The Board will recall that the Applicants brought an application for the Court to review this Board's decision to proceed to hear a motion it had ruled was a "nullity" without the Applicants in attendance. In an obvious violation of natural justice, the Board ordered that any further motions would require leave of the Board and only be granted in the most urgent of circumstances and only if the motion would be successful. On that application, the Applicants advised the Board on October 6th, 2017 that the Respondent filed an affidavit sworn on September 13th, 2017 attaching excerpts of a transcript the Applicants have not received from the court reporter.

In paragraph one of the Board's October 11th, 2017 decision, the Board states that it "did not consider [the Applicants' submissions of October 6th, 2017] in making this final order but in our submissions, we specifically noted that:

Mr. Berger's letter makes references to transcripts in his client's possession but does not list them nor advise as to when they were received. In our correspondence of August 21, 2017, we asked for a complete list of which transcripts the Respondent has received, with proof of delivery and receipt. The Applicants also asked the Board to explain why it and the Respondent received transcripts before they did. The Applicants also asked the Board for a copy of the Board's contract with the court reporter, Ms. St. Gelais. May we now have a reply to these enquiries? In our submission, it would be unfair for the Board to require the Applicants to file their final submissions without access to the same evidentiary record as the Respondent.

The Board must address the uneven positions of the parties.

The Board has treated the parties differently. It ordered the Applicants to file an affidavit setting out their contact with the court reporter when it refused to order the Respondent to file its Answers to Written Interrogatories in affidavit form as required by Rule 35.02 of the *Rules of Civil Procedure*. The Board's decision and subsequent decision to permit the Respondent to remove the operator of the greenhouse and anaerobic digester and the Respondent's President from its witness list without notice to the Applicants deprived them of an opportunity to cross-examine the Respondent when it had specifically made an order that the Applicants were to have the right to examine Daryl Robinson at the hearing.

With respect, setting out in affidavit form all the recorded written requests the Applicants made for the court reporter to deliver all the transcripts they ordered will not address the fundamental unfairness of this Board deciding to order the delivery of final submissions without complying with its Rules, hearing the Applicants or ensuring that the Applicants have transcripts of the entire proceeding. The issue is not what steps the Applicants took to obtain the missing transcripts they ordered from the court reporter but what steps the Board has taken to obtain them and to ensure that it treats the parties fairly. The Board is on notice that the Respondent has received a different set of transcripts than the Applicants and yet it has not ordered the Respondent to produce any of those transcripts to the Applicants when this is clearly required by Rule 39(5). The Board needs to remedy this unfairness.

The Board's Rules state that the parties are responsible for ordering their own transcripts, which the Applicants did personally on the last day of the hearing. The Board's Rules do not require that they follow up or monitor the court reporter's progress in completing their order. That responsibility lies with the Board who contracted with the reporter for her services and who has a long-standing relationship with this reporter. The Board needs to ensure that justice is not only done but seen to be done. A reasonable person viewing this situation could come to the conclusion that the Board is purposely shielding the court reporter from scrutiny because it is content to give the Respondent an advantage over the Applicants. Without all the transcripts the Applicants ordered and in particular without the transcripts the Respondent has and which the Applicants do not, the Applicants are in a disadvantaged position to prepare final submissions and to file thorough written submissions that cite the evidence heard. To be fair, the Board must not continue permitting the Respondent to enjoy this advantage, as it clearly favours one party at the other's expense.

Fairness demands that the Board disclose to the parties the steps it took to ensure that the reporter fulfilled her contractual obligations. Its reluctance to do so when it has been advised by the Respondent that it has received all the transcripts it ordered and requires raises a reasonable apprehension of bias.

A. Inconsistencies and errors in the Board's decision

i) Who is the court reporter?

The Applicants note that throughout the Board's letter of December 19th, 2017, the court reporter is referred to in the plural. In paragraph two, the Board states that "they were slow in delivering transcripts." Then, in the following sentence, the Board writes: "The Board does not know why the court reporter has conducted themselves in this manner."

Until the Board's December 19th decision, the Applicants understood that there was only one court reporter. We ask the Board to set out the names and contact information for all the court reporters who are or have been retained or who worked in any way on the transcripts for this proceeding. We also request that the Board advise as to what steps it has taken to secure the transcripts of this proceeding, when those steps were taken, by whom and how. Will the Board also provide the parties with copies of all its correspondence with the court reporters?

ii) The Board's erroneous finding that the Applicants are raising this issue for the first time

The Board states that its Orders of September 21st and October 11th, 2017 "were made considering that all transcripts were available and that obtaining them was the responsibility of the parties, as was previously ordered, whereas the order of August 4, 2017 was made considering that transcripts may not be forthcoming at all due to the court reporter not responding to the Board." The Applicants note however, that on October 6th, 2017, they specifically advised the Board that the premise of its Order of September 21st, 2017 was "mistaken" as "the Applicants have not received the entire record." As there was no evidence before the Board that "all the transcripts were available," the Board's decision was unreasonable.

At the time, the Applicants raised fairness concerns about the personal attacks Respondent's counsel launched against the Applicants' counsel, discrepancies between the court reporter's delivery of the transcripts and the parties not having access to the same evidentiary record. We insisted on having a copy of the entire record before the Board ordered the delivery of final submissions. We also asked for a list of all the transcripts the Respondent has received from the court reporter, but the Board has refused to make this Order.

Consequently, the Board is mistaken when it writes in paragraph two of its December 19th decision that: "Now the Applicant (sic) asserts that they do not have, and have been unable to get, all the transcripts they have ordered ..." With respect, the Applicants believe that they advised the Board that of the reporter's failure to deliver the entire record of the proceedings to them on at least eight separate occasions. We first advised the Board's Secretary in writing on December 16th, 2016 that the transcripts were not in hand. Despite this, on December 20th, 2016, the Board set out a timetable for the delivery of final submissions.

On January 12th, 2017, the Applicants advised Chairman Walker in writing that they still did not have the entire record of the proceedings. On January 13th, 2017, the Board advised the parties that "once transcripts are completed in its (sic) entirety and available for purchase, the Board will notify the parties." We have traced back through all the Board's Orders, directions and correspondence and cannot find any record that it notified the parties that the transcript was completed as it had promised to do. If we are mistaken, we would appreciate receiving a copy of the notification the Board sent to the parties, together with proof of delivery and receipt.

Since we cannot locate a notification from the Board that the transcripts were complete, the Board's Orders of September 21st and October 11th, 2017 were unfair as the condition precedent had not been met. While the Board has not disclosed to the Applicants whether it has a transcript of the entire proceeding, we would respectfully request that it do so now. If it does not, would the Board kindly identify which transcripts it has received, from whom and when?

On January 23rd, 2017, the Applicants wrote to the Board's Secretary to ask that the Board not set down a timeframe for the delivery of final submissions until the transcripts had actually been received. At the time, we wrote that "while the Board had a copy of the first six days since the week of January 13, we note that we are still waiting to receive a copy." The Applicants did not receive those first six days for weeks.

On March 24th, 2017, the Board's Secretary asked the parties to notify him when they received the remaining transcripts. The Applicants never sent any such notification. Nor have they received a copy of one from the Respondent.

The Applicants orally advised the Board in the motion that was heard by teleconference on July 19th, 2017 that they had not yet received all the transcripts of the evidence and argument in these proceedings. At the time, the Board suggested that in lieu of the missing transcripts, the parties could use their notes at the final submission stage.

On August 14th, 2017, the Board's Secretary advised that the reporter was still working on the transcripts. On August 18th, 2017, the Applicants wrote to the Board to request a copy of its contract for service with the court reporter so that they could take legal action for her failure to deliver the transcripts they ordered.

On August 21st, 2017, the reporter sent the Applicants an email in which she stated: "I had sent everybody the same thing, so I'm not sure what happened. I want to make sure you have everything." Her statement does not accord with the information we have. For example, in his September 25th, 2017 letter to the Board, Mr. Berger stated that up to September 2017, his client did not order any of the Applicants' transcripts but yet has admitted that it received a total of 11 transcripts. As we previously pointed out, at least some of the transcripts in the Respondent's possession must be transcripts which the Applicants are missing. Indeed, Mr. Berger filed a transcript in the judicial review proceeding which the Applicants have not received from the court reporter, and yet the Board has not ordered him to produce it to the Applicants when Rule 39(5) clearly states that his client must do so.

The Applicants have a copy of the late Paul Cline's testimony, but the Board has not listed his transcript as being in its possession. As such, the court reporter's statement is obviously false. As a result, we have repeatedly asked the Board to have her examined. We find it peculiar that the Board will not convene a hearing for this purpose when it has a long-standing relationship with the reporter as acknowledged by its Secretary in his email of December 7th, 2015, which we attached to our submissions of December 12th, 2017, and had no difficulty convening a hearing after finding a motion the Applicants brought a nullity. As the Board maintains that it has the power to order the parties and their counsel to appear at any time, as demonstrated by the hearing the Board conducted in August 2016 without the Applicants, we would have thought the issue raised herein to be of such fundamental and grave importance that the Board would have convened a hearing to address it. We note that Ms. St. Gelais was also the court reporter the Board had retained in 2012 to record and prepare a transcript of Judi and Richard Zirger's first application to the Board which they withdrew on the grounds of bias. Why has this Board refused to take steps to ensure that Ms. St. Gelais is accountable for the fulfillment of her professional duties and contractual obligations? We have previously advised that we saw her interviewed on TVO about her enrolment in a full-time course of study. Why has this Board refused to demand that she turn in her equipment so that another reporter could finish the outstanding transcripts? Is there a relationship between the reporter and the Board or the Respondent of which the Applicants are unaware? We sincerely doubt that a judge of the Superior Court would have adopted as passive a role as the Board in this matter. Would the Board kindly explain to the Applicants why it has refused to tell them what steps it has taken to ensure that they have the record they need to pursue their claims?

On August 21st and December 12th, 2017, the Applicants requested a review on the basis that all the transcripts were not available. We stated that “without all of the transcripts of these proceedings, the Applicants cannot make meaningful final submissions.” It is unreasonable for the Board to assert on December 19th that if “there were problems contacting the court reporter and receiving transcripts, this could have been communicated to the Board and the Respondent earlier.” It is also unreasonable for the Board to find that the Applicants “waited until the week before their submission was due to notify the Board... If there were problems contacting the court reporter and receiving transcripts, this could have been communicated and Respondent earlier.” Given all the instances outlined above where the Applicants incurred the cost of repeatedly writing to the Board, the Board’s finding that the Applicants gave “late notice” is patently unreasonable. While the Board held that had “the Applicants have raised this issue sooner, this issue could have been addressed before the time for the final submission is upon us,” the Applicants did raise the issue diligently and repeatedly. The Board failed to deal with it fairly. The Applicants attempted to draft their closing submissions without the transcript of the entire proceeding as they had ordered, using only their notes as the Board directed but found this an impossible task that was grossly unfair to their clients. We made best efforts to comply with the Board’s unfair and unreasonable orders and only raised the lack of procedural fairness again after the prejudicial effect of the Board’s decision-making became completely clear to our clients.

We consider the Board’s decision to shield the Respondent and its counsel from scrutiny very unfair given that the Respondent has admitted that it has some 11 transcripts, that is, all the transcripts it needs and at least one transcript which the Applicants do not. We respectfully ask the Board to advise as to whether the Respondent has complied with Rule 39(5) of its Rules of Procedure. Rule 39(5) provides that:

Where a Party orders a transcript of all or part of the proceedings in an Application, it shall provide one copy of the same to the Board to be part of the Board’s record pursuant to Section 20 of the Statutory Powers Procedure Act, RSO 1990 c. S.22, as amended and one copy to any other Party (as defined herein), as the case may be, without charge.

Has the Respondent provided the Board with any of the transcripts it ordered and received? We have not done so to date as we do not have a copy of the entire record. Our intention was to comply with the Rule once we had received the entire record of the testimony and argument as ordered. Despite all the occasions we have raised the issue of not having a complete record of the testimony with the Board, we can advise that the Applicants have not received from the Respondent a copy of any of the transcripts it ordered of this proceeding. We can also advise that we have made specific requests for copies of the transcripts in the Respondent’s possession, but it has refused to provide them to us.

B. The Board’s Rules concerning transcripts

Rule 39(4) of the Board’s Rules incorporates the transcript requirements of civil proceedings in this province. It states that:

The recording of evidence and argument and the production of transcripts thereof shall be completed in accordance with Section 5 of the *Evidence Act*, RSO 1990 c. E.23, as amended and the Regulations there under and Rule 4.09 of the *Rules of Civil Procedure*, as amended from time to time, with all necessary, consequential and appropriate changes in place.

The provision is mandatory. The Board must ensure that the requirements of Rule 4.09 are respected.

Rule 4.09(11) of the *Rules of Civil Procedure* is also a mandatory provision. It states that:

- (11) Every transcript of evidence taken in court or out of court shall have,
 - (a) a cover page setting out,
 - (i) the court,
 - (ii) the title of the proceeding,
 - (iii) the nature of the hearing or examination,
 - (iv) the place and date of the hearing or examination,
 - (v) the name of the presiding judge or officer, and
 - (vi) the names of the lawyers representing the parties; and
 - (b) a table of contents setting out,
 - (i) the name of each witness with the page number at which the examination, cross-examination and re-examination of the witness commence,
 - (ii) the page number at which the charge to the jury, the objections to the charge and the re-charge commence,
 - (iii) the page number at which the reasons for judgment commence,
 - (iv) a list of the exhibits with the page number at which they were made exhibits, and
 - (v) at the foot of the page, the date the transcript was ordered, the date it was completed and the date the parties were notified of its completion. R.R.O. 1990, Reg. 194, r. 4.09 (11); O. Reg. 575/07, s. 8.

The mandatory provision to which we wish to draw your attention is Rule 4.09(11)(v). That Rule unequivocally requires that the transcript state the date it was ordered and completed and the date the parties were notified of its completion.

On January 13th, 2017, the then Board Secretary advised the parties that the Board had received the transcripts from the first six days of the hearing. The Board then stated that “once transcripts are completed in its entirety (sic) and available for purchase, the Board will notify the parties.” With respect, *Rule* 4.09(11)(v) places the onus on the Board to ensure that the court reporter it retained for the hearing complies with the *Rules*.

The transcripts the court reporter has produced to date do not comply with Rule 4.09(11)(v) or Rule 39(4) of the Board’s Rules. The Applicants are entitled to a transcript of the proceedings that states the date the transcript was ordered, the date it was completed and the date the parties were notified of its completion.

C. Remedy sought

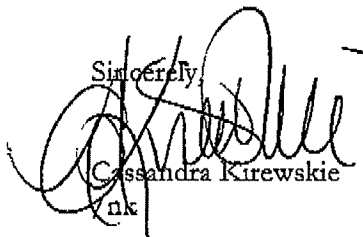
We therefore respectfully request that the Board review its December 19th, 2017 decision and Order to ensure that the Applicants are treated fairly and that the Board does not breach the rules of natural justice. As it stands, the Board’s decision-making in respect of moving to the final submissions stage without the Applicants being in receipt of all the transcripts of the hearing, which they ordered while the parties were still before the Board in 2016, and without hearing all the Applicants’ submissions breaches procedural fairness and the requirement that a statutory decision maker hear both sides, *audi alteram partem*.

We respectfully request that the Board convene an oral hearing in person at its very earliest convenience to examine Ms. St. Gelais with respect to the state of the transcripts of this proceeding,

that it compel the court reporter to produce the entire transcript of this proceeding and that it stay its orders with respect to the delivery of final submissions until it ascertains when the transcripts will be completed and delivered to the Applicants as ordered.

Thank you.

Sincerely,



Cassandra Kirewskie
nk

- c. Stanley Berger, counsel for the Respondent
Clients

Tab D

**Normal Farm Practices
Protection Board**
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**Commission de protection des
pratiques agricoles normales**
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January 19, 2018

By Email and Courier to:

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Email: sberger@foglers.com

Re: Dell et al v Zeifman Partners Inc. – December 11, 2017 Request of C. Kirewskie

There is no doubt that there has been significant issues with the court reporter in this matter. The court reporter has proven to be remiss in her duties. There was significant delay in preparing the transcripts, including an extended period of time in 2017 where the court reporter would not return messages and calls.

When the Order of September 21, 2017 was made, the court reporter finally had made contact with the Board and provided complete transcripts in hard copy, which are in the possession of the panel. The September 21 Order was made assuming that the parties had also been, or would soon be, provided with the transcripts that they had ordered. Thus, the October 6 letter of the Applicants was read with the assumption that any ordered transcripts would be provided within days. The extension to the time to file the final argument was made considering the Applicants' counsels availability, as stated in their previous submission, but assumed that all transcripts had been or would soon be provided. There has been no "shielding" of the court reporter or of the Respondent.

In the previous Orders on the reviews, there never was an intention of allowing the deadline for the final submission to pass if a party did not have the transcripts that they had ordered, if they had been at least reasonably diligent in trying to obtain their desired transcripts. As the court reporter had made contact and provided complete transcripts, the Orders were made considering that both parties could also make contact with the court reporter to obtain the transcripts. The parties were not treated differently or unfairly – it was made clear on more than one occasion that in this case each party would be responsible for ordering their own transcripts. Rule 39(5) was thus waived expressly by Order.

Counsel for the Applicants could have indicated to the Board in late October, 2017 or November, 2017, in a professional and concise manner, that they were experiencing continuing issues with the court reporter providing transcripts, rather than wait until days before the final submission was due to send a 57 page request for review that sought relief for matters clearly outside the

scope of a review, made further demands, argued matters that seem to relate to the subject of the hearing and not the review request, and that only briefly touched upon the real issue, that being that the Applicants did not yet have the transcripts. It was the time period from when the review Orders were made in the early fall of 2017, when the transcripts were complete and available (subject to the court reporter responding to communications) and December 11 that the Applicants' counsel allowed to lapse without indicating that there were further issues with the court reporter.

It should be clear that the Applicants' counsels' statements in the January 10, 2018 letter regarding notice of the court reporter not providing transcripts in 2016 and early 2017, when the transcripts were not completed, or during the period of 2017 when the court reporter 'went off the radar', were not what was referred to in the December 19 Order. All the fairness arguments of the Applicants' counsel regarding their eight notices therefore do not relate to the December 19 Order.

What was sought by the Board was an affidavit setting out the details of attempts to obtain the transcripts *during the period of time that they were available, after the revised time line was ordered* in the early fall of 2017. This evidence, as well as the other aspects of the affidavit, such as the delivery dates for the transcripts that the Applicants' counsel does have, are needed in order to determine how to resolve this issue. However, the Order to provide such an affidavit was disregarded by counsel for the Applicants. Instead, after the due date for the affidavit, another lengthy and questionable letter was sent, making demands of the Board that had already been made and answered, and seeking to convene a hearing to examine the court reporter. This could have been avoided if a concise and reasonable communication was sent in October or November indicating that the court reporter was being non-responsive again.

What is needed to move on to the final submissions are the transcripts, not calling a hearing on questionable authority to examine the court reporter. Insisting on receiving transcripts that are compliant with the Rules would be ideal, but given the past, and seem ongoing, issues with the court reporter not taking her duties seriously, such a step would likely only further the delay. Further attempts to raise irrelevant issues or re-litigate matters already decided, seeking "reviews" of matters not related to the Order under review, and making unfounded accusations and demands are not helpful and have only served to confuse the issue with the court reporter being remiss and have impeded the setting of appropriate time lines to make the final submission.

While confusion about the availability of the transcripts, and the court reporter 'coming back on the radar', at least for a period of time, and now allegedly reverting back to being non-responsive, has been unfortunate, going forward the affidavit is required. The Order for the affidavit is hereby reaffirmed and it should be provided without delay. Once the affidavit is received, or if the ordered affidavit is not filed and served by February 2, 2018, I will make a further order regarding submitting the final argument for the hearing panel and costs.

Yours truly,



Kirk Walstedt, Chair
Normal Farm Practices Protection Board

Tab E

NORMAL FARM PRACTICES PROTECTION BOARD

IN THE MATTER OF a hearing under the *Farming and Food Production and Protection Act*, 1998, S.O. 1998, Ch.1;

AND IN THE MATTER OF an application for a determination as to whether the disturbances from 2021 Four Mile Creek Road, Niagara on the Lake, result from a normal farm practice;

BETWEEN:

JAMES DELL, SOPHIE DELL, RON QUEVILLON, CHARLENE QUEVILLON, DINO LAVALLE, MARY LAVALLE, DAN LAVALLE, LARRY BOURK, JOAN BOURK, RICHARD ZIRGER, JUDI ZIRGER, ROBERT ZIRGER, SHARON ZIRGER, GEORGE LEPP, CINDI LEPP, MARK LEPP And ERICA LEPP

Applicants

and

ZEIFMAN PARTNERS INC. as operator of the waste disposal site at 2021 Four Mile Creek Road, Niagara on the Lake

Respondent

AFFIDAVIT OF RON QUEVILLON

I, Ron Quevillon, of the Town of Niagara on the Lake, in the Regional Municipality of Niagara,

MAKE OATH AND SAY:

1. I am a retired tool and die maker and part-time farmer. I live close to the farm located at 2021 Four Mile Creek Road, Niagara on the Lake, which is the subject of the within proceedings and am one of the Applicants herein. As such, I have knowledge of the matters

to which I hereinafter depose. Where my knowledge is based on information and belief, I have so stated.

2. On July 6th, 2017, on the last day of the hearing before the Board, with the entire Tribunal in attendance as well as counsel for the Respondent, I heard our counsel request a complete set of transcripts.
3. Our request for a complete set of the transcripts of the proceeding was made right after the Board requested a full set and Respondent's counsel, Mr. Berger, said that he would not require full set. I also recall that Mr. Berger advised the court reporter that he would provide her with a list of the transcripts he required. To this day, the Applicants do not know which transcripts the Respondent ordered or received.
4. After the hearing adjourned, those of the Applicants who were available went to lunch with the court reporter. I recall that at the table, we reiterated our need for a complete set of all the evidence and argument in the proceeding.
5. I recall that the court reporter told us that she would not be able to start working on the transcripts for three to four weeks because of some commitments she had and her holiday plans that summer. I recall her saying, though, that she would get to work on the record quickly.
6. On August 18th, 2016, Ms. Kirewskie followed up with the court reporter as to whether the transcripts were complete. Four days later, the court reporter sent the Applicants' counsel an email stating that "the transcripts had been put on hold for a while by the Board." I have attached as *Exhibit "A"* a copy of Marion St. Gelais' August 18-22, 2016 email string to Cassandra Kirewskie confirming this conversation.

7. On December 20th, 2016, the Board wrote to the parties to “clarify the issues ... regarding the distribution of the transcripts.” It outlined the workings of Rule 39 and stated: “It is the responsibility of each party to order their own transcripts. Rule 39(5) specifies the need to provide a copy to the Board and to the other parties involved in the matter. The Board will not require a copy in this instance because it has ordered its own full copy.” I have attached a copy of the Board’s email as *Exhibit “B”*.
8. I note that Mr. Jamieson directed the parties to contact the court reporter on her cell phone. I am advised by Judi Zirger and Paul Marshall that the Applicants made numerous attempts to contact the reporter on her cell phone but except for one occasion in August 2017, were unsuccessful reaching her. I am advised by Judi that when she called the court reporter on August 17, 2017, she blocked out her identity to increase the chance that the call would be answered, and it was.
9. On January 30th, 2017, the court reporter confirmed in writing her understanding that the Applicants had ordered the “entire transcript.” I have attached a copy of her January 2017 email string with Ms. Kirewskie as *Exhibit “C”*.
10. On July 19th, 2017, I attended the hearing the Board conducted by teleconference in the law office of Marshall Kirewskie. I recall that Ms. Kirewskie advised the Board that the Applicants had still not received the entire record and that Chairman Walker suggested that the parties and the Board use their notes to complete the final submission and decision stage. I recall that Ms. Kirewskie identified a practical problem with the Board’s suggestion and asked whose notes would be authoritative and what would happen if there was a conflict between the notes. I also recall that she asked whether the parties could be provided with a copy of the Board’s notes and Chairman Walker refused her request.

11. On August 4th, 2017, the Board issued a decision on the motion that was argued on July 19th, 2017. In its decision, the Board reiterated that the timelines with respect to final argument by way of written submissions “were to commence on the date that the Board advised the parties that it had received the transcripts of the hearing.” I have attached as *Exhibit “D”* a copy of the email the Board’s Secretary sent to the parties attaching the Board’s Order and transcript list.
12. On August 21st, 2017, the court reporter sent Ms. Kirewskie an email stating that she “got a message from the Board saying that their list and yours might differ.” She went on to say that she “had sent everybody the same thing” and was “not sure what happened.” Looking at the record, I do not believe that Ms. St. Gelais’ statements were accurate. Although she said that she wanted to “make sure that [Ms. Kirewskie] have everything,” to this day, she has not delivered “everything” to the Applicants. A copy of Ms. St. Gelais’ email is attached as *Exhibit “E”*.
13. I am advised by Paul Marshall that his office never received any transcripts of the proceedings from the Respondent.
14. The Applicants complied with the Board’s Rule and direction to order its own transcripts from the reporter. When she was unresponsive, we sought the assistance of the Board and repeatedly asked it to intervene to ensure that we obtained the transcripts we had ordered.
15. On September 25th, 2017, the Respondent’s counsel wrote to the Board setting out a description of the transcripts it had received to date and suggesting that the issue for the Board to consider was “diligence in trial preparation.” Mr. Berger wrote: “The fact is that the Applicants should have been preparing their submissions as they received their transcripts were they being respectful of the Board’s order of July 14th, 2016.” Mr. Berger

then went on to allege that the Applicants were acting in bad faith. Knowing that we did not have a complete copy of the proceedings, Mr. Berger asked the Board to order the Applicants to provide their final written submissions by October 16th, 2017.

16. In my view, the Respondent was trying to take advantage of a very unfair situation. Mr. Berger had said in his letter that he was satisfied with the transcripts he had received. At the same time, he knew that the Applicants were still waiting for copies of transcripts they had ordered from the reporter. Mr. Berger knew that the reporter had not delivered the same transcripts to the parties. He also knew that his client had not complied with Rule 39(5) and had not provided the Applicants with a copy of each and every transcript it had received from the reporter and yet his client was asking for the Applicants to deliver their final submissions and quickly. I have attached as *Exhibit "F"* a copy of the Respondent's October 25th, 2017 submissions.
17. On October 6th, 2017, the Applicants sent the Board a Reply to the Respondent's October 25th submissions. In their Reply, the Applicants stated: "We wrote to the court reporter on September 20th, 2017 noting that we still did not have a copy of the entire record of the proceedings. We asked Ms. St. Gelais when the remaining transcripts would be complete and sent to us. We also asked her for a copy of Randy van Berkel's transcript. To date, we have had no reply." The Applicants went on to set out their belief that the Respondent had more of the record than they did. The Applicants argued that "it would be unfair for the Board to require the Applicants to file their final submissions without access to the same evidentiary record as the Respondent."
18. At paragraph one on page two, the Applicants also said: "Given this situation, the premise of the Board's decision of September 21st, 2017 ought to be addressed as it is mistaken.

While you stated in your decision that you made ‘this order considering that the remainder of the transcripts have now been provided and are available from the court reporter,’ the Applicants have not received the entire record.” A copy of our Reply dated October 6th, 2017 is attached as *Exhibit “G”*. In my view, as of October 6th, 2017, it was evident that the court reporter was unresponsive to the Applicants while at the same time had provided the Board and the Respondent with the transcripts they had ordered. I cannot comprehend why the Board refused to hear our submissions and refused to take steps to ensure that we had all the transcripts it and the Respondent had. The Applicants did not retain the reporter and have no legal authority to compel her to fulfill her legal duties. I have attached as *Exhibit “H”* a copy of an email Brittany Wieglos sent to Ms. Kirewskie on June 17th, 2015 confirming that “the Board provides a court reporter for hearings...”

19. The Board wrote to the parties on October 11th, 2017. In its decision, the Board stated that it “did not consider [the Applicants’ October 6th, 2017] letter in making this final order...” While the Board found that “delays in obtaining complete transcripts were beyond the control of the Board and both parties,” I believe that the Board could have provided us with a copy of the missing transcripts back when we first told the Board that we did not have a complete record of the proceedings and it could have ordered the Respondent to comply with Rule 39(5). If it had, we would have had a copy of the missing transcripts months ago. The Board waived compliance with this requirement in its decision of January 19th, 2018.
20. On October 12th, 2017, the Applicants wrote to the Respondent’s commercial counsel asking whether his client was willing to provide them “with copies of any transcripts it has

which we have not received from the court reporter.” Mr. Azeff directed Ms. Kirewskie to take the issue up with Mr. Berger.


21. On October 25th, 2017, Mr. Berger responded that he would not provide the Applicants with any of the transcripts in his client’s possession. Mr. Berger suggested that the Applicants contact the court reporter to obtain information concerning which transcripts his client had received and when. A copy of Ms. Kirewskie’s email string with counsel is attached as *Exhibit “I”*.

22. Mr. Azeff also wrote to Ms. Kirewskie on October 25th, 2017 confirming that he would not be providing the Applicants with any of the outstanding transcripts. His email is attached as *Exhibit “J”*.

23. On December 12th, 2017, the Applicants wrote to the Board asking for it to vary its Order for the delivery of final submissions as there were “still a significant number of key transcripts missing.” The Applicants provided a comprehensive list of all the transcripts that were still missing as of that date and again asked the Board to intervene to obtain the court reporter’s equipment so that they could have the missing transcripts prepared. The Board did not intervene. Attached as *Exhibit “K”* is a copy of our submissions.

24. I swear this affidavit in support of the Applicants’ position in this matter and for no other or improper purpose.

SWORN before me at the)
Town of Grimsby)
in the Regional Municipality)
of Niagara this 2nd day of)
February, 2018)
)
)
)
)
Commissioner, etc.)



Ron Quevillon

Cassandra Kirewskie

From: Marion St. Gelais <marion.stg@hotmail.com>
Sent: August 22, 2016 6:14 AM
To: 'Cassandra Kirewskie'
Subject: RE: 16-June-23 Excerpt of Paul Cline - Robinson & Rutman

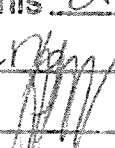
Hello Cassandra:

Just so you know, the transcripts had been put on hold for a while by the Board. I just got a call for the go ahead to continue to prepare them. When they are prepared, I will let you know and provide an estimate of what you require. I will send you a fresh list of witnesses for you to order from.

I trust you are a reputable firm. No deposit will be required, but I ask for full payment when I send you what you've requested with my attached invoice.

Marion

From: Cassandra Kirewskie [mailto:ckirewskie@cogeco.ca]
Sent: August 18, 2016 12:50 PM
To: 'Marion St. Gelais' <marion.stg@hotmail.com>
Cc: 'Marshall Paul' <p.marshall@bellnet.ca>
Subject: RE: 16-June-23 Excerpt of Paul Cline - Robinson & Rutman

This is Exhibit "A" referred to in the affidavit of Ron Quevillon sworn before me, this 2nd day of February, 2018

A COMMISSIONER, ETC.

Dear Marion,

I hope this note finds you well.

Could you please advise as to the state of the transcripts? Are they completed and available for purchase?

Could you also send us an updated order form so that we can process an order?

Do you need a deposit for our order, and if so, how much?

Many thanks,

Cassandra

From: Marion St. Gelais [mailto:marion.stg@hotmail.com]
Sent: August 3, 2016 9:05 AM
To: 'Paul Marshall' <p.marshall@bellnet.ca>; ckirewskie@bellnet.ca
Subject: 16-June-23 Excerpt of Paul Cline - Robinson & Rutman

Another portion was prepared before the entire transcript has been finished of Paul Cline.

I tried to reach you by phone but got the answering machine. I will be away today and can only be reached by cell phone.

I don't usually just send out portions without contact first, but I wanted to make sure you had this if you needed it immediately.

Please let me know you got this and were able to open it.

Marion

Have a great day!

Marion

Have a great day!

Marshall&Kirewskie

From: Jamieson, Andrew (OMAFRA) <andrew.jamieson@ontario.ca>
Sent: December-20-16 3:00 PM
To: Berger, Stanley D.; cassandra kirewskie; Marshall Paul; Marshall&Kirewskie
Subject: RE: Dell et. al. v. Zeifman Partners

Importance: High

To all:

The Board has considered the submissions of both parties.

Firstly, the Board would like to clarify the issues raised by the applicant regarding the distribution of the transcripts. Rule 39 of the Board's Rules of Practice and Procedure outlines the procedures with respect to ordering transcripts. It is the responsibility of each party to order their own transcripts. Rule 39(5) specifies the need to provide a copy to the Board and to the other parties involved the matter. The Board will not require a copy in this instance because it has ordered its own full copy. The rule, however, does not require the Board to order and distribute copies of the transcripts it orders. As a result, the Board has not ordered additional copies for the parties. Should you be interested in obtaining a copy please contact the court reporter directly. The court reporter details are as follows:

Marion St. Gelais
Cell no: 905-321-5646
Email: marko.marion1@gmail.com

In my experience it is better to call Ms. St. Gelais on her cell phone to get a quicker response.

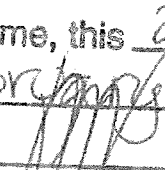
In light of the comments from both sides and the upcoming holiday season, the Board is prepared to set January 16, 2017 as the start time for final written submissions. In accordance with the Board Order dated July 14th, the deadlines for submissions will be as follows:

- Applicants' argument will be due on or before February 15, 2017
- Respondent's argument on or before March 17, 2017
- Reply from the Applicants' on or before April 1, 2017. See copy of Order attached.

Should the transcripts be unavailable for purchase because they are not complete by January 16th, 2016, the Board will consider adjusting the dates.

Regards,

Andrew Jamieson, P.Eng, M.Sc.
Secretary – Normal Farm Practices Protection Board
1 Stone Rd.
Guelph, ON N1G 4Y2
Tel: (519) 826-3549 Fax: (519) 826-3259
andrew.jamieson@ontario.ca

This is Exhibit "B" referred to in the
affidavit of Ron Ouevillon
sworn before me, this 2nd
day of February, 2018

A COMMISSIONER, ETC.

From: Berger, Stanley D. [mailto:sberger@foglers.com]
Sent: Friday, December 16, 2016 5:46 PM
To: cassandra kirewskie
Cc: Jamieson, Andrew (OMAFRA); Marshall Paul; Marshall&Kirewskie
Subject: Re: Dell et. al. v. Zeifman Partners

Ms . Kirewskie . My position on the status of the sale has not changed from what it has been the last several times that you inquired both with this Board and the Commercial Court . I'm in the Board's hands with respect to when the time for submissions should start to run . Happy holidays to all . Stan Berger

Sent from my iPhone

On Dec 16, 2016, at 4:59 PM, cassandra kirewskie <ckirewskie@bellnet.ca> wrote:

Dear Mr. Jamieson,

It is unfortunate that after six months, the transcripts are landing within hours of Christmas Day. We have been trying to contact our clients since receiving your email but have only been able to reach two families.

We agree with Mr. Berger's initial inclination to ask for more time to prepare given that six months have passed since the hearing ended.

It would have been preferable for us to have had a heads up as to when to expect the transcripts so that we could have planned accordingly. The Board may not be aware of this but as a result of the Province of Ontario's contract issues with Ontario's teachers, children don't return to school until January 9th this year. As a result, we have made plans to be away with our children until January 8th. We note that January 2, 2017 is a statutory holiday. As such, it would be improper for the Board to use January 2nd as the date to initiate the final submission stage.

Out of consideration for the length of time it took for the transcripts to be completed and in view of the fact that they are not even in hand now, we would ask that the Board make its election once the transcripts have been received. We would refer you the first part of the Board's Order of July 14, 2016 where it states that the Applicants shall provide final argument "... within 30 days of being advised by the Board that transcripts of the hearing have been received" (italics added). Given that the transcripts are expected to be completed and have not been "received," it would be, in our submission, premature to assign a date. Indeed, if the transcripts are completed late next week as expected and received by the Board, given the Christmas holidays, what arrangements have been made to provide them to the parties? We note that Ontario government offices will likely be closing early on December 23rd and not re-opening until December 28th. Similarly, we assume that the Board's office will be closed early on December 30th and not re-open until January 3rd. In the past, we have had difficulty communicating with the Board when the Secretary is away. Until your email, we had planned to close our office on December 22nd. That is to say that no one will be here to receive the transcripts if they were to arrive by courier. We did not plan to reopen our office until December 28th and only until 3:00 p.m. on the 29th.

The Board's Order does not address receipt of the transcripts by the parties. As such, it creates a situation where the Board could be in receipt of the transcripts long before the parties are. In our submission, the time for the Applicants to deliver their submissions should not start to run until we have received a copy of the transcripts. At this time, we have no idea when that will happen and in what form they will be received. As they are likely to be voluminous, we should be provided with time to have them copied and bound if they are being delivered by email or USB card.

While we would prefer to set the date in conformity with the Board's Order of July 16th, if that cannot be done, we would ask that the Board use January 16, 2017 as the date to initiate the final submission stage.

Could Mr. Berger please advise as to the status of the sale of the Vandermeer property?

Thank you.

Cassandra Kirewskie
Marshall Kirewskie
Barristers & Solicitors
201 – 88 Dunn Street
Oakville, ON
L6J 3C7

Tel: (905)842-5070 ext. 224
Fax: (905)842-4123
Email: ckirewskie@bellnet.ca

<image003.jpg>

From: Berger, Stanley D. [<mailto:sberger@foglers.com>]
Sent: December 15, 2016 8:38 PM
To: Jamieson, Andrew (OMAFRA) <andrew.jamieson@ontario.ca>
Cc: Paul Marshall <p.marshall@bellnet.ca>; Cassandra Kirewskie <ckirewskie@cogeco.ca>;
ckirewskie@bellnet.ca
Subject: Re: Dell et. al. v. Zeifman Partners

Mr. Jamieson . The attached order is not the one dealing with the time frame for final submissions . On further reflection perhaps given the length of time which has transpired between the end of the hearing and the availability of the transcripts , the board would consider giving the parties a bit more time for their respective submissions so that they might re- familiarize themselves with the evidence .
Stan Berger

Sent from my iPhone

On Dec 15, 2016, at 5:15 PM, Jamieson, Andrew (OMAFRA) <andrew.jamieson@ontario.ca> wrote:

To all:

I just spoke with Marion St. Gelais, our court reporter from the hearing, and she informed me that she intends to have the transcripts completed by the end of next week. Given this news, the Board is considering January 2nd, 2017 as the date to initiate the final submission stage outlined in the Board Order dated July 14th, 2016. (See attached). The Board is seeking comments on its proposal.

Regards,
Andrew Jamieson, P.Eng, M.Sc.
Secretary – Normal Farm Practices Protection Board
1 Stone Rd.
Guelph, ON N1G 4Y2
Tel: (519) 826-3549 Fax: (519) 826-3259

andrew.jamieson@ontario.ca

<In-Hearing Order Dell et al. v. Zeifman Partners Inc. 06-23-2016.pdf>

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Before printing, please consider the environment.

Cassandra Kirewskie

From: Marion St. Gelais <marion.stg@hotmail.com>
Sent: January 31, 2017 10:13 AM
To: Cassandra Kirewskie
Subject: RE: VANDERMEER TRANSCRIPT
Attachments: QUOTE FOR THE VANDERMEER V ZIRGER TRANSCRIPTS DATE.docx

Hello Cassandra:

Attached is an outline of the transcripts.

Please let me know what you would like and where you would like it sent.

Marion

From: Cassandra Kirewskie [mailto:ckirewskie@cogeco.ca]
Sent: January 30, 2017 1:55 PM
To: 'Marion St. Gelais' <marion.stg@hotmail.com>
Cc: 'Marshall Paul' <p.marshall@bellnet.ca>
Subject: RE: VANDERMEER TRANSCRIPT

Hello Marion,

Thank you for your note. I need an invoice before I can put in our order.

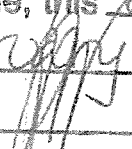
Would you be able to let us know how much each of the transcripts will cost?

Many thanks,

Cassandra

Cassandra Kirewskie
Marshall Kirewskie
Barristers & Solicitors
201 – 88 Dunn Street
Oakville, ON
L6J 3C7

Tel: (905)842-5070 ext. 224
Fax: (905)842-4123
Email: ckirewskie@bellnet.ca

This is Exhibit "C" referred to in the
affidavit of Ron Quevillon
sworn before me, this 2nd
day of February, 2018

A COMMISSIONER, ETC.



From: Marion St. Gelais [<mailto:marion.stg@hotmail.com>]

Sent: January 30, 2017 9:37 AM

To: ckirewskie@bellnet.ca

Subject: VANDERMEER TRANSCRIPT

Good morning, Cassandra:

This is in follow-up to the phone message.

Let me know if you would like a paper copy of the transcript or email copy or both.

Where would you like me to send it – to you at work, at home, or would you like me to have it dropped off at the Zirgers?

If you let me know today, I'll have everything printed and out to you tomorrow that I have up to this point.

The cost is \$1.50/page + GST + delivery costs.

I can send a total invoice at the end if that makes it easier. That's not a problem.

My understanding was that you would like the entire transcript. If that has changed, please let me know.

Marion

QUOTE FOR THE VANDERMEER V ZIRGER TRANSCRIPTS

DATE: JANUARY 30, 2017

From: MARION ST. GELAIS Phone: 905-321-5646
3975 15th Street
Jordan Station, ON
L0R 1S0

To: Marshall Kirewskie
201 – 88 Dunn Street
Oakville, Ontario
L6J 3C7

Attention: Cassandra Kirewskie Telephone: 905 – 842-5070 x 224
Email: ckirewskie@bellnet.ca

Below are the pages per witness. Cost per page is \$1.50 + delivery + GST

Opening remarks	128 pgs
Sophie Dell	14 pgs
James Dell	71 pgs
Larry Bourk	17 pgs
Charlene Quevillon	282 pgs
Mary Lavalie	50 pgs
Ron Quevillon	126 pgs
Judith Zirger	221 pgs
Dan Lavalie	171 pgs
Dino Lavalie	59 pgs
George Lepp	160 pgs
Richard Zirger	191 pgs
Robert Zirger	14 pgs
Ryan Brewster	118 pgs
Jake DeBruyn	486 pgs

Please let me know which witnesses you require.

cassandra kirewskie

From: Jamieson, Andrew (OMAFRA) <andrew.jamieson@ontario.ca>
Sent: August 14, 2017 5:12 PM
To: cassandra kirewskie; Paul Marshall; sberger@foglers.com; Marshall&Kirewskie
Subject: Motion Decision - and Board Order - Dell et. al. v. Zeifman Partners Inc.
Attachments: Board Transcript List - August 2017 - Dell et. al. v. Zeifman Partners Inc..pdf; Motion Decision - Board Order - August 4 2017 - Dell et. al. v. Ziefman Partners.pdf

Please find attached the Board's decision regarding the Applicants Motion for Leave. Please note the decision also includes an Order outlining the timelines for final submissions.

My last communication from Marion St. Gelais was August 1, 2017. I did receive a response indicating that she was still working on the transcripts. I have since contacted to let her know of the deadlines for the final submissions as outlined in the Order.


I have also attached a list of the transcripts in the Board's possession as of today. If you need to get a hold of Ms. St. Gelais, her contact information is below:

Marion St. Gelais
3975 15TH STREET
JORDAN STATION, ONTARIO
LOR 1S0

Cell no: 905-321-5646

Regards,

Andrew Jamieson, P.Eng, M.Sc.
Secretary – Normal Farm Practices Protection Board
1 Stone Rd.
Guelph, ON N1G 4Y2
Tel: (519) 826-3549 Fax: (519) 826-3259
andrew.jamieson@ontario.ca

This is Exhibit "D" referred to in the
affidavit of Ron Quevillon
sworn before me, this 2nd
day of February, 2018

A COMMISSIONER, ETC.

DELL v. ZEIFMAN PARTNERS

Summary of Transcripts

Volume #	Dates of Testimony	Tab #	Description
1	December 3, 2015	1	Opening Statements
		2	Sophie Dell
		3	James Dell
		4	Larry Bourk
2	December 4 & 8, 2015	5	Charlene Quevillon
3	December 8 & 9, 2015	6	Mary Lavalle
		7	Ron Quevillon
4	December 9 & 10, 2015	8	Judith Zirger
5	December 10, 2015	9	Daniel Lavalle
		10	Dino Lavalle
6	January 12 & 13, 2016	11	George Lepp
		12	Richard Zirger
		13	Robert Zirger
7	January 14, 2016	14	Ryan Brewster
8	January 14 & 21, 2016	15	Jake DeBruyn

Normal Farm Practices
Protection Board

1 Stone Road West, 2nd Floor
Guelph, Ontario N1G 4Y2
Tel: (519) 826-3433, Fax: (519) 826-4232
Email: NFPPB@ontario.ca

Commission de protection des pratiques
agricoles normales

1 Stone Road West, 2^e étage
Guelph (Ontario) N1G 4Y2
Tél.: (519) 826-3433, Téléc.: (519) 826-4232
Courriel: NFPPB@ontario.ca



Ontario

Board File No.: 2015-02

**IN THE MATTER OF an application to the Board under Section 5 of the Farming and Food
Production Protection Act, 1998**

JAMES DELL, SOPHIE DELL, RON QUEVILLON, CHARLENE QUEVILLON, DINO LAVALLE, MARY
LAVALLE, DAN LAVALLE, LARRY BOURK, JOAN BOURK, RICHARD ZIRGER, JUDI ZIRGER, ROBERT
ZIRGER, SHARON ZIRGER, GEORGE LEPP, CINDI LEPP, MARK LEPP, ERICA LEPP

Applicants

and

ZEIFMAN PARTNERS INC.

Respondent

APPEARANCES:

Cassandra Kirewskie and Paul Marshall, Counsel for the Applicants
Stanley Berger, Counsel for the Respondent

BEFORE:

Glenn C. Walker, Vice-Chair; Douglas Eadie and Thomas Field

DECISION ON MOTION ARGUED JULY 19, 2017

This is a motion brought by the Applicants for leave to bring a motion to hear new evidence and to add a party. It was heard by the panel seized of this matter by teleconference on July 19, 2017.

Background

In an Order of the Board dated August 12, 2016, the Board stated that it found merit in the Respondent's request in the previous motion for an Order that no further motions be permitted. There had been numerous motions brought by the Applicants over the previous year and the Board stated that at this point in the proceedings there should be no further need for motions except in the most urgent of circumstances. The Board therefore ordered that there shall be no further motions brought in these proceedings without the leave of the Board.

The Order of August 12, 2016 is presently under Judicial Review. It has not been stayed nor has a decision been made by the Divisional Court on the Judicial Review and the Order remains in effect. As a result of the Order of August 12, 2016, the Applicants bring this motion for leave to bring a motion for an Order to hear new evidence and to add a party.

The Test

The Board has determined that the test for granting leave to bring a motion in these circumstances is not only the urgency of the motion but the Board must consider that the motion for which leave is sought will have a reasonable prospect of success. In doing so, the Board must review the relief which will be claimed in the motion for which leave is sought. The purpose of the Order of August 12, 2016 was to eliminate motions which were either frivolous, vexatious or lacked merit.

In an attempt to establish the test for granting leave in these circumstances, Counsel for the Applicants referred to six cases at the trial level and indicated that the case of Van Ginkel v. East Asia Minerals Corporation (2010) ONSC 905 and the decision of Perell, J. in the Ontario Superior Court was the leading case. This was a motion for leave to bring a motion to compel certain undertakings to be honoured after the action had been set down for trial by the moving party. This case, and the others cited, are of no assistance to the Board in these circumstances.

Purpose of the Motion for which Leave is Sought

To Add a Party to the Proceedings

In the Board Decision dated August 12, 2016, the Board stated as follows:

“The Board finds that it has no jurisdiction to add a party at this stage in the hearing, whether that request was made by the party to be added or at the request of the Applicants. The Motion would have to first of all come from the party to be added and would have to be brought before the commencement of the hearing. Even if the Board had jurisdiction to do so, it would be manifestly unfair to the party added who would not have had an opportunity to hear all of the evidence, to cross-examine the witnesses or to call evidence of his or her own. The Board would not be inclined to exercise its jurisdiction to add a purchaser as a party at this late date or to permit the hearing to be re-opened.”

In a review of that Decision dated September 22, 2016 by the Board Chair, requested by the Applicants, the Chair stated as follows:

“It is appropriate for the Board to address adding purchasers or possible purchasers of the operation and to give directions at this stage of the proceedings, even on its own initiative. The August 12 decision and order indicates that the panel wished to comment on the issue of adding a party at this stage, and it did so. It should be evident from that decision and order that such motion would have no reasonable prospect of success due to the unfairness to the prospective purchaser who would not have had timely notice of the proceedings, would not have had an opportunity to hear and respond to the evidence, and would not know the case they had to meet.”

As stated above, the Applicants have brought an application for Judicial Review of the Decision and Order of August 12, 2016. The Divisional Court has not yet ruled and the Order has not been stayed. To be allowed to bring a motion for the same relief at this time would be frivolous, vexatious and a waste of the Board's time as well as the time and money of the parties.

To Hear New Evidence

A review of the new evidence which the Applicants wish to call if the hearing is allowed to be reopened at this point indicates that this motion lacks merit as well. Some of the proposed "new evidence" could have been available to the Applicants either prior to the commencement of the hearing or during the hearing. Other alleged new evidence is either irrelevant to the decision to be made by the Board or are really submissions that can be the subject of final argument.

Furthermore, any evidence relating to a period of time after the commencement of the hearing would certainly be irrelevant to the Board's decision. It is the facts existing at the date of the application or at the very latest at the date of the commencement of the hearing on which the Board will make its decision. To find otherwise, would be unfair to the Respondent who would never know the case that it had to meet. The fact situation is not a moving target.

Conclusion

The Board therefore finds that the Applicants have failed to convince it that there would be any reasonable prospect of success on the motion if it should allow the Applicants to proceed with the same. It is not necessary to consider the urgency of the motion as that requirement would only apply if the motion had a reasonable prospect of success. The motion for leave is therefore dismissed.

Costs

Both parties have requested costs with respect to this motion for leave. Costs awarded by the Board are the exception rather than the rule and will only be granted in rare circumstances in accordance with Rule 66 of the Board's Rules of Practice and Procedure. This motion was unnecessary and falls under the category of taking a step that the Board had determined was improper, that is bringing a motion without merit. As stated above, with respect to the motion to add a party, this was clearly unreasonable, frivolous and vexatious. The Applicants shall pay to the Respondent costs fixed in the amount of \$2,000.00 payable forthwith.

Final Submissions

In an Order of the Board dated July 14, 2016, the Board set out provisions with respect to final argument by way of written submissions. The timelines were to commence on the date that the Board advised the parties that it had received the transcripts of the hearing.

The Board has not yet received full transcripts of the hearing and has made a concerted effort to compel the Court reporter to provide these transcripts. It is necessary that this matter be brought to a final conclusion and whether or not full transcripts have been received by the

Board and by the parties, the timelines set out in the Order of July 14, 2016 will commence to run as of September 15, 2017.

Consequently, the Applicants shall provide final argument by way of written submissions to the Board in accordance with the Order of July 14, 2016 on or before October 15, 2017. The Respondent shall provide final argument by way of written submissions to the Board in accordance with the Order dated July 14, 2016 on or before November 14, 2017. The Applicants shall provide a reply to the Respondent's final argument in accordance with the Order of July 14, 2016 on or before November 30, 2017.

DATE: August 4, 2017



Glenn C. Walker, Vice-Chair

Cassandra Kirewskie

From: Marion St. Gelais <marion.stg@hotmail.com>
Sent: August 21, 2017 11:10 AM
To: Cassandra Kirewskie; Judy Zirger
Subject: OMAERA--ZIRGER.VS.VANDERMEER

Good morning, Cassandra:

Can you please provide me with a list of what you have in terms of paper copies for the transcripts. I got a message from the Board saying that their list and yours might differ. I had sent everybody the same thing, so I'm not sure what happened. I want to make sure that you have everything. I'll be sending you e-mails today. If you can verify you received them and were able to open them, then I know you're good. The paper copy will follow.

Marion

This is Exhibit "E" referred to in the
affidavit of Ron Quverillon
sworn before me, this 2nd
day of February, 2018


A COMMISSIONER, ETC.

fogler
rubinoff

The Exhibit "F" referred to in the
affidavit of Ron Quevillon
sworn before me, this 2nd
day of February, 2018

ACOMMISSIONER, ETC.

Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

September 25, 2017

Kirk W. Walstedt, Chair
Normal Farm Practices Protection Board
Ministry of Agriculture, Food and Rural Affairs
1 Stone Road West
Guelph, Ontario
N1G 4Y2
By Fax: 519 826-4232

Reply To: Stanley D. Berger
Direct Dial: 416.864.7626
E-mail: sberger@foglers.com
Our File No. 14/3857

Marshall Kirewskie
Attention: Paul Marshall, Cassandra
Kirewskie
88 Dunn Street, Suite 201
Oakville, Ontario L6J3C7
By Fax: 905-842-4123

Mr. Chair:

Re: Dell et al. v. Zeifman Partners Inc.

The Respondent is in receipt of your letter of September 21, 2017. The Respondent objects to any further delay of these proceedings by way of the granting of any extension of the timelines for the final written submissions set by the Board on August 4, 2017 and July 14, 2016. The timelines suggested would extend the submission of the evidence by 75 days. The Board undoubtedly would need time to reach its decision and prepare written reasons. This would extend the proceedings well into 2018, likely 2 and a half years from when the hearing of evidence commenced and over 3 years from the time the Application was originally filed with the Board.

The evidence presented at the Board hearing concluded more than a year ago. Given that the hearing took place with a number of interruptions over 21 days from December 2015 to July 2016, the preparation of transcripts of the evidence of witnesses seemed reasonable at the time. Unfortunately, those transcripts came in more slowly than originally anticipated over the year and were still not complete at the time the Board gave its decision on August 4, 2017. Nevertheless, transcripts were being produced and sent to the parties during this period. The Respondent received electronic versions of transcripts for two witnesses in early February of this year, another witness at the end of March, and a further witness a little over a month ago and four additional witnesses at the beginning of September. At or around this same time, the Respondent received printed transcripts of three additional witnesses. The Respondent did not order the testimony of the Applicants, although in the past 2 weeks one of the Applicants' cross-examination was requested. The Respondent diligently ordered the other transcripts more than a year before. As counsel for the Respondent I have been reading and summarizing these transcripts with a view to incorporating relevant portions of them into the Respondent's submissions as they have been received, in reliance on the Board's original directions with respect to the filing of submissions issued on July 14th of last year. The Board confirmed at the beginning of 2017 that it had received the first 6 days of the hearing which the Respondent did not order. The Applicants had access to these same transcripts according to their August 21, 2017 letter to you on February 17th and presumably were also diligently engaged in the review



of the transcripts of interest to them soon after receipt. It is worth noting the Applicants have two counsel of record. The issue of whether the Applicants got transcripts for the same witnesses on the same day as the Board and the Respondents diverts attention from the key issue of due diligence in trial preparation. The fact is that the Applicants should have been preparing their submissions as they received their transcripts were they being respectful of the Board's order of July 14, 2016. This evidence is not new to them as both counsel for the Applicants were present for the duration of the hearing.

The Applicants brought the present motion on June 21, 2017 which the Board determined had no substantive merit. They subsequently sought a review of the Board's decision on this motion dated August 21, 2017 which you also determined had no substantive merit. You characterized the request to add a party as "an attempt to re-litigate the issue which has been the subject of an order from the Board..." Indeed this same request had been made after the completion of the evidence a year before. Both the Board and yourself also found that the request to call new evidence was without merit. Your reasons identify the fundamental misconception the Applicants continue to hold with respect to the Board's jurisdiction. In your reasons you state "To proceed as the Applicant desires would, if the operator did not change, raise the possibility of a never ending hearing, as new disturbances could be alleged as soon as the evidence of previous disturbances was heard, with the case the Respondent has to respond to changing day by day." The history of these proceedings as documented in your reasons, suggest that the Applicants use delay to acquire further evidence which then forms the basis of a fresh round of affidavits and a virtually identical motion as was previously denied. They seek judicial review with the faint hope that they may very well be able to add a further party and use any lapsed time to collect fresh evidence which they would then attempt to introduce at a revitalized hearing. This is an abuse of this Board's jurisdiction. The Board does not police farmland in Ontario. That role is left to the Ministry of the Environment and Climate Change and OMAFRA. The Board's role is considerably narrower. As with all other tribunals, it determines whether a defined set of facts developed at a hearing at which the Board presides qualify for the Board's remedial intervention. The interests of maintaining confidence in the administration of justice and certainty in the conduct of business affairs demand that there be timely conclusion to litigation. The courts recognize the value in finality of proceedings. *see decision of Ontario Superior Court in Huang v Fraser Hillary's Ltd. 2017 ONSC 1836, 2017 CarswellOnt 4124 at par. 2.*

Providing the Applicants with more time for final submissions would effectively reward them for having brought applications which the Board has repeatedly found to be without merit. They should have been using the time available to them for preparing their final submissions as the Respondent has done, rather than pursuing groundless repetitive motions with unsubstantiated allegations. Proof that these motions and allegations were brought in bad faith is evident from the fact that costs have been ordered against the Applicants not once but twice, both in the summer of 2016 and the summer of 2017. The Board specifically found bad faith as the reason for awarding costs against the Applicants on the first motion. Neither cost order has been modified by either review or a stay. The Board's cost orders both require payment 'forthwith' as of the date of the issuance of those Orders and to date neither cost order has been complied with. The disrespect that the Applicants have shown to the Board in this regard should further deprive them of any indulgence with respect to the timing of their submissions.

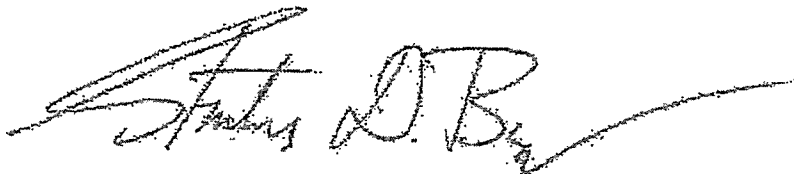
fogler
rubinoff

Page 3 of 3

Pursuant to the Board's August 4, 2017 and July 14th 2016 Orders, the Applicants are required to serve their submissions within 30 days to run as of September 15, 2017. I take their deadline for submissions to be October 16th, 2017 as the 15th is a Sunday. The Respondent is required to submit its final argument within 60 days of September 15th or by November 14, 2017. The Applicants are required to file any reply argument by November 29th, 2017, within 75 days of September 15th. These time frames are more than reasonable to all concerned. This would be almost 2 years to the day that the hearing of evidence commenced.

Yours truly,

FOGLER, RUBINOFF LLP

A handwritten signature in black ink, appearing to read "Stanley D. Berger". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Stanley D. Berger
SDB

cc. A. Rutman



MARSHALL KIREWSKIE
LAWYERS

88 Dunn Street, Suite 201
Oakville, ON L6J 3C7
T 905.842.5070
F 905.842.4123
mklaw@bellnet.ca

This is Exhibit "G" referred to in the
affidavit of Ron Quevillon
sworn before me, this 2nd
day of February 2018

Paul David Marshall, B.A., B.Ed., LL.B.
p.marshall@bellnet.ca
Cassandra Kirewskie, M.A., LL.B.
ckirewskie@bellnet.ca
Nick Kirewskie, Office Manager
mklaw@bellnet.ca

A COMMISSIONER, ETC.

October 6th, 2017

By email to the Board's Secretary

Chairman Walstedt
Normal Farm Practices Protection Board
Ministry of Agriculture, Food and Rural Affairs
1 Stone Road West
Guelph N1G 4Y2

Dear Mr. Chairman:

RE: James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, Dino Lavalle, Mary
Lavalle, Dan Lavalle, Larry Bourk, Joan Bourk, Richard Zirger, Judi Zirger, Robert
Zirger, Sharon Zirger, George Lepp, Cindi Lepp, Mark Lepp, Erica Lepp v. Zeifman
Partners as operator of 2021 Four Mile Creek Road, Niagara on the Lake

We write further to Mr. Berger's letter of September 25th, 2017 and your decision of September 21st, 2017.

Please be advised that we received Mr. Berger's letter responding to your decision of September 21st, 2017 before we received the decision itself.

We wrote to the court reporter on September 20th, 2017 noting that we still did not have a copy of the entire record of the proceedings. We asked Ms. St. Gelais when the remaining transcripts would be complete and sent to us. We also asked her for a copy of Randy van Berkel's transcript. To date, we have had no reply.

In his submissions on the judicial review application before the Divisional Court, Mr. Berger filed an affidavit that was sworn on September 13th, 2017 attaching an excerpt of Randy van Berkel's transcript which is in the same unusual typeface as the transcripts we most recently received from Ms. St. Gelais.

Mr. Berger's letter makes references to transcripts in his client's possession but does not list them nor advise as to when they were received. In our correspondence of August 21, 2017, we asked for a complete list of which transcripts the Respondent has received, with proof of delivery and receipt. The Applicants also asked the Board to explain why it and the Respondent received transcripts before they did. The Applicants also asked the Board for a copy of the Board's contract with the court reporter, Ms. St. Gelais. May we now have a reply to these enquiries? In our submission, it would be unfair for the Board to require the Applicants to file their final submissions without access to the same evidentiary record as the Respondent.

Given this situation, the premise of the Board's decision of September 21st, 2017 ought to be addressed as it is mistaken. While you stated in your decision that you made "this order considering that the remainder of the transcripts have now been provided and are available to the court reporter," the Applicants have not received the entire record.

Accordingly, it is our submission that until the Board can assure the Applicants that they have exactly the same evidentiary record available to them as the Respondent to complete their submissions, no order ought to be made as to the timelines for the delivery of final submissions in this case. The Applicants insist that they are entitled to the entire evidentiary record. They also insist that they be given at least 30 days to review that record before the time starts to run for the delivery of their final submissions as it has been 15 months since the hearing concluded.

We believe that it would be premature and unfair for us to reply to Mr. Berger before he provides us with a copy of the van Berkel transcript as well as a list of each of the transcripts in his client's possession, evidence as to when they were received and if necessary, copies of any transcripts the Applicants have not received from the court reporter to date. Given the discrepancy between the reporter's delivery of the transcripts to the parties, we do not believe it is necessary to respond to the personal and professional criticisms contained in Mr. Berger's submissions concerning "diligence in trial preparation." Simply put, it is not clear that we have had "access to the same transcripts" as Mr. Berger alleges. He is diverting attention from "the key issue," not the Applicants.

In our view, Mr. Berger's submissions amount to little more than a personal and professional attack on counsel. His comments lack civility. It is entirely inappropriate for him to accuse Mr. Marshall and I of disrespecting the Board, of holding a "fundamental misconception," having a "faint hope," and of "bad faith" conduct when he, as an experienced litigator, certainly understands that no party succeeds on every motion and that such a serious professional issue as "bad faith" can only be decided on a complete record of all of the proceedings.

Mr. Berger has accused Applicants' counsel of an "abuse of the Board's jurisdiction." We ask him to supply to the Board case law that establishes the legal foundation for his accusation as we are not aware of any.

We have not, as Mr. Berger alleges, used "delay to acquire further evidence..." It is our view and the view of our client that Mr. Berger's client knowingly suppressed relevant and material evidence. We only learned that it had done so inadvertently through evidence the Respondent filed to support its position in the bankruptcy proceeding, to which the Applicants are not a party. The Respondent filed that evidence some seven months after it arose. As a result, it is our view that the Respondent is fully responsible for the absence of relevant and material evidence pertaining to the Board's jurisdiction being tendered during the hearing. Had Mr. Berger's client approached the Board with clean hands to advise it and the Applicants that his client had shut down the greenhouse operation in December 2015 and then accepted a conditional offer on the sale of the property in February 2016, we would be in a very different position today.

In our view, the Board ought to ignore any superfluous statements in Mr. Berger's submissions which provide his personal jaundiced opinion as to what we as counsel for the Applicants "should" be doing. In our view, the Board ought not hear any personal attacks on counsel. We would appreciate the Board intervening to remind counsel of his professional obligations.

We note that Mr. Berger has for some unknown reason brought to the Board's attention that the seventeen Applicants herein have two counsel of record. We can advise that the Receiver has at least three: Mr. Berger, Mr. Azeff and Ms. Stephanie De Caria. We also recall that Mr. Berger was assisted by a student or young lawyer at the hearing.

We are not asking for a "reward" as Mr. Berger and his client have claimed. The Applicants are asking this Board to be fair to them and to give them a proper opportunity to obtain the record in its entirety before starting the time for the delivery of final submissions.

We trust that the Board will not order the Applicants to file their submissions as the Respondent has demanded on October 16th, 2017 as that would clearly be unreasonable given that we would have less than ten days' notice to deliver final submissions.

Thank you.

Sincerely,

Cassandra Kirewskie
/nk

c. Stanley Berger, counsel for the Respondent
Clients

Cassandra

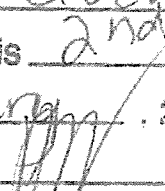
From: Wielgos, Brittney (OMAFRA) <Brittney.Wielgos@ontario.ca>
Sent: June 17, 2015 10:13 AM
To: Cassandra; gazeff@foglers.com
Cc: Curran, Becky (OMAFRA)
Subject: RE: 2015-02 Dell et. al. v. Zeifman Partners - Notice of Pre-Hearing Conference July 7, 2015

Ms. Kirewskie,

My apologies for any confusion arising as a result of my email of June 12, 2015. To clarify the Board's usual procedure, the Board provides a court reporter for hearings, not pre-hearing events. This does not mean that you can not arrange to have a court reporter attend for any hearing event. Please refer to Rule 39 (7) of the of the *Normal Farm Practices and Protection Board Rules of Practice and Procedure*. Please note that if you retain a court reporter for this PHC, or any other pre-hearing event, and you also order a transcript, you must also provide a copy to the Board, as per Rule 39(5).

Regards,
Brittney

Brittney Wielgos, Secretary (A)
Normal Farm Practices Protection Board
1 Stone Rd. W., 3rd Floor
Guelph, ON N1G 4Y2
Tel: 519-826-3773
Brittney.wielgos@ontario.ca

This is Exhibit "H" referred to in the
affidavit of Ron Quevillon
sworn before me, this 2nd
day of February, 2018

A COMMISSIONER, ETC.

From: Cassandra [mailto:ckirewskie@bellnet.ca]
Sent: June-15-15 5:34 PM
To: Wielgos, Brittney (OMAFRA); gazeff@foglers.com
Cc: Curran, Becky (OMAFRA)
Subject: RE: 2015-02 Dell et. al. v. Zeifman Partners - Notice of Pre-Hearing Conference July 7, 2015

Dear Ms. Wielgos,

We would prefer that the pre-hearing Conference be recorded as we believe that our requests for disclosure will be contested. We have made many prior requests for documents from the Receiver which have been denied or ignored. As we have grave concerns about the fairness of the hearing in the absence of full disclosure, the discussion at the pre-hearing Conference ought to be recorded.

Would you kindly confirm that the pre-hearing Conference will be recorded?

Thank you.

Sincerely,

Cassandra Kirewskie

From: Wielgos, Brittney (OMAFRA) [<mailto:Brittney.Wielgos@ontario.ca>]
Sent: June 15, 2015 4:16 PM
To: ckirewskie@bellnet.ca; gazeff@foglers.com
Cc: Curran, Becky (OMAFRA)
Subject: RE: 2015-02 Dell et. al. v. Zeifman Partners - Notice of Pre-Hearing Conference July 7, 2015

Good Afternoon,

As a follow up to my June 12 email - I would like to clarify that the hearing will be recorded but not the pre-hearing conference.

Thank you,
Brittney

Brittney Wielgos, Secretary (A)
Normal Farm Practices Protection Board
1 Stone Rd. W., 3rd Floor
Guelph, ON N1G 4Y2
Tel: 519-826-3773
Brittney.wielgos@ontario.ca

From: Wielgos, Brittney (OMAFRA)
Sent: June-12-15 5:01 PM
To: ckirewskie@bellnet.ca; gazeff@foglers.com
Cc: Curran, Becky (OMAFRA)
Subject: 2015-02 Dell et. al. v. Zeifman Partners - Notice of Pre-Hearing Conference July 7, 2015

Good Afternoon,

Please find attached Notice of Pre-Hearing Conference for the case of Dell et. al. v. Zeifman Partners Inc. The Board's Rules of Practice and Procedure are accessible at <http://www.omafra.gov.on.ca/english/engineer/nfppb/rules.htm>. Other information on the Board is accessible at <http://www.omafra.gov.on.ca/english/engineer/nfppb/nfppb.htm>.

Ms. Kirewskie, there are a few outstanding points that have not been addressed from your letter dated May 8, 2015. We can confirm a court reporter will be provided to record the proceedings. Please note transcripts are not provided. A current listing of all the Board's members can be found on the Public Appointments Secretariat website - <https://www.pas.gov.on.ca/scripts/en/BoardDetails.asp?boardID=1292>.

If you have any questions, please contact me through the contact information below.

Brittney Wielgos, Secretary (A)
Normal Farm Practices Protection Board
1 Stone Rd. W., 3rd Floor
Guelph, ON N1G 4Y2
Tel: 519-826-3773
Brittney.wielgos@ontario.ca

cassandra kirewskie

From: Berger, Stanley D. <sberger@foglers.com>
Sent: October 25, 2017 2:40 PM
To: 'cassandra kirewskie'; 'Azeff, Gregory'; 'De Caria, Stephanie'
Cc: 'Paul Marshall'
Subject: RE: Meridian Credit Union v. Vandermeer Greenhouses Ltd. (Court file NO. CV-14-10443-00CL) [MTDMS-Legal.FID6753436]

Importance: High

Ms. Kirewskie: I refer you to the October 11, 2017 letter you and your co-counsel received from the Chair of the Normal Farm Practices Protection Board. He states that the questions you asked in the 5th paragraph of your October 6, 2017 letter "have already been responded to except for the request for a copy of the agreement with the court reporter . " (my emphasis added in the underline)Those questions related to the transcripts and are the same ones you are asking in your e-mail below. The Chair goes on to say "transcripts should be obtained directly from the court reporter , as has been previously directed. " When you next contact the reporter you may show her my current e-mail in which I am hereby providing the Respondent Zeifman Partners Inc. consent to releasing to you the identification of which transcripts have been sent to us by the reporter and the dates they were received.

Sincerely,

fogler
rubinoff

Stanley D Berger
Partner
Fogler, Rubinoff LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
Direct: 416.864.7626
Main: 416.864.9700
Toll Free: 1.866.861.9700
Fax: 416.941.8852
Email: sberger@foglers.com
foglers.com

This is Exhibit 117 referred to in the
affidavit of Ron Quevillon
sworn before me, this 2nd
day of February, 2018


A COMMISSIONER, ETC.

From: cassandra kirewskie [mailto:ckirewskie@bellnet.ca]
Sent: Wednesday, October 25, 2017 1:47 PM
To: 'Azeff, Gregory' <gazeff@millertthomson.com>; 'De Caria, Stephanie' <sdecaria@millertthomson.com>; Berger, Stanley D. <sberger@foglers.com>
Cc: 'Paul Marshall' <p.marshall@bellnet.ca>
Subject: RE: Meridian Credit Union v. Vandermeer Greenhouses Ltd. (Court file NO. CV-14-10443-00CL) [MTDMS-Legal.FID6753436]

Dear Greg and Stephanie,

We write further to your emails of this yesterday and this morning.

Below please find our last correspondence with you concerning tomorrow's date. As we did not hear back from you, we have not taken any further steps. It is our understanding that we need to confer to agree on a date for us to appear to schedule the hearing. We received this

information from our process server when your firm was served with our motion and have confirmed it with the Commercial Court.

If you have different information, please advise.

Please also advise as to your availability for the hearing of our motion for costs of our leave application.

Through our correspondence with the Board, we have asked Mr. Berger for a list of the transcripts your client has and the dates on which they were received but have not received the courtesy of a reply.

As a court appointed Receiver, your client is an officer of the court. It has a fiduciary duty to comply with the powers provided in the order and to act honestly and in the best interests of all interested parties.

The Receivership Order empowers your client to "initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver..." It does not permit your client to use its division of legal work to evade its obligations to the administration of justice.

Would you or Mr. Berger kindly advise as to which of the transcripts from the hearing before the Normal Farm Practices and Protection Board are in your client's possession.

Thank you.

Cassandra Kirewskie
Marshall Kirewskie
Barristers & Solicitors
201 – 88 Dunn Street
Oakville, ON
L6J 3C7

Tel: (905)842-5070 ext. 224
Fax: (905)842-4123
Email: ckirewskie@bellnet.ca



From: cassandra kirewskie [mailto:ckirewskie@bellnet.ca]

Sent: October 13, 2017 2:41 PM

To: 'De Caria, Stephanie' <sdecaria@millerthomson.com>; 'Stoica, Alina' <astoica@millerthomson.com>

Cc: 'Azeff, Gregory' <gazeff@millerthomson.com>

Subject: RE: Meridian Credit Union v. Vandermeer Greenhouses Ltd. (Court file NO. CV-14-10443-00CL) [MTDMS-Legal.FID6753436]

Hi Stephanie,

It may seem unusual because your office is more familiar with the practice of the Commercial Court than ours. We learned of the Court's practice with respect to scheduling after we drafted and served our materials. When we learned the details of the Court's practice and didn't hear from your firm, we assumed that your office understood the process and had no objection to the date as it was far in advance. I apologise for any miscommunication.

We confirmed yesterday that the date to set a date needs to be confirmed. Are you and Greg available on the 26th to set a date? Could you please address the transcript and caselaw issue I raised yesterday?

Thanks,

Cassandra

Cassandra Kirewskie
Marshall Kirewskie
Barristers & Solicitors
201 – 88 Dunn Street
Oakville, ON
L6J 3C7

Tel: (905)842-5070 ext. 224

Fax: (905)842-4123

Email: ckirewskie@bellnet.ca



From: De Caria, Stephanie [mailto:sdecaria@millerthomson.com]

Sent: October 12, 2017 3:23 PM

To: cassandra kirewskie <ckirewskie@bellnet.ca>; Stoica, Alina <astoica@millerthomson.com>

Cc: Azeff, Gregory <gazeff@millerthomson.com>

Subject: RE: Meridian Credit Union v. Vandermeer Greenhouses Ltd. (Court file NO. CV-14-10443-00CL) [MTDMS-Legal.FID6753436]

Hi Cassandra:

To confirm, your motion record suggests that the motion is returnable October 26th at 10:00am. I read your email below (specifically where I have highlighted – see below) to indicate that the 26th is purely a scheduling date. Please confirm that this is in fact correct, as it seems rather unusual.

STEPHANIE DE CARIA

Associate

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.2652
Fax: +1 416.595.8695
Email: sdecaria@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

From: cassandra kirewskie [<mailto:ckirewskie@bellnet.ca>]
Sent: Thursday, October 12, 2017 2:54 PM
To: Stoica, Alina <astoica@millerthomson.com>
Cc: Azeff, Gregory <gazeff@millerthomson.com>; De Caria, Stephanie <sdecaria@millerthomson.com>
Subject: RE: Meridian Credit Union v. Vandermeer Greenhouses Ltd. (Court file NO. CV-14-10443-00CL) [MTDMS-Legal.FID6753436]

Dear Greg,

You unilaterally set down a teleconference to discuss this at 11 am on a statutory holiday.

I advised you that my partner and I were in court all day on Tuesday. We worked through Thanksgiving Weekend and took yesterday off as ***compensation.*** As a result, we only just received your email.

Neither Paul nor I are available this week. Neither of us sees the need for a Chambers Attendance and both of us have a full week already scheduled for next week.

I find your letter and its tone discourteous. I have already had occasion to speak with Harassment and Discipline counsel at the Law Society about you publicly calling me “a pain in the ass” at court in front of my clients. I would ask you to refrain from taking steps without consultation.

We served our motion materials in early September and only just heard from your office for the first time last week. As experienced commercial counsel, you are more aware of the procedures of the Commercial Court than our office and ought to know that nothing has been set down as we have not canvassed dates with you. As we have been advised that an appearance is required to set a date in the Commercial Court, your client's issues can be brought forward at that time.

We appreciate that your client has changed its view and now recognizes that the threshold on the leave application was "low." Clearly the motion should not have been opposed. As such, when it was served with our record, it should have consented. Instead, it delayed until the very last moment before consenting.

If you have any case law to support your view that our clients have to be successful before the Board in order to obtain their costs of the application to lift the stay, kindly provide it so that we may obtain instructions.

Mr. Berger may have advised you that we have not received all of the transcripts from the Board hearing. He may also have advised that through the Board, we have requested a list of all of the transcripts in your client's possession as the record Mr. Berger filed on our judicial review application contains excerpts from a transcript we have not received from the court reporter. Notwithstanding any decision of the Board, we maintain that it would be grossly unfair for the Applicants to have to proceed without the same record in the Respondent's possession.

Would you kindly advise as to whether your client is willing to provide the Applicants with a complete list of all of the transcripts in its possession as well as the date of their receipt? Will your client undertake to provide us with copies of any transcripts it has which we have not received from the court reporter?

Lastly, in reference to your comment about the purpose of the Board hearing, the Board has no jurisdiction to determine, as you suggest "which side is right." It exercises delegated authority to determine whether the disturbances our clients' were experiencing as a result of your clients' operation of a waste disposal site next to their homes and farms was as a result of a normal farm practice or not. The Board is not a Court and has no inherent powers beyond its statutory mandate.

Cassandra
Cassandra Kirewskie
Marshall Kirewskie
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Oakville, ON
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From: Stoica, Alina [<mailto:astoica@millერთhompson.com>]
Sent: October 10, 2017 5:19 PM
To: ckirewskie@bellnet.ca
Cc: Azeff, Gregory <gazeff@millერთhompson.com>; De Caria, Stephanie <sdecaria@millერთhompson.com>;
aar@zeifmans.ca
Subject: Meridian Credit Union v. Vandermeer Greenhouses Ltd. (Court file NO. CV-14-10443-00CL) [MTDMS-Legal.FID6753436]

Hello:

Please see enclosed correspondence from Mr. Azeff dated October 10, 2017.

Regards,

ALINA STOICA
Legal Assistant

Miller Thomson LLP
Services provided through Miltom Management LP
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40 King Street West, Suite 5800
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cassandra kirewskie

From: Azeff, Gregory <gazeff@millerthomson.com>
Sent: October 13, 2017 3:21 PM
To: cassandra kirewskie; De Caria, Stephanie; Stoica, Alina
Subject: RE: Meridian Credit Union v. Vandermeer Greenhouses Ltd. (Court file NO. CV-14-10443-00CL) [MTDMS-Legal.FID6753436]
Attachments: 26979452_1_Motion Record - May 27, 2015 (Incl. Fourth Report) .PDF

There is no need to attend court to set a motion date. All that you have to do is propose dates for the motion to be heard so that we can confirm our availability. Once we have agreed upon a date, you can submit a Commercial List Hearing Request Form to the court office to book the date.

We do not have any interest in litigation by correspondence, but this should not be taken as meaning that we agree with or accept the contents of your email of October 12. That said, we do not agree that the letter referenced in your email was in any way "discourteous". If you feel aggrieved by its tone then we invite you to take whatever steps you need to in that regard.

As you know, Mr. Berger has carriage of the Board proceeding. If you would like copies of whatever transcripts he may have then we suggest that you take it up with him.

With respect to your motion to lift the stay of proceedings, you may recall that you brought the proceeding before the wrong tribunal. The need to attend court to deal with the matter was due to the fact that (a) you commenced it in the Superior Court of Justice despite the fact that the Normal Farm Practices Protection Act expressly enjoins the court from dealing with the matters at issue; and (b) you refused to serve the other parties on the service list. The history of this matter is set out in the Fourth Report of the Receiver dated May 27, 2015, a copy of which is included in the attached Motion Record. We will be relying on the Report (among other things) in response to your motion.

Regards,
Greg

This is Exhibit "J" referred to in the affidavit of Ron Quevillon sworn before me, this 2nd day of February, 2018

GREGORY AZEFF
Partner

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
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Toronto, Ontario M5H 3S1
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Email: gazeff@millerthomson.com
millerthomson.com

A COMMISSIONER, ETC.

 MILLER THOMSON
AVOCATS - LAWYERS

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From: cassandra kirewskie [mailto:ckirewskie@bellnet.ca]
Sent: Friday, October 13, 2017 2:41 PM
To: De Caria, Stephanie <sdecaria@millerthomson.com>; Stoica, Alina <astoica@millerthomson.com>
Cc: Azeff, Gregory <gazeff@millerthomson.com>
Subject: RE: Meridian Credit Union v. Vandermeer Greenhouses Ltd. (Court file NO. CV-14-10443-00CL) [MTDMS-Legal.FID6753436]

Hi Stephanie,

It may seem unusual because your office is more familiar with the practice of the Commercial Court than ours. We learned of the Court's practice with respect to scheduling after we drafted and served our materials. When we learned the details of the Court's practice and didn't hear from your firm, we assumed that your office understood the process and had no objection to the date as it was far in advance. I apologise for any miscommunication.

We confirmed yesterday that the date to set a date needs to be confirmed. Are you and Greg available on the 26th to set a date? Could you please address the transcript and caselaw issue I raised yesterday?

Thanks,

Cassandra

Cassandra Kirewskie
Marshall Kirewskie
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L6J 3C7

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From: De Caria, Stephanie [mailto:sdecaria@millerthomson.com]
Sent: October 12, 2017 3:23 PM
To: cassandra kirewskie <ckirewskie@bellnet.ca>; Stoica, Alina <astoica@millerthomson.com>
Cc: Azeff, Gregory <gazeff@millerthomson.com>

Subject: RE: Meridian Credit Union v. Vandermeer Greenhouses Ltd. (Court file NO. CV-14-10443-00CL) [MTDMS-Legal.FID6753436]

Hi Cassandra:

To confirm, your motion record suggests that the motion is returnable October 26th at 10:00am. I read your email below (specifically where I have highlighted – see below) to indicate that the 26th is purely a scheduling date. Please confirm that this is in fact correct, as it seems rather unusual.

STEPHANIE DE CARIA

Associate

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Fax: +1 416.595.8695
Email: sdecaria@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

From: cassandra kirewskie [<mailto:ckirewskie@bellnet.ca>]
Sent: Thursday, October 12, 2017 2:54 PM
To: Stoica, Alina <astoica@millerthomson.com>
Cc: Azeff, Gregory <gazeff@millerthomson.com>; De Caria, Stephanie <sdecaria@millerthomson.com>
Subject: RE: Meridian Credit Union v. Vandermeer Greenhouses Ltd. (Court file NO. CV-14-10443-00CL) [MTDMS-Legal.FID6753436]

Dear Greg,

You unilaterally set down a teleconference to discuss this at 11 am on a statutory holiday.

I advised you that my partner and I were in court all day on Tuesday. We worked through Thanksgiving Weekend and took yesterday off as ***compensation.*** As a result, we only just received your email.

Neither Paul nor I are available this week. Neither of us sees the need for a Chambers Attendance and both of us have a full week already scheduled for next week.

I find your letter and its tone discourteous. I have already had occasion to speak with Harassment and Discipline counsel at the Law Society about you publicly calling me “a pain in

the ass” at court in front of my clients. I would ask you to refrain from taking steps without consultation.

We served our motion materials in early September and only just heard from your office for the first time last week. As experienced commercial counsel, you are more aware of the procedures of the Commercial Court than our office and ought to know that nothing has been set down as we have not canvassed dates with you. As we have been advised that an appearance is required to set a date in the Commercial Court, your client’s issues can be brought forward at that time.

We appreciate that your client has changed its view and now recognizes that the threshold on the leave application was “low.” Clearly the motion should not have been opposed. As such, when it was served with our record, it should have consented. Instead, it delayed until the very last moment before consenting.

If you have any case law to support your view that our clients have to be successful before the Board in order to obtain their costs of the application to lift the stay, kindly provide it so that we may obtain instructions.

Mr. Berger may have advised you that we have not received all of the transcripts from the Board hearing. He may also have advised that through the Board, we have requested a list of all of the transcripts in your client’s possession as the record Mr. Berger filed on our judicial review application contains excerpts from a transcript we have not received from the court reporter. Notwithstanding any decision of the Board, we maintain that it would be grossly unfair for the Applicants to have to proceed without the same record in the Respondent’s possession.

Would you kindly advise as to whether your client is willing to provide the Applicants with a complete list of all of the transcripts in its possession as well as the date of their receipt? Will your client undertake to provide us with copies of any transcripts it has which we have not received from the court reporter?

Lastly, in reference to your comment about the purpose of the Board hearing, the Board has no jurisdiction to determine, as you suggest “which side is right.” It exercises delegated authority to determine whether the disturbances our clients’ were experiencing as a result of your clients’ operation of a waste disposal site next to their homes and farms was as a result of a normal farm practice or not. The Board is not a Court and has no inherent powers beyond its statutory mandate.

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Email: ckirewskie@bellnet.ca



From: Stoica, Alina [<mailto:astoica@millerthomson.com>]
Sent: October 10, 2017 5:19 PM
To: ckirewskie@bellnet.ca
Cc: Azeff, Gregory <gazeff@millerthomson.com>; De Caria, Stephanie <sdecaria@millerthomson.com>;
aar@zeifmans.ca
Subject: Meridian Credit Union v. Vandermeer Greenhouses Ltd. (Court file NO. CV-14-10443-00CL) [MTDMS-Legal.FID6753436]

Hello:

Please see enclosed correspondence from Mr. Azeff dated October 10, 2017.

Regards,

ALINA STOICA

Legal Assistant

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Services provided through Miltom Management LP
Scotia Plaza
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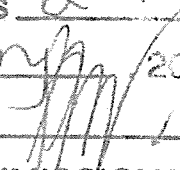
Cassandra Kirewskie, M.A., LL.B.
ckirewskie@bellnet.ca

Nick Kirewskie, Office Manager
mklaw@bellnet.ca

December 12th, 2017

By fax
To the Board: 519-826-4232
To the Respondent: 416-941-8852

Chairman Walstedt
Normal Farm Practices Protection Board
Ministry of Agriculture, Food and Rural Affairs
1 Stone Road West
Guelph N1G 4Y2

This is Exhibit "K" referred to in the
affidavit of Ron Quevillon
sworn before me, this 2nd
day of February, 2018

A COMMISSIONER, ETC.

Dear Mr. Chairman:

RE: James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, Dino Lavallo, Mary Lavallo, Dan Lavallo, Larry Bourk, Joan Bourk, Richard Zirger, Judi Zirger, Robert Zirger, Sharon Zirger, George Lepp, Cindi Lepp, Mark Lepp, Erica Lepp v. Zeifman Partners as operator of 2021 Four Mile Creek Road, Niagara on the Lake

The Applicants have previously written to the Board about the timelines for the delivery of our final submissions. Around this time last year, without the transcripts in hand, the Board set out a timeframe for the delivery of the parties' final submissions. At the time, we asked the Board to reconsider its Order and it did.

In August 2017, we wrote to the Board for a second time to express our concerns about the absence of a full record of the proceedings and to request relief from the Board's Order to proceed to the final submissions stage without them.

Pursuant to Rule 64 of its *Rules of Practice and Procedure*, we are writing for a third time to ask the Board to review its decision to order the delivery of final transcripts when there are still a significant number of key transcripts missing. We respectfully request the Board to review its October 11th, 2017 Order for the Applicants to deliver their final submissions on or before December 22nd, 2017.

A. Grounds for the Applicants' Request for a review of the Board's Order of October 11th, 2017

- i) To be fair to the Applicants, the clock should not start running for delivery of final submissions until the full record of the proceedings has been received

In its Order of July 14th, 2016, the Board set out time frames for the delivery of final submissions that were based on it advising the parties "that transcripts of the hearing have been received" (italics added).

On August 4th, 2017, the Board discarded the basis for its Order of July 14th. It did not communicate its decision to the Applicants for eleven days as its Order of August 4th, 2017 was not sent to the Applicants until after the close of business on August 14th, 2017. Instead of starting the clock for the delivery of final submissions after it and the Applicants had received the full record of the proceedings, the Board ordered the delivery of final submissions without a full transcript. It did not provide its reasoning nor any justification for its decision, ruling that it "is necessary that this matter be brought to a final conclusion...whether or not full transcripts have been received by the Board and by the parties..."

The Applicants asked the Board to review its Order on August 21st, 2017. By letter dated September 21st, 2017, pending submissions from the Respondent, the Board made a tentative order for the delivery of the Applicants' submissions by December 22nd, 2017.

On September 25th, 2017, the Respondent provided its submissions objecting to the Applicants' request to vary, suspend or cancel the Order for the delivery of final submissions by December 22nd, 2017. The Applicants did not receive the Board's Order until after they received the Respondent's submissions of September 25th, 2017.

- ii) Fairness requires this Board to order the Respondent to disclose which transcripts it has received

In its Order of October 11th, 2017, the Board stated that it "did not consider" the Applicants' letter of October 6th, 2017 responding to the Respondent's September 25th letter asking the Board to order them to deliver their submissions on or before October 16th, 2017.

The Applicants submit that it is improper for this Honourable Board to make rulings without considering the submissions of counsel. In our letter of October 6th, 2017, the Applicants specifically noted that they had evidence that the Respondent had received a transcript they had not. The Board has not responded to their concern and has declined to order the Respondent to disclose which transcripts it has and when they were received. The Board has also declined to order the Respondent to provide the Applicants with any transcripts they are missing. The Applicants submit that the Board is not treating them fairly.

The Applicants demand a reply to the matters raised in their October 6th, 2017 letter, specifically:

- a) The Applicants require a complete list of which transcripts the Board and Respondent have received to date, with the Respondent to provide proof of delivery and/or receipt, under cover of an affidavit of one of its principals who will make him or herself available for cross-examination within 30 days of the Board's Order on this request for review; and,

b) The Applicants require the Board to disclose when it received the transcripts in its possession.

iii) **Fairness requires the Board to disclose its communications**

The Applicants are deeply concerned about the Board's failure to disclose its communications with the court reporter and Respondent's counsel. Fairness requires this Board to disclose all attempts it made to obtain the full record of the proceedings from the reporter.

Fairness also requires that the Board disclose its separate and private communications with the Respondent and the full nature of its relationship with the Respondent and its counsel.

Through the receivership proceedings in the Commercial List Court, the Applicants just learned that Respondent's counsel coordinated with the Board's counsel to produce the Respondent's factum on the judicial review application the Applicants brought challenging the Board's decision to convene a hearing in their absence after it had ruled their motion a nullity. The Board found that the Applicants had acted in bad faith and awarded costs against them. Given the Board's decision to "coordinate" its position with the Respondent, the Applicants are very gravely concerned about this Board's ability to decide their case impartially.

We have enclosed a copy of counsel for the Respondent's dockets for June 21st, 2017 to September 13th, 2017. On September 5th, 2017, Mr. Berger billed his client for work an undisclosed amount of time he spent working on what he described as: "Judicial Review: Draft facts portion of Factum for review and co-ordination with counsel for the Farm Practices Board." The following day, Mr. Berger billed his client for an undisclosed amount of time he spent working on the file, which he described as: "Judicial Review: Finalizing draft Factum for review by Attorney General for Ontario..."

The Applicants are adverse in interest to the Respondent. The Board is still seized of the Applicants' application. The Applicants are deeply concerned that the Board cannot be fair to the Applicants on their application if it is coordinating its position with the Respondent on their judicial review application. Kindly explain how the Board came to "coordinate" with the Respondent? Kindly disclose the nature of the Board and court reporter's relationship with the Respondent and its counsel and immediately disclose the records of all the Respondent's communications with the Board and its counsel.

iv) **Fairness requires the Board to vary, suspend or cancel its order for final submissions to be delivered without all the transcripts the Applicants ordered being delivered**

The Applicants consider the Board's decision to require counsel to deliver final submissions on the last business day before Christmas, seventeen months after the hearing concluded in a non-urgent situation where the transcripts have not all been delivered to the Applicants and ownership of the property has changed, unfair. With respect, we do not agree with the Board's view that the Applicants' request for an accounting from the Board and the Respondent as to which transcripts they have, when they were received and what steps the Board has taken to obtain the remaining transcripts "frivolous and not relevant to the issues in this proceeding."

The Applicants require a copy of the same evidentiary record as the Respondent and require the Board to deliver to them at its cost the same evidentiary record as has been delivered to the Respondent by the court reporter.

The Applicants have made every effort to comply with the Board's Order but in light of the circumstances set out above, it would be unfair for them to be required to file their final submissions on December 22nd, 2017 without the full record and answers to the questions posed herein. As the Board suggested during our last teleconference on July 19th, 2017, the Applicants have attempted to complete our final submissions using their notes of the hearing but have found that too many months have passed since the hearing ended for their notes to act as a substitute for a verbatim transcript of the proceedings.

The hearing ended some seventeen months ago. The Applicants' recollection of the testimony has faded; the Applicants cannot accurately cite the testimony from their notes. We therefore respectfully request that the Board vary, suspend or cancel its Order for the delivery of final submissions until at least 60 days after the court reporter has delivered the entire record of the proceedings to the Board and the Applicants.

In our view, the December 22nd deadline is arbitrary and prejudicial as the court reporter has still not delivered the entire record of the proceedings and key transcripts are still outstanding. As well, in the interim, the Ministry of the Environment has confirmed that it will not be issuing a new Certificate of Approval to the new owner of the waste disposal site formerly operated by the Respondent. As a result, the Board's decision will govern how the new owner, and possibly any other subsequent owner, is permitted to operate the waste disposal site.

Given these circumstances, the Applicants respectfully request that the Board vary, suspend or cancel its October 11th, 2017 Order for the delivery of final submissions and ask that no further Order be made until the court reporter has delivered the entire record of the proceedings to the Applicants and the Board. We understand that the Respondent does not wish to have a copy of the entire record.

v) **The Sudbury Mining case**

With respect, the court reporter's failure to deliver all the transcripts goes to the issue of fairness. Mr. Justice David Stone recently rescheduled final submissions in a case where three days of transcripts in a proceeding were missing. We have enclosed a copy of a newspaper article published in the Sudbury Star on October 26th, 2017 reporting on this issue. We confirmed with the Crown Counsel on this case that the Sudbury Star correctly reported on the issue as it arose and was handled by the Court. We also confirmed that Justice Stone did not write an Endorsement or Order which we could provide to the Board.

In our view, the transcript issue in this proceeding is analogous to the situation that was before Justice Stone, except that the Respondent has not raised any objection with proceeding to the final submission stage without all the transcripts. In our view, the Board ought to be very concerned about this disparity in positions as it goes to fairness. The Applicants are deeply concerned that the absence of verbatim testimony of the experts called in this matter favours the Respondent's position.

vi) The Respondent's position and evidence

We note that despite the court reporter's failure to deliver all the transcripts, the Respondent has pushed for the delivery of the parties' final submissions. In its letter of September 25th, 2017 responding to the Board's decision of September 21st, 2017 (which the Applicants only received after the Respondent's letter), the Respondent asked the Board to order the Applicants to deliver their final submissions on or before October 16th, 2017. That is to say that the Respondent asked this Board to give the Applicants 14 days to complete their submissions because, it alleged, the Applicants failed to exercise "due diligence in trial preparation.." The Board rejected the Respondent's request and set December 22nd, 2017 as the deadline for the delivery of the Applicant's final submissions.

The Respondent served the Applicants with a motion on December 1st, 2017 which was returnable in the Commercial List Court on December 6th, but which was inexplicably adjourned at 4:32 p.m. the day before, alleging that the receivership is continuing for the sole purpose of completing the proceeding before the Board. While the Respondent Receiver is prepared to ignore the Applicants' procedural rights in order to obtain a final decision, the Applicants are asking this Honourable Board to ensure that it takes all necessary steps to give effect to their procedural rights.

From the correspondence that has been exchanged with respect to this on-going issue, we have determined that the court reporter did not deliver the same transcripts to the Board, Applicants and Respondent at the same time as is the usual practice among court reporters. We therefore disagree with the Respondent that the Applicants have had "access to the same transcripts" as alleged in their letter to the Board of September 25th, 2017. Indeed, we have enclosed copies of the accounts of the Respondent's counsel from June to November 2017, which we obtained from the receivership proceedings, where counsel have purposefully blacked out the identity of the witnesses whose transcript they billed their client for reviewing. In the past, we can advise the Board that previous motions in the Commercial Court have not contained redacted accounts. The Respondent has therefore intentionally prevented the Applicants from discerning which transcripts it has in its possession.

In the Respondent's letter of September 25th, 2017, it noted that it had received four transcripts from the court reporter in the month of September. The Applicants did not receive any. As the Respondent did not disclose which transcripts it received, the Applicants have no means of determining whether we have the same record of the proceedings. We note that the enclosed October 17th, 2017 account of Fogler Rubinoff shows that Respondent's counsel has created "180 pages of notes of transcripts of testimony" which is to say that while the Board has suggested that the Applicants rely on their notes to draft their submissions, the Respondent has used actual transcripts to prepare its final submissions.

vii) The Board must take steps to address unfairness to the Applicants

We have enclosed a copy of our last correspondence to the court reporter dated September 20th, 2017 which has not been answered to date. In an email in the string, the court reporter stated: "If you require any of the balance of the transcripts, please let me know and I will send them and confirm delivery. I want to ensure that you have everything you need." Her failure to deliver the remaining parts of the record has not been explained.

The Board has not provided any information as to why the court reporter has not fulfilled her duties. We have been advised that in the Sudbury mining trial, Justice Stone had contemplated having the

court reporter appear to explain why the transcripts had not been delivered. We take the view that the Board must intervene. We note that it did so once before, when it put the transcripts “on hold” in August of 2016 as set out an email from the court reporter, which we have also enclosed.

The Respondent has refused to voluntarily advise as to which transcripts it has received. Yet in its submissions on the judicial review application before the Divisional Court, it filed an affidavit that was sworn on September 13th, 2017 attaching an excerpt of Randy van Berkel’s transcript which is in the same unusual typeface as the transcripts most recently received from the court reporter. The Applicants do not have a copy of the transcript of Randy van Berkel. We specifically asked the court reporter to provide the van Berkel transcript to us in the enclosed September 20th, 2017 email but have received no reply. The Applicants are at a clear disadvantage which is unfair. It would be very unfair for them to file their final submissions without access to the same evidentiary record as the Respondent, especially when the record already shows that there is a discrepancy between the facts known by the parties.

As we previously advised, the Applicants learned post-hearing that the Respondent “shut-down” the Vandermeer farm greenhouse operation the day after the Board conducted a site visit on December 9th, 2015. In our view, the Respondent knowingly suppressed relevant and material evidence when its obligation, as a court appointed receiver, was to make candid and full disclosure and to act honestly and in the best interest of all interested parties. For the Board’s information, we have enclosed a copy of Frank Bennett’s statement on court appointed receivers from his book, *Bennett on Receiverships*.

We enclose for the Board’s consideration a copy of the Respondent’s Answers to Interrogatories. We note that 4 ½ pages of its Answers were devoted to describing the advanced farm practices the Respondent used in the greenhouse on the Vandermeer farm. It did not disclose that it had shut down the greenhouse in December 2015 and terminated the employment of its greenhouse staff.

As of December 2015, the evidence indicates that the Respondent was not running an agricultural operation. While the Respondent revised some of its previous Answers, it is telling that it never revised its Answers pertaining to the agricultural operation. In our view, it changed its witness list to deprive the Applicants of a cross-examination on its Answers to Interrogatories as the Respondent failed to provide its Answers under cover of an affidavit as is required by the Ontario *Rules of Civil Procedure*. While the Board’s Rules do not require Answers to Interrogatories to be filed by affidavit, gaps in the Rules and in the *Statutory Powers Procedure Act* both provide that the *Rules of Civil Procedure* are to be used to fill gaps in proceedings before the Board.

The Applicants only learned that the Respondent had shut down the greenhouse because they had access to the Respondent’s counsel’s accounts in the receivership application after the hearing ended. The Respondent never advised the Board or the Applicants that its circumstances had changed. Its Answers were accordingly inaccurate within days after the commencement of the hearing. We consider this very unfair.

Given these events, the Board, in our submission, ought to be very concerned about taking all the steps it can to be fair to the Applicants. We note that the Respondent has not raised any concerns about the absence of a complete record of the proceedings. The Applicants can only surmise that the Respondent does not believe it will suffer any prejudice without the missing expert transcripts. Accordingly, it seems that the Respondent has a clear advantage. Most of the transcripts the Applicants have received are of their testimony, not expert testimony concerning normal farm practices, the issue

the Board has been called upon to decide. Without transcribed verbatim expert testimony as to whether its farm practices were normal farm practices, the Applicants will have an uphill battle proving to the Board that the Respondent's activities were not normal farm practices.

With respect, the Applicants' notes are not a verbatim record nor are they complete as they were made in the expectation that the court reporter would be providing us with a transcript of the entire hearing as the Applicants had ordered one from her. The Applicants' notes were not made in the expectation that they would act as a substitute for a verbatim recording of the entire proceeding.

We have also enclosed a copy of an email which the Board's Secretary sent to us on December 7th, 2015, attaching a letter dated April 28th, 2010 from Ms. St. Gelais, the court reporter. Ms. St. Gelais now goes by the name St. Gelais Marko. In her letter to the Board, Ms. St. Gelais Marko noted that over "the last several years I have done a variety of hearings for OMAFRA." She advised that she is a "verbatim CAT court reporter." We can advise that "CAT" is an acronym for "computer aided transcription." CAT is a method whereby the court reporter records evidence on a stenotype machine verbatim. The stenotype machine writes to memory and electronic media.

If the Applicants were to use their handwritten notes to refer to the evidence in lieu of the missing verbatim transcripts, and if the Respondent were to do the same, there would be no way for the Board to ascertain which party had more accurately paraphrased the evidence in the inevitable event of a disagreement over its content. In short, if the parties resorted to their notes to complete their final submissions as directed, any references the Applicants might make to the evidence through the citation of their personal notes would be unreliable and open to dispute by the Respondent. There is no way for the Board to resolve such a dispute fairly without a verbatim transcript.

While the Board confirmed in our last teleconference that it would also use notes to prepare its decision, it was unwilling to provide copies to the Applicants. Not only does this create another layer of unfairness in our view, as a practical matter, without the verbatim transcripts, whose notes does the Board intend to use as authoritative, Chairman Walker or Members Field or Eadie? There is no fair way in our submission, of overcoming the problems that the absence of a complete record creates.

Without the missing transcripts, the parties have no means of verifying which exhibits were entered or their numbers. Fairness in our view requires that the Board vary, suspend or cancel its Order for the delivery of final submissions until after the complete record has been received by the Board and the Applicants, both of whom have ordered a copy of the entire proceedings as the Board confirmed in the enclosed email from its Secretary dated December 20th, 2016.

viii) Key verbatim evidence is missing

The hearing ended on July 6th, 2016, some seventeen months ago. The Applicants cannot present the evidence properly, fairly or effectively without having a complete record of the proceedings. As of the date of writing, the Applicants are missing the transcripts of seven critical witnesses, namely:

1. Randy van Berkel (the original proponent of the anaerobic digester and the first operator);
2. Kyle Bartel (the Respondent's operator);
3. Stephen Bedford (formerly the Town of Niagara on the Lake's Chief Planner whom the Applicants called and was qualified by the Board as a planning expert with direct

- knowledge of the anaerobic digester and waste disposal site as he was involved in its approval);
4. Doug Beattie (who was qualified by the Board as a waste disposal and anaerobic digester expert and the operator of the City of Toronto's Disco Road anaerobic digester and waste disposal site whom the Applicants called to give expert evidence on best management practices);
 5. Hugh Fraser (whom the Applicants called and was qualified by the Board as a Ministry of Agriculture expert in the minimum distance separation requirement which regulates the distances that are required between agricultural land uses);
 6. Clare Riepma (who was the planner Randy van Berkel hired to obtain the municipal and provincial approvals necessary to situate an anaerobic digester and waste disposal site on the former Vandermeer farm and whom the Respondent called and was qualified as a planning expert to testify as to whether the anaerobic digester operation "is conducted with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances and/ or makes use of innovative technology in a manner consistent with advanced management practices"); and,
 7. Ken Anders (the Respondent's only other witness, who is a farmer who was leasing from the Respondent next to the digester and who was the only witness qualified as a farming expert to provide expert evidence as to growing peaches and nectarines next to the anaerobic digester on the Vandermeer farm and Canada GAP certification).

In addition, they are also missing the transcripts of the following public participating witnesses:

8. Rheinhold Schulze;
9. Rick Meloen (from whose testimony the Applicants learned that the Respondent had sold the Vandermeer farm while the parties were before the Board);
10. Bruce Moore;
11. Patricia McMaster; and,
12. James McMaster.

We have enclosed a copy of an email dated January 30th, 2017, in which the court reporter confirmed that the Applicants had ordered "the entire transcript."

ix) The Respondent has some of the missing transcripts

In its September 25th, 2017 letter to the Board, the Respondent confirmed that it ordered and received eleven transcripts of this proceeding, none of which were of the Applicants' testimony. Presumably if it did not require the Applicants' testimony to complete its submissions, it also did not require the transcripts of public participation witnesses. Backing out the Applicants and public participants, there are fourteen other transcripts of this proceeding:

1. Stephen Bedford (see above description, missing expert transcript);
2. Doug Beattie (see above description, missing expert transcript);
3. Kyle Bartle (see above description, missing transcript);
4. Randy van Berkel (see above description, missing transcript);
5. Clare Riepma (see above description, missing expert transcript);
6. Hugh Fraser (see above description, missing expert transcript);
7. Ken Anders (see above description, missing expert transcript);

8. Ryan Brewster – (tender fruit expert called by the Applicants);
9. Jake DeBruyn – (farm practices expert called by the Applicants and a Ministry of Agriculture employee);
10. Dan Carlow – (policy expert called by the Applicants and a Ministry of Agriculture employee);
11. James Dyck (Ministry of Agriculture’s agricultural officer responsible for the Vandermeer farm);
12. Todd Leuty (expert called by Applicants to give evidence as to odour abatement and a Ministry of Agriculture employee);
13. Chris Duke (biogas policy expert and a Ministry of Agriculture employee called by the Applicants); and,
14. The late Paul Cline (formerly the Ministry of Environment’s Agricultural Officer responsible for the Vandermeer farm).

Of these, the Respondent says it has eleven. As such, the Respondent has received transcripts the Applicants have not.

We understand that the Board has not received Paul Cline’s transcript. If this still the case, we can provide a copy to the Board’s Secretary.

x) **Fairness requires that the Board address the prejudice to the Applicants**

Without the complete record of the proceedings, the Applicants will also be prejudiced in the event of any appeal. Rule 61.09 of the *Ontario Rules of Civil Procedure* provides that on appeal, the appellant shall file a copy of the transcript of evidence. It does not contemplate the filing of the appellants’ handwritten notes to perfect the appeal. The lack of a complete evidentiary record will prejudice any further legal proceedings.

The Applicants are also very concerned about the prejudice that will arise if the court reporter delivers the remaining transcripts after the Applicants have filed their final submissions. We respectfully request that the Board advise the Applicants as to how it will address this issue if it arises.

In light of the foregoing, the Applicants are of the view that it would be unfair for them to have to comply with the Board’s Order for the delivery of their final submissions by December 22nd. We implore the Board to take steps to secure the remaining transcripts from Ms. St. Gelais Marko. While we previously requested a copy of the Board’s contract with Ms. St. Gelais Marko when we were advised that the Board was contemplating legal action, we note that it has not been provided to us and no action appears to have been taken by the Board.

We enclosed a copy of an email the Board’s Secretary sent to us at the beginning of the hearing which attached a letter from the court reporter. The letter was dated April 28th, 2010. It indicates that the court reporter has had a lengthy history with the Board and has worked for it on many past occasions. We implore the Board to contact Ms. St. Gelais Marko and to obtain the outstanding transcripts, her equipment or recording devices and USB cards. We respectfully request that this Honourable Board convene a hearing for Ms. St. Gelais Marko to appear before it to explain what has happened with the rest of the record, when and how the parties who want them can obtain a complete record of the proceedings.

xi) Fairness requires that the Board convene a hearing to examine the court reporter

Ms. St. Gelais Marko advised the Applicants' counsel and some of the Applicants directly that she had not completed the transcripts as her elderly mother had been in the intensive care unit for over a week after a fall and she had been in a car accident which was hampering her ability to work. When she and her husband Marty dropped by our office in April 2017 to personally deliver some of the transcripts, Ms. St. Gelais Marko apologized and explained that she had been in a second car accident. She advised us that she had been hit from behind and was incapable of working. She also updated us as to the state of her mother's health, telling us that she and her husband were actively engaged in looking after her mother, which made it difficult for her to work. The court reporter also advised that she had hired help to assist her in completing the transcripts. She told us that she would be delivering the entire set as we had requested.

We recently learned that since January 2017, Ms. St. Gelais Marko has been enrolled in a full-time course of study. It seems strange that she was able to undertake full-time studies without having had the benefit of any of the income from the Applicants for the transcripts she has delivered. It is odd that she has never billed the Applicants for her work to date nor advised as to when we may expect her outstanding work. It seems quite strange that a self-employed court reporter would not seek any compensation, especially while enrolled in full-time studies for which she has to pay tuition and forego earnings. Of course, we do not have any knowledge of what the Board or Respondent have paid her for her services to date, if anything.

We learned that Ms. St. Gelais Marko is a full-time student when we saw her interviewed on Steve Paikin's TVO program, *The Agenda*. On Ontario government TV, Ms. St. Gelais Marko spoke about her studies in the Commercial Beekeepers Program at Niagara College. TVO described the program as "physically demanding." If the court reporter was able to undertake a physically demanding course of studies, we question whether she has provided the Applicants with a honest and truthful accounting as to why she has not completed the transcripts of the entire proceeding. Since we note that OMAFRA is a supporter of the Beekeeper's program and that it had a representative at its launch, we believe that fairness requires that the Board convene a hearing to determine why there has been a seventeen-month delay in providing the transcripts as ordered.

We have located a court reporting service in Milton, Ontario, Ponka Verbatium, that has confirmed that if we can provide Ms. St. Gelais Marko's USB card, other back up or recording equipment, they can produce the remaining transcripts on an expedited basis within five working days.

We do not have the authority to demand that Ms. St. Gelais Marko produce these items to us. As the Board retained the court reporter and has an obligation to produce the record, including the transcripts, we ask that it convene a hearing immediately to demand that Ms. St. Gelais Marko answer questions and either produce the remaining transcripts forthwith or produce her recording equipment and/or recordings so that the Applicants can take the steps necessary to have the remaining transcripts produced on an expedited basis.

xii) Relief sought by the Applicants

Out of fairness, we ask that the Board vary, suspend or cancel its Order for the delivery of the final submissions until the transcript issue has been resolved. This step is required to ensure that the Applicants do not suffer prejudice as the Board cannot reach a fair conclusion as to whether the

disturbances they complained about are or are not normal farm practices without considering the transcribed verbatim evidence of all the witnesses. In the alternative, we request that the Board vary its Order of October 11th, 2017, by bifurcating the delivery of final submissions into two parts. First, submissions from the Applicants by December 22nd, 2017 on the Applicants' onus to prove that they have been directly affected by the Respondent's activities on 2021 Four Mile Creek Road, Niagara on the Lake, with the present timeline for the Respondent's submissions and Reply remaining in place. Submissions on the second issue, whether the disturbances the Applicants complained of were as a result of normal farm practices, to be ordered to be delivered at least sixty days after the Board and the Applicants have received full copies of all the missing transcripts from the court reporter.

We urgently request that the Board provide the Applicants with a decision on our request for a review on or before December 15th, 2017.

Thank you.

Sincerely,

Cassandra Kirewskie
/nk

Encls.

c. Stanley Berger, counsel for the Respondent
Clients

Tab F

**Normal Farm Practices
Protection Board**
1 Stone Road West, 2nd Floor
Guelph, Ontario N1G 4Y2
Tel: (519) 826-3433, Fax: (519) 826-4232
Email: NFPPB@ontario.ca

**Commission de protection des
pratiques agricoles normales**
1 Stone Road West, 2^e étage
Guelph (Ontario) N1G 4Y2
Tél.: (519) 826-3433, Téléc.: (519) 826-4232
Courriel: NFPPB@ontario.ca



February 22, 2018

By Email and Courier to:
Cassandra Kirewskie
Marshall Kirewskie Lawyer
88 Dun Street, Suite 201
Oakville, Ontario
L6J 3C7
Email : ckirewskie@bellnet.ca

And by Email and Courier to:
Stanley D. Berger
Fogler Rubinoff LLP
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, Ontario
M5K 1G8
Email: sberger@foglers.com

Re: Dell et al v Zeifman Partners Inc. – December 11, 2017 Request for Review of the Applicants

In response to the orders of December 19, 2017 and January 19, 2018, the Normal Farm Practices Protection Board ("Board") has received an affidavit regarding the steps taken to contact the court reporter in this case and secure any transcripts desired by the Applicants. This affidavit was initially ordered to be filed by January 10, 2018, but this order was disregarded and the affidavit was not filed until February 2, 2018, per the January 19, 2018 order.

From the affidavit, it is apparent that no attempts were made to contact the court reporter since transcripts were completed and available several months ago. Since being instructed by the hearing panel that each party was to be responsible for their own transcripts, the Board has reminded the parties of this obligation on more than one occasion. The timelines for the final submissions were set, and then extended, while transcripts were available. I acknowledge that there has been some confusion as to when the transcripts became available, as the court reporter was non-responsive during the summer of 2017 and has been slow to respond at some other times, and it appears that an indication of the availability of the transcripts was not provided to the parties. However, even after my December 19, 2017 order, no attempt was made by the Applicants or their counsel to contact the court reporter. While the October 11, 2017 order indicates that transcripts were available ("...when transcripts were still outstanding."), there could have been no confusion after the December 19, 2017 order.

As the parties were repeatedly instructed to be responsible for obtaining transcripts, allowing the extended time for filing final submission to lapse without a single phone call or email to the court reporter evidences a lack of due diligence. My statements in the January 19 order assumed that at least some attempt to contact the court reporter and obtain copies was made over the last few months, however, it now appears that the problem was not that the court reporter was being non-responsive.

Since receiving the affidavit, I have instructed staff to contact the court reporter. My understanding is that she has been in contact with counsel for the Applicants, and that the matter of dates for the final submission can be set without further objections.

In light of this, I hereby order the applicants to confirm in writing when all desired transcripts have been received. This confirmation must be made within one week of receipt and include copies of emails or other documentation clearly indicating the date of receipt of the final ordered transcripts. The Respondent and the Board should be copied on this confirmation. Any non-substantive deviations from the required format should not, in this case, be considered to equate to non-receipt.

Counsel for the Respondent has asked for costs for reviewing and responding to the correspondence regarding the issue of the timelines for the final submission and the transcripts, and also, I note, regarding unrelated matters raised in the correspondence from the Applicants' counsel, in the amount of \$1000. The Applicants should include with the confirmation of receipt of the transcripts a response to the costs request. This process for considering costs is set per Rule 5, but any costs order will consider the criteria in Rule 66. The Applicants' response should not exceed five pages of 12 point type.

The timeline for the final submissions will be set upon filing of the confirmation of receipt of the transcripts by the Applicants.

Yours truly,

A handwritten signature in black ink, appearing to read "Kirk Waistedt", written in a cursive style.

Kirk Waistedt, Chair

Normal Farm Practices Protection Board

Tab G



88 Dunn Street, Suite 201
Oakville, ON L6J 3C7
T 905.842.5070
F 905.842.4123
mklaw@bellnet.ca

Paul David Marshall, B.A., B.Ed., LL.B.
p.marshall@bellnet.ca

Cassandra Kirewskie, M.A., LL.B.
ckirewskie@bellnet.ca

Nick Kirewskie, Office Manager
mklaw@bellnet.ca

February 13th, 2018

By fax to: 416-595-8695

Gregory Ryan Azeff
Miller Thomson
40 King Street West
Suite 5800
PO Box 1011
Toronto, ON
M5H 3S1

Dear Mr. Azeff:

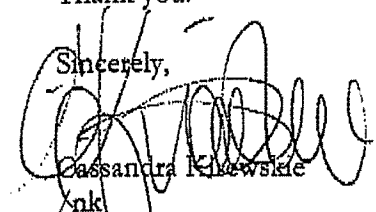
RE: James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, Dino Lavallo, Mary Lavallo, Dan Lavallo, Larry Bourk, Joan Bourk, Richard Zirger, Judi Zirger, Robert Zirger, Sharon Zirger, George Lepp, Cindi Lepp, Mark Lepp, Erica Lepp v. Zeifman Partners as operator of 2021 Four Mile Creek Road, Niagara on the Lake

We have reviewed your client's seven reports to the Court and cannot find any entries for payments it made to the court reporter for the transcripts of the proceedings before the Normal Farm Practices and Protection Board.

Would you kindly provide us with copies of all Ms. St. Gelais' invoices as well as proof of payment from your client's accounts or from your present or former law firm's account. These invoices should have been included in your client's reports to the Court.

Thank you.

Sincerely,



Cassandra Kirewskie
nk

c. clients

Tab H

De Caria, Stephanie

From: Azeff, Gregory
Sent: Tuesday, December 19, 2017 2:28 PM
To: Marshall&Kirewskie; De Caria, Stephanie; 'Ross Macfarlane'
Cc: 'cassandra kirewskie'; 'p.marshall'; 'Tina Dugas'
Subject: RE: Court File No. CV-14-10443-00CL [MTDMS-Legal.FID6753436]

That date is fine with me. Thanks.

GREGORY AZEFF

Partner

Miller Thomson LLP

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, Ontario M5H 3S1

Direct Line: +1 416.595.2660

Fax: +1 416.595.8695

Email: gazeff@millerthomson.com

millerthomson.com



MILLER THOMSON
AVOCATS | LAWYERS

Please consider the environment before printing this email.

From: Marshall&Kirewskie [mailto:mklaw@bellnet.ca]
Sent: Tuesday, December 19, 2017 2:27 PM
To: De Caria, Stephanie <sdecaria@millerthomson.com>; 'Ross Macfarlane' <jrmafar@flettbeccario.com>; Azeff, Gregory <gazeff@millerthomson.com>
Cc: 'cassandra kirewskie' <ckirewskie@bellnet.ca>; 'p.marshall' <p.marshall@bellnet.ca>; 'Tina Dugas' <Tdugas@flettbeccario.com>
Subject: RE: Court File No. CV-14-10443-00CL [MTDMS-Legal.FID6753436]

Of the dates the court has provided we are only available on February 22, 2018. The rest of the dates are over March break. We assume that this would be an inconvenient time for counsel with children.

Kindly advise as to whether you're available on February 22, 2018.

Thank you.

Nick Kirewskie, Office Manager

Marshall Kirewskie

201 - 88 Dunn Street

Oakville, Ontario

L6J 3C7

Tel: (905)842-5070 ext. 221

De Caria, Stephanie

From: Ross Macfarlane <jrmacfar@flettbeccario.com>
Sent: Tuesday, December 19, 2017 2:30 PM
To: Marshall&Kirewskie; De Caria, Stephanie; Azeff, Gregory
Cc: 'cassandra kirewskie'; 'p.marshall'; Tina Dugas
Subject: RE: Court File No. CV-14-10443-00CL [MTDMS-Legal.FID6753436]

Yes, I am available on that date.

J. Ross Macfarlane
Flett Beccario,
Barristers & Solicitors
190 Division Street
P.O. Box 340
Welland, ON L3B 5P9
Canada

Tel: 905.732.4481 x.274
Cel: 289.821.0679
Fax: 905.732.2020
Web: flettbeccario.com

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From: Marshall&Kirewskie [mailto:mklaw@bellnet.ca]
Sent: Tuesday, December 19, 2017 2:27 PM
To: 'De Caria, Stephanie' <sdecaria@millერთhompson.com>; Ross Macfarlane <jrmacfar@flettbeccario.com>; 'Azeff, Gregory' <gazeff@millერთhompson.com>
Cc: 'cassandra kirewskie' <ckirewskie@bellnet.ca>; 'p.marshall' <p.marshall@bellnet.ca>; Tina Dugas <Tdugas@flettbeccario.com>
Subject: RE: Court File No. CV-14-10443-00CL [MTDMS-Legal.FID6753436]

Of the dates the court has provided we are only available on February 22, 2018. The rest of the dates are over March break. We assume that this would be an inconvenient time for counsel with children.

Kindly advise as to whether you're available on February 22, 2018.

Thank you.

Nick Kirewskie, Office Manager
Marshall Kirewskie
201 - 88 Dunn Street
Oakville, Ontario

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Tel: (905)842-5070 ext. 221

Fax: (905)842-4123

Email: mklaw@bellnet.ca



From: De Caria, Stephanie [<mailto:sdecaria@millerthomson.com>]
Sent: December-07-17 6:24 PM
To: Ross Macfarlane; Marshall&Kirewskie; Azeff, Gregory
Cc: 'cassandra kirewskie'; 'p.marshall'; Tina Dugas
Subject: RE: Court File No. CV-14-10443-00CL [MTDMS-Legal.FID6753436]

Nick/Cassandra – please provide us with available court dates and we will be in a position to provide you with our availability.

Thank you
Stephanie

STEPHANIE DE CARIA

Associate

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.2652
Fax: +1 416.595.8695
Email: sdecaria@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

From: Ross Macfarlane [<mailto:jrmacfar@flettbeccario.com>]
Sent: Thursday, December 07, 2017 2:54 PM
To: Marshall&Kirewskie <mklaw@bellnet.ca>; Azeff, Gregory <gazeff@millerthomson.com>
Cc: 'cassandra kirewskie' <ckirewskie@bellnet.ca>; 'p.marshall' <p.marshall@bellnet.ca>; De Caria, Stephanie <sdecaria@millerthomson.com>; Tina Dugas <Tdugas@flettbeccario.com>
Subject: RE: Court File No. CV-14-10443-00CL

What dates are available from the court?

Thank you,

J. Ross Macfarlane
Flett Beccario,
Barristers & Solicitors
190 Division Street
P.O. Box 340
Welland, ON L3B 5P9
Canada

Tel: 905.732.4481 x.274
Cel: 289.821.0679
Fax: 905.732.2020
Web: flettbeccario.com

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From: Marshall&Kirewskie [<mailto:mklaw@bellnet.ca>]
Sent: Thursday, December 07, 2017 2:52 PM
To: 'Azeff, Gregory' <gazeff@millერთhomson.com>
Cc: 'cassandra kirewskie' <ckirewskie@bellnet.ca>; 'p.marshall' <p.marshall@bellnet.ca>; 'De Caria, Stephanie' <sdecaria@millერთhomson.com>; Ross Macfarlane <jrmacfar@flettbeccario.com>
Subject: RE: Court File No. CV-14-10443-00CL

Dear Greg,

Thank you for your note below.

We are happy to proceed as you suggested.

Would everyone please provide their availability for the costs motion to be heard in February or March 2018.

Once we have your dates, we will attempt to schedule the motion with the court. If an appearance is necessary, we will advise.

Could you please advise as to when you intend to proceed with your motion.

Thank you.

Nick Kirewskie, Office Manager
Marshall Kirewskie
201 - 88 Dunn Street
Oakville, Ontario
L6J 3C7

Tel: (905)842-5070 ext. 221
Fax: (905)842-4123
Email: mklaw@bellnet.ca



From: Azeff, Gregory [<mailto:gazeff@millerthomson.com>]
Sent: December-07-17 2:20 PM
To: Marshall&Kirewskie
Cc: 'cassandra kirewskie'; 'p.marshall'; De Caria, Stephanie; Ross Macfarlane
Subject: RE: Court File No. CV-14-10443-00CL

This is very unusual – typically when scheduling a 2 hour motion we simply canvass available dates from the court office, confirm availability with opposing counsel, and submit a continuing matter request form to the Commercial List office. The only time we would do a 9:30 for scheduling is if the parties cannot agree on a date. We are more than willing to provide you with dates and agree on a timetable for your motion.

In any event, please confirm dates with Stephanie De Caria (cc'ed), who will be dealing with this. We also suggest you canvass dates with Mr. Macfarlane, also cc'ed.

GREGORY AZEFF

Partner

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.2660
Fax: +1 416.595.8695
Email: gazeff@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

From: Marshall&Kirewskie [<mailto:mklaw@bellnet.ca>]
Sent: Thursday, December 07, 2017 1:27 PM
To: Azeff, Gregory <gazeff@millerthomson.com>
Cc: 'cassandra kirewskie' <ckirewskie@bellnet.ca>; 'p.marshall' <p.marshall@bellnet.ca>
Subject: FW: Court File No. CV-14-10443-00CL

Dear Counsel,

We have reconfirmed that the parties must attend at scheduling court to set a date for the interested parties' costs motion. Please see below.

Would you please advise as to your availability to attend scheduling court for this purpose.

Thank you.

Nick Kirewskie, Office Manager

Marshall Kirewskie
201 - 88 Dunn Street
Oakville, Ontario
L6J 3C7

Tel: (905)842-5070 ext. 221

Fax: (905)842-4123

Email: mklaw@bellnet.ca



From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List [<mailto:MAG.CSD.To.SCJCom@ontario.ca>]

Sent: December-07-17 12:07 PM

To: Marshall&Kirewskie

Subject: RE: Court File No. CV-14-10443-00CL

Have to attend at 9;30am scheduling

From: Marshall&Kirewskie [<mailto:mklaw@bellnet.ca>]

Sent: December-07-17 12:02 PM

To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List

Subject: RE: Court File No. CV-14-10443-00CL

2 hours will be required for the motion. Can you please let me know how to set the date?

Nick Kirewskie, Office Manager

Marshall Kirewskie
201 - 88 Dunn Street
Oakville, Ontario
L6J 3C7

Tel: (905)842-5070 ext. 221

Fax: (905)842-4123

Email: mklaw@bellnet.ca



From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List [<mailto:MAG.CSD.To.SCJCom@ontario.ca>]
Sent: December-06-17 4:58 PM
To: Marshall&Kirewskie
Subject: RE: Court File No. CV-14-10443-00CL

How much time required

From: Marshall&Kirewskie [<mailto:mklaw@bellnet.ca>]
Sent: December-06-17 4:01 PM
To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject: Court File No. CV-14-10443-00CL

Hello,

We wish to schedule a hearing date for the above noted matter. Can you please provide available hearing dates?

Thank you.

Nick Kirewskie, Office Manager

Marshall Kirewskie
201 - 88 Dunn Street
Oakville, Ontario
L6J 3C7

Tel: (905)842-5070 ext. 221
Fax: (905)842-4123
Email: mklaw@bellnet.ca



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Tab I

Zeifman Partners Inc., Court Appointed Receiver of Vandermeer Greenhouses Ltd.
Interim Statement of Receipts and Disbursements
For the Period from February 21, 2014 to February 26, 2018

	<u>Receivership Accounts</u>	
	<u>Total</u>	
Cash Receipts		
Revenues from Operations	\$	368,960
Digester Revenue		183,773
Government Grant		641,718
Rent		151,847
HST Recoverable		91,173
Sale of Asset		4,106,487
Interest		1,086
Vehicle Sale		22,600
Total Receipts		<u>5,567,643</u>
Cash Disbursements		
Payroll		782,564
Direct Material Purchases		247,293
Digester Input		20,096
Digester Maintenance		286,624
Greenhouse Repairs & Maintenance		79,341
Truck Lease		2,925
Auto Repairs & Maintenance		109,861
Equipment Leases		44,220
Commission		189,180
Heat		430,902
Insurance		265,107
Office and Administration		24,091
Property Taxes		21,220
Receiver Fees		506,557
Legal Fees		432,735
Consulting Fees		327,495
Telephone		10,287
Bank Charges and Interest		961,218
Dues		11,030
Utilities		290,633
HST Paid		36,504
WSIB		29,080
Total Disbursements		<u>5,108,962</u>
Cash inflow/(outflow) from Operations	\$	<u>458,681</u>

Tab J

Court File No. CV-14-10443-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

AFFIDAVIT OF ALLAN A. RUTMAN

(Affirmed February 27, 2018)

I, **Allan A. Rutman**, of the City of Vaughan, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am President of Zeifman Partners Inc. and, as such, have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. Pursuant to the Order of the Honourable Mr. Justice Spence dated February 21, 2014 (the “**Receivership Order**”), Zeifman Partners Inc. was appointed as receiver (the “**Receiver**”) of all the assets, undertakings and properties of Vandermeer Greenhouses Ltd. (“**Vandermeer**” or the “**Debtor**”) pursuant to Section 101 of the *Courts of Justice Act* (Ontario) and section 243(1) of the *Bankruptcy and Insolvency Act* (Canada).

3. The total amount of professional fees being claimed for work performed by the Receiver for the period February 1, 2017 to January 31 2018 inclusive (the “**Fee Period**”) is CAD \$48,109.25 plus disbursements of CAD \$163.08 plus Harmonized Sales Tax of CAD \$6,275.41 totalling CAD \$51,855.49. Attached hereto as **Exhibit “A”** to this Affidavit are true copies of all bills of costs rendered by the Receiver on a periodic basis during the Fee Period, inclusive of details of the individuals involved in the administration of the Debtor estate and the hours and applicable rates claimed. Attached hereto as **Exhibit “B”** to this Affidavit is a summary of the bills of costs.

4. Details of the activities undertaken and services provided by the Receiver in connection with the administration of the Debtor estate is described in the Seventh Report to the Court of the Receiver.

5. In the course of performing its duties pursuant to the Receivership Order, the Receiver and its staff have expended a total of 118.65 hours during the Fee Period. Attached hereto as **Exhibit “C”** to this Affidavit is a schedule setting out the personnel involved in the administration of the Debtor estate and the hours and applicable rates claimed for the Fee Period.

6. The Receiver has not received any remuneration or consideration other than the amount claimed herein.

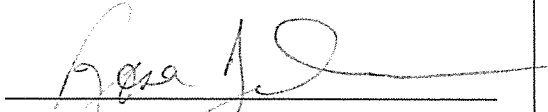
7. The hourly billing rates outlined in **Exhibit “C”** to this Affidavit are comparable to the hourly rates charged by Zeifman Partners Inc. for services rendered in relation to similar proceedings.

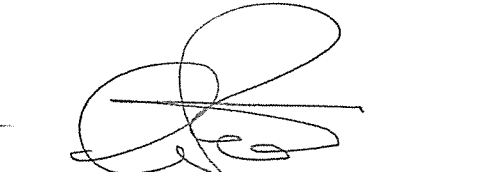
8. To the best of my knowledge, the rates charged by the Receiver throughout the course of these proceedings are comparable to the rates charged by other accounting firms in the Toronto market for the provision of similar services.

9. I verily believe that the fees and disbursements incurred by the Receiver were fair and reasonable in the circumstances.

10. This Affidavit is sworn in support of the Receiver's request for approval of the Receiver's bills of costs rendered during the Fee Period, and for no other or improper purpose.

AFFIRMED BEFORE ME at the City
of Toronto, ON, on February 27, 2018.

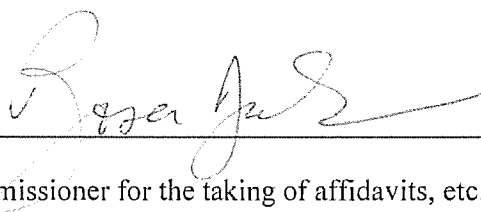


A Commissioner, etc.

Allan A. Rutman

Rosa DaSilva, a Commissioner, etc.,
Province of Ontario, for Zelfman Partners Inc.
Expires October 25, 2019.

This is Exhibit "A" to the Affidavit of
Allan A. Rutman sworn on February 27, 2018



A Commissioner for the taking of affidavits, etc.

Rosa DaSilva, a Commissioner, etc.,
Province of Ontario, for Zelfman Partners Inc.
Expires October 25 2019



ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL
MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

CLIENT # 208699

INTERIM BILLING

INVOICE #41866

To: Professional services rendered in respect of the Court Appointed
Receivership of Vandermeer Greenhouses Ltd. from February 1, 2017 to
February 28, 2017.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	24.75 hours @	\$600.00 per hour	\$ 14,850.00
B. Rutman	B.R.	11.75 hours @	\$200.00 per hour	\$ 2,350.00
J. Schincariol	J.S.	1.00 hours @	\$192.00 per hour	\$ 192.00
R. DaSilva	R.D.	7.50 hours @	\$190.00 per hour	\$ 1,425.00
E. Lauterpacht	E.L.	0.10 hours @	\$395.00 per hour	\$ 39.50
L. Veeren	L.V.	0.50 hours @	\$235.00 per hour	\$ 117.50
L. Hipple	L.H.	0.10 hours @	\$90.00 per hour	\$ 9.00
H. Abdul	H.A.	0.20 hours @	\$65.00 per hour	\$ 13.00
				<u>\$ 18,996.00</u>
Miscellaneous disbursements (Courier, mail, meals, etc.)				\$ 25.74
				<u>\$ 19,021.74</u>
H.S.T.				\$ 2,472.83
				<u>\$ 21,494.57</u>
Total Balance Due				<u>\$ 21,494.57</u>

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7, Canada

accounts@zeifmans.ca
T: 416.256.4000 ext.: 231

Payment due on receipt. Interest at the rate of 1.5% per month (18% per annum)
charged on balances over 30 days past due.
H.S.T. Registration # 89573 8201 RT0001
Your account may be settled by Cheque payable to Zeifman Partners Inc.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
2/1/2017	A.R.	3.00	Engaged in various email correspondence with counsel re: outstanding accounts, final payout and wiring of funds; email correspondence with staff re: same. Email correspondence with secured creditor re: update on closing and scheduling of conference call. Email correspondence with B. Rutman re: Vandermeer computer.
2/1/2017	B.R.	0.75	Bank schedule updates.
2/1/2017	L.V.	0.50	Reviewed T4's.
2/2/2017	A.R.	1.50	Engaged in various matters re: D. Robinson and realtor commission; email correspondence and call with counsel re: same. Review email correspondence from secured creditor re: interest expense and commission on sale; email correspondence with staff re: same. Email correspondence with D. Robinson re: final wrap up issues.
2/2/2017	R.D.	0.75	Review file re: commission agreement; email correspondence with counsel re: wire transfer. Banking administration.
2/3/2017	A.R.	2.00	Review updated interest expense schedule; call with B. Rutman to discuss same. Various email exchange and call with counsel re: commission matters. Email correspondence with D. Robinson re: Enbridge Annual Minimum Bill Charge.
2/3/2017	B.R.	0.75	Prepare ROE forms.
2/3/2017	B.R.	2.50	Updated interest schedule per bank request.
2/6/2017	A.R.	1.25	Email correspondence with counsel re: update on realtor commission. Email correspondence with B. Rutman re: Meridian interest charge. Email correspondence and call to secured creditor re: updated interest calculation and commission agreements.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
2/6/2017	R.D.	0.25	Banking administration.
2/7/2017	A.R.	0.50	Email correspondence re: cancellation of insurance policy. Email correspondence with counsel re: commission agreement.
2/8/2017	A.R.	2.00	Engaged in calls with D. Robinson and secured creditor. Email correspondence with counsel re: post-dated cheques for occupancy costs and commission agreement. Email correspondence with D. Robinson re: commission agreement.
2/9/2017	A.R.	1.50	Engaged in various email correspondence with D. Robinson, counsel and J. Huitema re: commission and release provided by J. Huitema.
2/9/2017	R.D.	0.75	Banking administration.
2/13/2017	A.R.	0.50	Meeting with D. Robinson and B. Rutman re: payment of commission and final matters.
2/13/2017	B.R.	2.00	Meet with D. Robinson. Obtain all information from greenhouse, discuss outstanding amounts to be paid. Calculate payroll taxes for December, calculate outstanding amount owing to Brian. Bank schedule update.
2/13/2017	J.S.	1.00	Post Meridian Interest Charges. Print Report. Prepare Posting Sheet. Bank Reconciliation - January, 2017 Bank Reconciliation - US Account - January 2017.
2/13/2017	R.D.	0.50	Banking administration.
2/14/2017	A.R.	1.50	Email correspondence with secured creditor re: outstandings and distribution order. Engaged in email correspondence with staff and D. Robinson re: outstanding payables and receivables. Review Affidavit of Fees; forward same to counsel. Email correspondence to counsel update on report book and billing. Email correspondence with B. Rutman re: updated R&D.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
2/14/2017	B.R.	1.25	Update Court Appointed R&D, plus sale of asset less commission to D. Robinson.
2/14/2017	R.D.	2.00	Prepare Affidavit of Fees. Review Fogler fees re: NFP.
2/15/2017	A.R.	1.75	Call with secured creditor re: outstandings and distribution order. Review documentation re: receivables, payables and misc. correspondence; discussions with B. Rutman re: same. Reviewed correspondence re: MOE matter relating to 2013 Abatement Plan; email correspondence with counsel, D. Robinson and B. Rutman re: same.
2/15/2017	B.R.	1.50	Determine remaining amounts payable as of January 31, 2017.
2/15/2017	H.A.	0.20	Organized T4 documents.
2/16/2017	A.R.	2.00	Review documents re: outstanding receivables and payables; discussion with B. Rutman and R. DaSilva re: same. Engaged in calls and email correspondence with D. Robinson and B. Rutman re: MOE matter.
2/16/2017	B.R.	2.50	Update AR expected to be received (relating to end of receivership). Conference call with D. Robinson and A. Rutman regarding MOE new water management plan. Calculate HST amount, file Final HST Returns - October, November, December and January. Update outstanding payable listing.
2/16/2017	E.L.	0.10	Check and sign off T4.
2/16/2017	R.D.	1.50	Banking administration. Review outstanding payables, legal and Receiver fees, fees re: NFP.
2/17/2017	A.R.	2.50	Engaged in various email correspondence with secured creditor re: outstanding payables, statement of adjustment, NFP hearing, Distribution Order, utility costs, occupancy costs and Reimbursement Agreement. Calls with S. Berger and D. Robinson.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
			Email correspondence with counsel re: scheduling of date for Distribution Order.
2/21/2017	A.R.	0.25	Review hydro invoice; email correspondence with staff re: same.
2/22/2017	A.R.	1.50	Email correspondence and call with G. Azeff re: scheduling of court date and discount on NFP legal fees. Review estimate from Wessuc re: haulage of 15 loads of ASM to Grimsby Energy; email correspondence with D. Robinson and B. Rutman re: same.
2/22/2017	L.H.	0.10	E-filed 2016 T4.
2/22/2017	R.D.	0.50	Banking administration.
2/23/2017	A.R.	1.75	Review and execute Receiver's Certificate; email correspondence to counsel re: same. Email correspondence with B. Rutman re: Agricorp statement. Email correspondence with G. Azeff re: scheduling of court date for Distribution Order.
2/23/2017	R.D.	0.50	Banking administration.
2/24/2017	A.R.	0.50	Email correspondence with D. Robinson.
2/28/2017	A.R.	0.75	Email correspondence with G. Azeff re: scheduling of court date.
2/28/2017	B.R.	0.50	WSIB premiums report, January & February.
2/28/2017	R.D.	0.75	Banking administration.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.



ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL
MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

CLIENT # 208699

INTERIM BILLING

INVOICE #41873

To: Professional services rendered in respect of the Court Appointed
Receivership of Vandermeer Greenhouses Ltd. from March 1, 2017 to
March 31, 2017.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	10.75 hours @	\$600.00 per hour	\$ 6,450.00
B. Rutman	B.R.	3.25 hours @	\$200.00 per hour	\$ 650.00
J. Schincariol	J.S.	1.00 hours @	\$192.00 per hour	\$ 192.00
R. DaSilva	R.D.	3.75 hours @	\$190.00 per hour	\$ 712.50
				<u>\$ 8,004.50</u>
Miscellaneous disbursements (Courier, mail, meals, etc.)				\$ 15.23
				<u>\$ 8,019.73</u>
H.S.T.				\$ 1,042.56
				<u>\$ 1,042.56</u>
Total Balance Due				<u>\$ 9,062.29</u>

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7, Canada

accounts@zeifmans.ca
T: 416.256.4000 ext.: 231

Payment due on receipt. Interest at the rate of 1.5% per month (18% per annum)
charged on balances over 30 days past due.
H S T Registration # 89573 8201 RT0001
Your account may be settled by Cheque payable to Zeifman Partners Inc.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
3/1/2017	B.R.	0.75	Update bank transaction schedule for February month end and other.
3/2/2017	A.R.	0.25	Email correspondence with R. DaSilva re: auto insurance cancellation.
3/2/2017	R.D.	0.50	Banking administration. Update outstanding payable list.
3/3/2017	A.R.	0.50	Email correspondence with counsel re: update on response to Purchaser's counsel re: compliance of the cistern and the sale of the Property and Chattels.
3/6/2017	A.R.	0.50	Email exchange with counsel re: response to Purchaser re: sale and future compliance of the cistern; review draft response.
3/7/2017	A.R.	1.75	Review Affidavit of Fees; forward same to G. Azeff. Review draft court report; provide comments to counsel. Email exchange with D. Robinson re: update on Wessuc and transfer of liquid digestate. Review updated R&D.
3/8/2017	A.R.	1.00	Various email correspondence with D. Robinson re: update on liquid transfer. Review email correspondence from ACC Underwriting re: Priority Agreement; forward same to counsel for discussion. Email correspondence with B. Rutman re: amended R&D.
3/8/2017	B.R.	0.75	Update court Appointed R&D. Calculate and file HST return for February 2017.
3/10/2017	A.R.	0.50	Email updated R&D to B. Huber. Email correspondence to G. Azeff re: updated R&D and reimbursement agreement.
3/13/2017	J.S.	1.00	Posted Meridian Interest Charges to Ascend. Bank Reconciliation - CD & US Accounts.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
3/14/2017	A.R.	1.00	Email correspondence and call with B. Huber re: Statement of Loan and Line of Credit Balances. Review R&D; discussions with staff re: amendments.
3/14/2017	B.R.	0.25	Discussion with R. DaSilva re: R&D notes relating to accrued receivables and payables.
3/14/2017	R.D.	1.00	Update R&D with accrual notes; discussions with A. Rutman re: same. Email correspondence to A. Rutman re: Fogler Rubinoff fees.
3/15/2017	A.R.	1.50	Email correspondence to counsel re: outstanding legal fees; review same; email correspondence to G. Azeff re: reduction in NFP fees. Forward updated R&D to secured creditor.
3/15/2017	B.R.	0.50	Update R&D.
3/17/2017	A.R.	0.25	Email correspondence with counsel re: assignment of the RESOP contract.
3/27/2017	A.R.	1.25	Call and email correspondence with G. Azeff re: matters relating to finalization of court report.
3/28/2017	A.R.	0.75	Email correspondence and call with G. Azeff re: finalization of court report. Call with S. Berger.
3/30/2017	A.R.	1.00	Conference call with G. Azeff and R. Macfarlane. Matters re: distribution to Meridian Credit Union re: Receiver's loans. Discussion with D. Robinson and B. Rutman re: mail and mail redirection.
3/30/2017	B.R.	0.50	Call government to enquire about HST refund.
3/30/2017	B.R.	0.50	Update bank transaction schedule.
3/30/2017	R.D.	2.25	Matters re: distribution to Meridian. Banking administration. Mail redirection.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
3/31/2017	A.R.	0.50	Review Notice of Application re: NFP; email correspondence with G. Azeff and S. Berger re: same.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.



ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL
MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

CLIENT # 208699

INTERIM BILLING

INVOICE #41880

To: Professional services rendered in respect of the Court Appointed
Receivership of Vandermeer Greenhouses Ltd. from April 1, 2017 to
April 30, 2017.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	4.00 hours @	\$600.00 per hour	\$ 2,400.00
B. Rutman	B.R.	2.50 hours @	\$200.00 per hour	\$ 500.00
J. Schincariol	J.S.	0.75 hours @	\$192.00 per hour	\$ 144.00
R. DaSilva	R.D.	3.75 hours @	\$190.00 per hour	\$ 712.50
				<u>\$ 3,756.50</u>
Miscellaneous disbursements (Courier, mail, meals, etc.)				\$ 69.02
				<u>\$ 3,825.52</u>
H.S.T.				\$ 497.32
				<u>\$ 4,322.84</u>
Total Balance Due				\$ 4,322.84

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7, Canada

accounts@zeifmans.ca
T: 416.256.4000 ext.: 231

Payment due on receipt. Interest at the rate of 1.5% per month (18% per annum)
charged on balances over 30 days past due.
H.S.T Registration # 89573 8201 RT0001
Your account may be settled by Cheque payable to Zeifman Partners Inc

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
4/3/2017	A.R.	0.50	Email correspondence with S. Berger re: Affidavit re: delivery of NFP Notice of Application. Email correspondence with G. Azeff re: hearing.
4/4/2017	R.D.	0.25	Banking administration.
4/5/2017	A.R.	0.50	Email exchange with H. Fogul re: IESO release.
4/6/2017	A.R.	0.25	Email exchange with D. Robinson re: delivery of mail.
4/7/2017	A.R.	1.00	Various email exchange with D. Robinson re: mail delivery, digestate and payment to Wessuc.
4/7/2017	B.R.	0.25	Call WSIB to close account.
4/10/2017	B.R.	1.50	Prepare T4 Discrepancy Schedule; fill out and send to government. Call government regarding January remittance misposted to December 2016. Speak with government regarding closing payroll account.
4/10/2017	R.D.	1.00	Banking administration.
4/11/2017	R.D.	0.75	Banking administration.
4/17/2017	R.D.	0.25	Banking administration.
4/19/2017	B.R.	0.25	WSIB reconciliation requested by government.
4/20/2017	B.R.	0.50	WSIB reconciliation form - 2016.
4/20/2017	R.D.	0.50	Banking administration.
4/24/2017	R.D.	0.50	Banking administration.
4/25/2017	J.S.	0.75	Bank Reconciliation - USD & CAD accounts - March 2017. Post monthly interest charge in Ascend and print report.
4/26/2017	A.R.	0.75	Engaged in various email correspondence with counsel re: payment of Aird & Berlis invoice re: RESOP contract.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
4/27/2017	A.R.	0.50	Engaged in email correspondence with SusGlobal Energy re: court documents as well as final Receiver's Certificate. Various email exchange with G. Azeff re: NFP hearing and Reimbursement Agreement.
4/27/2017	R.D.	0.50	Banking administration.
4/28/2017	A.R.	0.50	Email exchange with Purchaser's counsel re: update on waste liquid to be removed from the tank. Email exchange with S. Berger re: outstanding NFP fees.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.



ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL
MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

CLIENT # 208699

INTERIM BILLING

INVOICE #41888

To: Professional services rendered in respect of the Court Appointed
Receivership of Vandermeer Greenhouses Ltd. from May 1, 2017 to May
31, 2017.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	2.25 hours	@	\$600.00	per hour	\$ 1,350.00
B. Rutman	B.R.	4.25 hours	@	\$200.00	per hour	\$ 850.00
J. Schincariol	J.S.	0.50 hours	@	\$192.00	per hour	\$ 96.00
R. DaSilva	R.D.	2.00 hours	@	\$190.00	per hour	\$ 380.00
D. Graham	D.G.	0.25 hours	@	\$65.00	per hour	\$ 16.25
						<u>\$ 2,692.25</u>
Miscellaneous disbursements (Courier, mail, meals, etc.)						\$ 15.08
						<u>\$ 2,707.33</u>
H.S.T.						\$ 351.95
						<u>\$ 3,059.28</u>
Total Balance Due						<u>\$ 3,059.28</u>

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7, Canada

accounts@zeifmans.ca
T: 416.256.4000 ext.: 231

Payment due on receipt. Interest at the rate of 1.5% per month (18% per annum)
charged on balances over 30 days past due.
H.S.T. Registration # 89573 8201 RT0001
Your account may be settled by Cheque payable to Zeifman Partners Inc.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
5/1/2017	A.R.	0.75	Various email correspondence with counsel re: waste liquid removal; various email correspondence with D. Robinson re: same.
5/1/2017	R.D.	0.75	Banking administration. Calls to Bell and Allstream re: final accounts.
5/2/2017	B.R.	0.50	Update bank schedule - Meridian Account.
5/3/2017	A.R.	0.25	Review email correspondence from D. Robinson re: update on digestate.
5/3/2017	B.R.	1.50	Work on December 31, 2016 year end WP file.
5/4/2017	B.R.	1.50	Work on 2016 year-end financial statement.
5/4/2017	B.R.	0.50	Prepare 2016 corporate tax return.
5/9/2017	A.R.	0.25	Email correspondence with D. Robinson re: update on outstanding digestate issues; review invoice from R. Romkes.
5/10/2017	B.R.	0.25	Discussion with D. Robinson regarding completion of liquid digestate haulage, outstanding Anush invoice and Wessuc invoice.
5/11/2017	A.R.	0.50	Engaged in various email correspondence with Fogler Rubinoff re: outstanding professional fees and credit note. Review correspondence from S. Berger re: proposal for scoping remainder of the legal work before the Board.
5/11/2017	R.D.	0.50	Banking administration.
5/12/2017	A.R.	0.50	Email correspondence with counsel re: outstanding professional fees and NFP Bloc Fee proposal.
5/15/2017	R.D.	0.25	Banking administration.
5/16/2017	D.G.	0.25	File return.
5/23/2017	J.S.	0.50	Bank Reconciliations - 3 Accounts - April 2017.



Page 3

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
5/29/2017	R.D.	0.50	Banking administration.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

N:\Trustee\CLIENTS\Vandermeer\Receivership\Billings\Court Appointment Bills\Invoice 41888 - May 2017.docx



ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL
MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

CLIENT # 208699

INTERIM BILLING

INVOICE #41899

To: Professional services rendered in respect of the Court Appointed
Receivership of Vandermeer Greenhouses Ltd. from June 1, 2017 to June
30, 2017.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	1.75 hours @	\$600.00 per hour	\$ 1,050.00
B. Rutman	B.R.	5.00 hours @	\$200.00 per hour	\$ 1,000.00
R. DaSilva	R.D.	3.00 hours @	\$190.00 per hour	\$ 570.00
				<hr/>
				\$ 2,620.00
H.S.T.				\$ 340.60
				<hr/>
Total Balance Due				\$ 2,960.60

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7, Canada

accounts@zeifmans.ca
T: 416.256.4000 ext.: 231

Payment due on receipt. Interest at the rate of 1.5% per month (18% per annum)
charged on balances over 30 days past due.
H.S.T Registration # 89573 8201 RT0001
Your account may be settled by Cheque payable to Zeifman Partners Inc

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
6/6/2017	0.25	R.D.	Banking administration.
6/8/2017	0.50	R.D.	Banking administration.
6/20/2017	0.25	R.D.	Banking administration.
6/23/2017	0.25	A.R.	Review email correspondence from B. Huber re: update for R&D and accruals.
6/26/2017	1.00	R.D.	Update R&D. Review accruals. Discussions with A. Rutman and B. Rutman re: same.
6/26/2017	4.00	B.R.	R&D Update. Update bank transaction schedule - RBC account + Meridian account, discuss with R. DaSilva.
6/27/2017	1.00	B.R.	Further amendments to final R&D.
6/27/2017	1.00	R.D.	Update R&D. Prepare accrual comparison spreadsheet. Discussion with A. Rutman and B. Rutman re: same.
6/27/2017	1.50	A.R.	Discussions and email correspondence with staff re: updated R&D, accruals and schedules to be provided to Meridian.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.



ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL
MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

CLIENT # 208699

INTERIM BILLING

INVOICE #41906

To: Professional services rendered in respect of the Court Appointed
Receivership of Vandermeer Greenhouses Ltd. from July 1, 2017 to July
31, 2017.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	2.25 hours @	\$600.00 per hour	\$ 1,350.00
R. DaSilva	R.D.	0.75 hours @	\$190.00 per hour	\$ 142.50
				<u>\$ 1,492.50</u>
H.S.T.				\$ 194.03
				<u>\$ 1,686.53</u>
Total Balance Due				<u>\$ 1,686.53</u>

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7, Canada

accounts@zeifmans.ca
T: 416.256.4000 ext.: 231

Payment due on receipt. Interest at the rate of 1.5% per month (18% per annum)
charged on balances over 30 days past due.
H.S.T. Registration # 89573 8201 RT0001
Your account may be settled by Cheque payable to Zeifman Partners Inc.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
7/13/2017	A.R.	0.50	Various email exchange with secured creditor re: update on NFP hearing.
7/13/2017	R.D.	0.50	May 2017 bank recs.
7/14/2017	A.R.	0.50	Review update on NFP hearing from S. Berger; forward same to secured creditor.
7/27/2017	A.R.	0.50	Review and execute Affidavit RE: NFP.
7/28/2017	A.R.	0.25	Review correspondence from IESO re: assignment of contracts.
7/31/2017	A.R.	0.50	Email exchange with staff re: mail redirection. Discussion with B. Rutman re; outstanding items.
7/31/2017	R.D.	0.25	Mail redirection renewal.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.



ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL
MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

CLIENT # 208699

INTERIM BILLING

INVOICE #41920

To: Professional services rendered in respect of the Court Appointed
Receivership of Vandermeer Greenhouses Ltd. from August 1, 2017 to
August 31, 2017.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	1.25 hours @	\$600.00 per hour	\$	750.00
R. DaSilva	R.D.	0.25 hours @	\$190.00 per hour	\$	47.50
Total fees				\$	797.50
Miscellaneous disbursements				\$	23.75
				\$	821.25
H.S.T.				\$	106.76
Total Balance Due				\$	928.01

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7, Canada

accounts@zeifmans.ca
T: 416.256.4000 ext.: 231

Payment due on receipt. Interest at the rate of 1.5% per month (18% per annum)
charged on balances over 30 days past due.
H.S.T. Registration # 89673 8201 RT0001
Your account may be settled by Cheque payable to Zeifman Partners Inc.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
8/3/2017	A.R.	0.50	Review correspondence re: RESOP Assignment and Novation Agreement; email correspondence with counsel re: same.
8/14/2017	A.R.	0.25	Email correspondence with S. Berger re: Board's decision regarding the Applicants Motion for Leave.
8/15/2017	A.R.	0.25	Email exchange with counsel on Affidavit on cost award.
8/22/2017	R.D	0.25	Banking administration.
8/24/2017	A.R.	0.25	Email correspondence with Harry Fogul re: RESOP Assignment and Statutory Declaration.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.



ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL
MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

CLIENT # 208699

INTERIM BILLING

INVOICE #41930

To: Professional services rendered in respect of the Court Appointed
Receivership of Vandermeer Greenhouses Ltd. from September 1, 2017
to September 30, 2017.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	2.50 hours @	\$600.00 per hour	\$ 1,500.00
A. Palmer	A.P.	0.50 hours @	\$175.00 per hour	\$ 87.50
Total fees				\$ 1,587.50
H.S.T.				\$ 206.38
Total Balance Due				\$ 1,793.88

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7, Canada

accounts@zeifmans.ca
T: 416.256.4000 ext.: 231

Payment due on receipt. Interest at the rate of 1.5% per month (18% per annum)
charged on balances over 30 days past due.
H.S.T Registration # 89573 8201 RT0001
Your account may be settled by Cheque payable to Zeifman Partners Inc.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
9/6/2017	A.R.	1.00	Review Factum and Affidavits re: NFP hearing; email correspondence with S. Berger re: same.
9/7/2017	A.R.	0.50	Review email correspondence from H. Fogul re: Statutory Declarations for the Vandermeer RESOP assignment.
9/13/2017	A.R.	1.00	Call with S. Berger. Review draft factum re: NFP.
9/21/2017	A.P.	0.25	Bank reconciliation for August 2017.
9/22/2017	A.P.	0.25	Bank reconciliation for August 2017.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.



ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL
MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

CLIENT # 208699

INTERIM BILLING

INVOICE #41938

To: Professional services rendered in respect of the Court Appointed
Receivership of Vandermeer Greenhouses Ltd. from October 1, 2017 to
October 31, 2017.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	2.25 hours @	\$625.00 per hour	\$ 1,406.25
A. Palmer	A.P.	0.25 hours @	\$200.00 per hour	\$ 50.00
Total fees				\$ 1,456.25
H.S.T.				\$ 189.31
Total Balance Due				\$ 1,645.56

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7, Canada

accounts@zeifmans.ca
T: 416.256.4000 ext.: 231

Payment due on receipt. Interest at the rate of 1.5% per month (18% per annum)
charged on balances over 30 days past due.
H.S.T. Registration # 89673 8201 RT0001
Your account may be settled by Cheque payable to Zeifman Partners Inc.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
10/4/2017	A.R.	0.50	Review Farm Board's position on the judicial review; email correspondence to G. Azeff re: same.
10/7/2017	A.R.	0.25	Email correspondence to G. Azeff re: fee approval.
10/10/2017	A.R.	0.50	Email exchange with G. Azeff re: obtaining court approval on fees. Review draft correspondence to Cassandra Kirewskie re: Motion; email correspondence with counsel re: same.
10/16/2017	A.R.	0.25	Call with G. Azeff.
10/19/2017	A.P.	0.25	Bank reconciliation for September 2017.
10/19/2017	A.R.	0.25	Email correspondence with G. Azeff re: preparation of draft report and obtaining fee approval.
10/25/2017	A.R.	0.50	Email exchange with G. Azeff re: update on court report and approval motion. Review email correspondence re: NFP hearing and Cassandra Kirewskie's request re: receipt dates of transcripts.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.



ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL
MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

CLIENT # 208699

INTERIM BILLING

INVOICE #41945

To: Professional services rendered in respect of the Court Appointed
Receivership of Vandermeer Greenhouses Ltd. from November 1, 2017 to
November 30, 2017.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	4.25 hours @	\$625.00 per hour	\$ 2,656.25
B. Rutman	B.R.	0.75 hours @	\$210.00 per hour	\$ 157.50
A. Palmer	A.P.	0.25 hours @	\$200.00 per hour	\$ 50.00
R.DaSilva	R.D.	2.50 hours @	\$190.00 per hour	\$ 475.00
Total fees				\$ 3,338.75
H.S.T.				\$ 434.04
Total Balance Due				\$ 3,772.79

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7, Canada

accounts@zeifmans.ca
T: 416.256.4000 ext.: 231

Payment due on receipt. Interest at the rate of 1.5% per month (18% per annum)
charged on balances over 30 days past due.
H.S.T. Registration # 89573 8201 RT0001
Your account may be settled by Cheque payable to Zeifman Partners Inc.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
11/7/2017	A.R.	0.25	Email correspondence to G. Azeff re: approval of NFP hearing fees. Review Fogler pre-bill.
11/27/2017	A.R.	0.75	Email correspondence to G. Azeff re: fee approval status. Email correspondence with R. DaSilva re: fee affidavit.
11/28/2017	A.R.	1.00	Review Affidavit of Fees. Review draft report to court; email correspondence to G. Azeff re: same.
11/28/2017	R.D.	1.00	Prepare Affidavit of Fees.
11/29/2017	A.R.	0.75	Review updated R&D; discussions with B. Rutman re: same.
11/29/2017	B.R.	0.75	Updated R&D.
11/30/2017	A.R.	1.50	Review updated R&D. Discussions with staff re: reconciliation to last R&D. Review Report to Court. Email correspondence with G. Azeff re: report and R&D. Review legal Affidavit of Fees.
11/30/2017	A.P.	0.25	Bank account reconciliation for October 2017.
11/30/2017	R.D.	1.50	Prepare R&D comparison from last court report; forward same to A. Rutman. Update R&D and prepare R&D reconciliation; discussions with A. Rutman re: same.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.



ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL
MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

CLIENT # 208699

INTERIM BILLING

INVOICE #41958

To: Professional services rendered in respect of the Court Appointed
Receivership of Vandermeer Greenhouses Ltd. from December 1, 2017 to
December 31, 2017.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	2.75 hours @	\$625.00 per hour	\$ 1,718.75
A. Palmer	A.P.	0.25 hours @	\$200.00 per hour	\$ 50.00
R.DaSilva	R.D.	0.50 hours @	\$190.00 per hour	\$ 95.00
Total fees				\$ 1,863.75
Miscellaneous disbursements: (courier)				\$ 14.26
				\$ 1,878.01
H.S.T.				\$ 244.14
Total Balance Due				\$ 2,122.15

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7, Canada

accounts@zeifmans.ca
T: 416.256.4000 ext.: 231

Payment due on receipt. Interest at the rate of 1.5% per month (18% per annum)
charged on balances over 30 days past due.
H.S.T. Registration # 89573 8201 RT0001
Your account may be settled by Cheque payable to Zeifman Partners Inc.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
12/7/2017	A.R.	1.50	Review amended Affidavit of Fees; discussions with R. DaSilva re: same. Email correspondence with G. Azeff.
12/7/2017	R.D.	0.50	Update Fee Affidavit.
12/11/2017	A.P.	0.25	Bank account reconciliation for November 2017.
12/19/2017	A.R.	0.75	Review email correspondence from S. Berger re: Farm Board's response re: postponement of submissions.
12/20/2017	A.R.	0.50	Review correspondence re: Farm Board's response re: postponement of submissions.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.



ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL
MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

CLIENT # 208699

INTERIM BILLING

INVOICE #41967

To: Professional services rendered in respect of the Court Appointed
Receivership of Vandermeer Greenhouses Ltd. from January 1, 2018 to
January 31, 2018.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	2.25 hours @	\$625.00 per hour	\$ 1,406.25
A. Palmer	A.P.	0.25 hours @	\$200.00 per hour	\$ 50.00
R.DaSilva	R.D.	0.25 hours @	\$190.00 per hour	\$ 47.50
Total fees				\$ 1,503.75
H.S.T.				\$ 195.49
Total Balance Due				\$ 1,699.24

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7, Canada

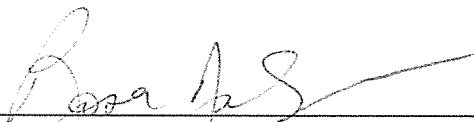
accounts@zeifmans.ca
T: 416.256.4000 ext.: 231

Payment due on receipt. Interest at the rate of 1.5% per month (18% per annum)
charged on balances over 30 days past due.
H.S.T Registration # 89573 8201 RT0001
Your account may be settled by Cheque payable to Zeifman Partners Inc.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
1/4/2018	A.R.	0.25	Email exchange with G. Azeff re: update on court hearing. Review email correspondence from S. Berger re: update on NFP hearing scheduled for April 2018.
1/9/2018	A.P.	0.25	Bank account reconciliation for December 2017.
1/10/2018	A.R.	1.00	Review draft correspondence from Stanley Berger to Applicants submissions on the transcripts; email exchange re: same.
1/22/2018	R.D.	0.25	Banking administration.
1/22/2018	A.R.	1.00	Various email correspondence with counsel re: update on court motion. Email correspondence with B. Huber re: update on remaining funds and court approval of outstanding fees.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

This is Exhibit "B" to the Affidavit of
Allan A. Rutman sworn on February 27, 2018



A Commissioner for the taking of affidavits, etc.

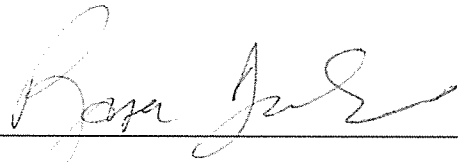
Rosa DaSilva, a Commissioner, etc.
Province of Ontario, for Zelfman Partners Inc.
Expires October 25, 2019.

Vandermeer Greenhouses Ltd.
Summary of Receiver's Fees
February 1, 2017 to January 31, 2018

Exhibit B

	<u>Invoice #</u>	<u>Fees</u>	<u>Disbursements</u>	<u>HST</u>	<u>Total</u>
February 1 - 28, 2017	41866	\$ 18,996.00	\$ 25.74	\$ 2,472.83	\$ 21,494.57
March 1 - 31, 2017	41873	\$ 8,004.50	\$ 15.23	\$ 1,042.56	\$ 9,062.29
April 1 - 30, 2017	41880	\$ 3,756.50	\$ 69.02	\$ 497.32	\$ 4,322.84
May 1 - 31, 2017	41888	\$ 2,692.25	\$ 15.08	\$ 351.95	\$ 367.03
June 1 - 30, 2017	41899	\$ 2,620.00	\$ -	\$ 340.60	\$ 2,960.60
July 1 - 31, 2017	41906	\$ 1,492.50	\$ -	\$ 194.03	\$ 1,686.53
August 1 - 31, 2017	41920	\$ 797.50	\$ 23.75	\$ 106.76	\$ 928.01
September 1 - 30, 2017	41930	\$ 1,587.50	\$ -	\$ 206.38	\$ 1,793.88
October 1 - 31, 2017	41938	\$ 1,456.25	\$ -	\$ 189.31	\$ 1,645.56
November 1 - 30, 2017	41945	\$ 3,338.75	\$ -	\$ 434.04	\$ 3,772.79
December 1 - 31, 2017	41958	\$ 1,863.75	\$ 14.26	\$ 244.14	\$ 2,122.15
January 1 - 31, 2018	41967	\$ 1,503.75	\$ -	\$ 195.49	\$ 1,699.24
		<u>\$ 48,109.25</u>	<u>\$ 163.08</u>	<u>\$ 6,275.41</u>	<u>\$ 51,855.49</u>

This is Exhibit "C" to the Affidavit of
Allan A. Rutman sworn on February 27, 2018

A handwritten signature in cursive script, appearing to read "Rosa DaSilva", written over a horizontal line.

A Commissioner for the taking of affidavits, etc.

Rosa DaSilva, a Commissioner, ex
Province of Ontario, for Zeifman Partners
Expires October 25, 2019.

**Vandermeer Greenhouses Ltd.
Receiver's Personnel Summary
For the Period February 1, 2017 to January 31, 2018**

Exhibit C

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
A. Rutman	11.50	\$ 625.00	\$ 7,187.50
A. Rutman	49.50	\$ 600.00	\$ 29,700.00
E. Lauterpacht	0.10	\$ 395.00	\$ 39.50
L. Veeren	0.50	\$ 235.00	\$ 117.50
B. Rutman	0.75	\$ 210.00	\$ 157.50
B. Rutman	26.75	\$ 200.00	\$ 5,350.00
J. Schincariol	3.25	\$ 192.00	\$ 624.00
A. Palmer	1.00	\$ 200.00	\$ 200.00
A. Palmer	0.50	\$ 175.00	\$ 87.50
R. DaSilva	24.25	\$ 190.00	\$ 4,607.50
L. Hipple	0.10	\$ 90.00	\$ 9.00
H. Abdul	0.20	\$ 65.00	\$ 13.00
D. Graham	0.25	\$ 65.00	\$ 16.25
	<u>118.65</u>		<u>\$ 48,109.25</u>
AVERAGE HOURLY RATE		<u>\$ 405.47</u>	

Tab K

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

MERIDIAN CREDIT UNION LIMITED

Applicant

AND

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1995 C. B-3, as amended, section 101 of the *Courts Of Justice Act*, R.S.O. 1990 C. C.43 as amended, and Rule 14.05(3)(8) of the *Rules of Civil Procedure*

**AFFIDAVIT OF ALINA STOICA
(Sworn February 28, 2018)**


I, **Alina Stoica**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND**

SAY:

1. I am an assistant with the law firm Miller Thomson LLP (“MT”) lawyers for Zeifman Partners Inc., in its capacity as Receiver of Vandermeer Greenhouses LTD. and as such, have knowledge of the matters to hereinafter deposed to.
2. Attached hereto as **Exhibit "A"** is a true copy of the invoices issued to the Receiver by MT for fees and disbursements incurred by MT in the course of the receivership proceedings between October 27, 2017 and February 26, 2018. The total fees charged by MT during that period were \$5,149.50 plus disbursements of \$160.00 plus Harmonized Sales Tax (HST) in the amount of \$669.44 for a total of \$5,978.94.

3. Accordingly, I verily believe that the total fees, disbursements and HST as at the date of the within motion are \$5,978.94.
4. Attached hereto as **Exhibit "B"** is a schedule summarizing each invoice in Exhibit "A", the total billable hours charged per invoice, the total fees charged per invoice and the average hourly rate charged per invoice.
5. Attached hereto as **Exhibit "C"** is a schedule summarizing the respective years of call and billing rates of each of the lawyers at MT who acted for the Receiver.
6. To the best of my knowledge, the rates charged by MT throughout the course of this proceeding are comparable to those charged by other law firms in Toronto for the provision of similar services.
7. The hourly billing rates outlined in Exhibit "C" to this affidavit are comparable to the hourly rates charged by MT for services rendered in similar proceedings.
8. I make the affidavit in support of a motion by the Receiver for, among other things, approval of the fees and disbursements of the Receiver's counsel.


SWORN BEFORE ME at the City of Toronto this
28th day of February, 2018


A Commissioner for taking Affidavits (or as may be)

Stephanie De Luca


ALINA STOICA

This is Exhibit "A" referred to in the Affidavit of Alina Stoica sworn February 28, 2018



Commissioner for Taking Affidavits (or as may be)



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
SCOTIA PLAZA
40 KING STREET WEST, SUITE 5800
P.O. BOX 1011
TORONTO, ON M5H 3S1
CANADA

T 416.595.8500
F 416.595.8695

MILLERTHOMSON.COM

Account Summary and Remittance Form

December 31, 2017

Invoice Number 3138726

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, ON M6A 1Y7

Attention: Allan Rutman

Re: Vandermeer Greenhouses Ltd.
Our File No. 0221019.0001

Fees:	\$4,378.50
Disbursements:	\$160.00
Ontario HST 13% (R119440766)	\$569.21
Total Amount Due	\$5,107.71

Please return the Account Summary and Remittance Form with your payment.

Terms: Accounts due when rendered. Interest at the rate of 12.0% per annum will be charged on accounts overdue 30 days or more. Any disbursements not posted to your account on the date of this account will be billed later.
<http://eastfinweb.millerthomson.com/adevantools/printreview/FileStream.aspx?documentType=BILL&documentKey=6559702&OXBehavior=Central&CacheID=fded8d74-f77c-423d-812f-67d82218h34a>



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December 31, 2017

Invoice Number 3138726

Zeifman Partners Inc.
 201 Bridgeland Avenue
 Toronto, ON M6A 1Y7

Attention: Allan Rutman

To Professional Services Rendered in connection with the following matter(s) including:

Re: Vandermeer Greenhouses Ltd.
Our File No. 0221019.0001

Date	Initials	Description	Hours
11/27/2017	GRA	Drafting Report;	0.90
11/28/2017	GRA	Continue drafting Report; Telephone call with S. Berger;	1.90
11/29/2017	GRA	Review and revise Affidavit;	0.80
11/29/2017	GRA	Preparing fee Affidavit; Review old reports to determine whether to include; Review dockets regarding entries to redact; Compile exhibits;	0.80
11/30/2017	GRA	Draft notice of motion; Review Board Orders; Further revisions to Seventh Report; Draft Order; Finalizing Seventh Report; Compiling exhibits; Review final version of Motion Record; Multiple discussions with S. De Caria;	1.90
12/07/2017	SDC	review email correspondence regarding motion for costs on leave motion; email exchange with G Azeff regarding motion for costs; email to counsel regarding motion dates and scheduling	0.20
12/19/2017	SDC	review email correspondence regarding motion date; review email exchange between counsel; email response to counsel regarding availability and scheduling of costs motion; discuss interested parties	0.20

Please return the Account Summary and Remittance Form with your payment.

Terms: Accounts due when rendered. Interest at the rate of 12.0% per annum will be charged on accounts overdue 30 days or more. Any disbursements not posted to your account on the date of this account will be billed later.
<http://eastfinweb.millerthomson.com/vanderantools/PrintPreview/FileStream.aspx?documentType=Bill&documentKey=6559702&OXBehavior=Central&CacheID=fded8d74-f77c-423d-812f-67d82218h34a>



Date	Initials	Description	Hours
		motion with G Azeff	
		Total Hours	6.70
Our Fee:			4,378.50
Non-Taxable Disbursements			
		Filing Fee	160.00
		Total Non-Taxable Disbursements	160.00
			\$160.00
Total Fees and Disbursements			\$4,538.50
Ontario HST 13% (R119440766)			
		On Fees	\$569.21
Total Amount Due			\$5,107.71
E.&O.E.			



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MILLERTHOMSON.COM

Account Summary and Remittance Form

February 27, 2018

Invoice Number 3153228

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, ON M6A 1Y7

Attention: Allan Rutman

Re: Vandermeer Greenhouses Ltd.
Our File No. 0221019.0001

Fees:	\$771.00
Ontario HST 13% (R119440766)	\$100.23
Total Amount Due	<u>\$871.23</u>



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
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TORONTO, ON M5H 3S1
CANADA

T 416.595.8500
F 416.595.8695

MILLERTHOMSON.COM

February 27, 2018

Invoice Number 3153228

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, ON M6A 1Y7

Attention: Allan Rutman

To Professional Services Rendered in connection with the following matter(s) including:

Re: Vandermeer Greenhouses Ltd.
Our File No. 0221019.0001

Date	Initials	Description	Hours
02/15/2018	SDC	email exchange with G. Azeff regarding fee approval motion	0.10
02/16/2018	SDC	Discuss Fee Approval Motion with G Azeff; review motion record and fee affidavits; email to Fogler Rubinoff regarding updated fee affidavit; reporting email to A. Rutman regarding motion date;	0.20
02/20/2018	SDC	review email from FR regarding fee affidavit; internal email to G. Azeff regarding fee affidavit and motion;	0.10
02/21/2018	SDC	Review email from Ross Macfarlane regarding cost motion and return date; responding email to Ross Macfarlane regarding cost motion and moving parties; reporting email to A. Rutman regarding cost motion, scheduled fee approval motion and updated fee affidavit;	0.20
02/22/2018	SDC	Review letter from Farm Board regarding application and applicant's due diligence; review email from S. Berger; discuss letter and supplementary report with G. Azeff; email to A Rutman regarding fee affidavit; review fee affidavits provided;	0.50
02/22/2018	GRA	Review and respond to correspondence; Multiple discussions with S. De Caria regarding motion; Review	0.60



Date	Initials	Description	Hours
		correspondence from Board; Consider inclusion of response in Eighth Report;	
		Total Hours	1.70
Our Fee:			771.00
Ontario HST 13% (R119440766)			
On Fees			\$100.23
Total Amount Due			\$871.23

E.&O.E.

This is Exhibit "B" referred to in the Affidavit of Alina Stoica sworn February 28, 2018



Commissioner for Taking Affidavits (or as may be)

EXHIBIT "B"

SUMMARY OF FEES FOR THE PERIOD OCTOBER 27, 2017 to FEBRUARY 26, 2018

Invoice No.	Fees	Disbursements	HST	Hours	Average Hourly Rate	Total
3138726	\$4,378.50	\$160.00	\$569.21	6.70	\$505.00	\$5,107.71
3153228	\$771.00	\$0.00	\$100.23	1.70	\$505.00	\$871.23
	\$5,149.50	\$160.00	\$669.44	8.40	\$505.00	\$5,978.94

This is Exhibit "C" referred to in the Affidavit of
Alina Stoica sworn February 28, 2018



Commissioner for Taking Affidavits (or as may be)

EXHIBIT "C"

BILLING RATES OF MILLER THOMPSON LLP FOR THE PERIOD OCTOBER 27, 2017 to FEBRUARY 26, 2018

TIMEKEEPER	HOURLY RATE	YEAR OF CALL
Gregory Azeff	\$680.00	2002
Stephanie De Caria	\$330.00	2015

MERIDIAN CREDIT UNION LIMITED
Applicant

VANDERMEER GREENHOUSES LTD
Respondent

Court File No.: CV-14-10443-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF ALINA STOICA
(Sworn February 28, 2018)

MILLER THOMSON LLP
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40 King Street West, Suite 5800
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Toronto, ON Canada M5H 3S1

Gregory Azeff LSUC#: 45324C
gazeff@millerthomson.com
Tel: 416.595.2660
Fax: 416.595.8695

Lawyers for the Court- Appointed Receiver,
Zeifman Partners In.c

MERIDIAN CREDIT UNION LIMITED
Applicant

VANDERMEER GREENHOUSES LTD
Respondent

Court File No.: CV-14-10443-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

SUPPLEMENTARY MOTION RECORD
(RETURNABLE MARCH 6, 2018)

MILLER THOMSON LLP

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Stephanie De Caria LSUC#: 68055L

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Lawyers for the Court-appointed Receiver,
Zeifman Partners Inc.

MERIDIAN CREDIT UNION LIMITED
Applicant

VANDERMEER GREENHOUSES LTD
and
Respondent

Court File No.: CV-14-10443-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SUPPLEMENTARY MOTION RECORD
(RETURNABLE MARCH 6, 2018)**

MILLER THOMSON LLP

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Zeifman Partners Inc.