

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*
R.S.C. 1985, c. C-36**

AND

**IN THE MATTER OF THE RECEIVERSHIP OF
TED LEROY TRUCKING LTD. and 383838 B.C. LTD.
(Collectively referred to as "TLT" or the "Company")**

RECEIVER'S FIRST REPORT TO COURT

OCTOBER 28, 2008

**TED LEROY TRUCKING LTD. et al
RECEIVER'S FIRST REPORT TO COURT**

OCTOBER 28, 2008

TABLE OF CONTENTS

| | | |
|----------|---|----------|
| 1 | INTRODUCTION..... | 1 |
| 2 | BACKGROUND ON THE PROCEEDINGS..... | 2 |
| 3 | REALIZATIONS..... | 2 |
| 4 | VESTING ORDER..... | 3 |
| 5 | POTENTIAL PRIOR RANKING LIABILITIES..... | 4 |
| 6 | CUSTOMER SET-OFF CHARGE..... | 7 |
| 7 | AMOUNTS REPORTABLE TO WEPPA AND SECURED BY BIA SECTION 81.3..... | 8 |
| 8 | CONCLUSION AND RECOMMENDATIONS..... | 9 |

APPENDICES

- A. Background of the CCAA and the Receivership**
- B. Receiver's Statement of Receipts and Disbursements from September 4, 2008 to October 20, 2008**
- C. Summary of Wage Related Liabilities and Customer Exposure**
- D. Set-Off Charge Analysis**
- E. Receiver's Position Regarding WEPPA**

TED LEROY TRUCKING LTD. et al
RECEIVER'S FIRST REPORT TO COURT

OCTOBER 28, 2008

1 INTRODUCTION

- 1.1 Following a Court Order of September 3, 2008, on September 4, 2008:
 - 1.1.1 PricewaterhouseCoopers Inc. was appointed Receiver of Ted LeRoy Trucking Ltd. pursuant to a General Security Agreement issued by the debtor on March 27, 1992.
 - 1.1.2 PricewaterhouseCoopers Inc. was appointed Receiver of 383838 B.C. Ltd. pursuant to mortgages issued by the Company.
 - 1.1.3 Ted LeRoy Trucking Ltd. was assigned into bankruptcy. Pursuant to paragraph 4 of the September 3, 2008 Court Order, all proceedings under the bankruptcy are stayed until further order of the Court.
- 1.2 Notwithstanding the appointment of the Receiver was by private appointment, the issues before the Receiver are relevant to the captioned proceedings including the resolution of Administrative and Set-Off charges created in those proceedings.
- 1.3 This is the Receiver's First Report to the Court since its appointment on September 4, 2008. This report is prepared to:
 - 1.3.1 Provide an update to the Court on realizations to date;
 - 1.3.2 Obtain a Vesting Order for the assignment of the Company's logging and road building contracts with Western Forest Products Ltd. to 0836793 B.C. Ltd. (logging contract) and to Strathcona Contracting Ltd. (road building contract).
 - 1.3.3 Provide information to all stakeholders regarding potential priority claims that will be relevant to the resolution of the Set-Off Charge.
 - 1.3.4 Seek directions of the Court regarding the *Wage Earner Protection Program Act* ("WEPPA").

**TED LEROY TRUCKING LTD. et al
RECEIVER'S FIRST REPORT TO COURT**

OCTOBER 28, 2008

2 BACKGROUND ON THE PROCEEDINGS

- 2.1 This administration began in December, 2007 with TLT making an application under the *Companies' Creditors Arrangement Act* (the "CCAA").
- 2.2 The Monitor established a website at www.pwc.com/car-tedleroy where all materials filed with the Court by TLT and the Monitor, as well as any Orders granted by the Court, are made available in electronic form to creditors and other interested parties.
- 2.3 Full details of the CCAA proceedings are set out in Appendix A.

3 REALIZATIONS

- 3.1 A Statement of the Receiver's Receipts and Disbursements to October 20, 2008 is attached as Appendix B.
- 3.2 To October 20, 2008, receipts totalled \$12,364,463 and disbursements totalled \$532,615 leaving a surplus of \$11,831,848. From this surplus, the Receiver has:
 - 3.2.1 Paid the unpaid, pre-receivership charges of the Monitor, the Company's counsel and the Monitor's counsel totalling \$380,803 plus Goods and Services Tax;
 - 3.2.2 Paid \$9,900,000 to Century Services Inc.; and
 - 3.2.3 Retained \$1,551,045 to deal with the Set-Off Charge, those claims secured under sections 81.3 and 81.5 of the *Bankruptcy and Insolvency Act* ("BIA") and deal with the Canada Revenue Agency's ("CRA") assertion that the funds held by the Monitor (\$305,202) are held in trust for CRA and do not form part of the Estate of the Company.
- 3.3 The Receiver has realized current assets totalling \$409,495 comprised primarily of cash received from the Monitor's account, from the Company's bank account and the sale of logs and other inventory. Further collections of receivables may be possible depending on the resolution of issues with the customers.

TED LEROY TRUCKING LTD. et al
RECEIVER'S FIRST REPORT TO COURT

OCTOBER 28, 2008

- 3.4 The Receiver has realized, to October 20, 2008, proceeds of \$11,826,857 from the sale of capital assets including: the equipment auction, the Timberwest Agreement, the Roga Sale, the Lemare Sale and the GMC sale. The Receiver anticipates further proceeds from the following assets:
- 3.4.1 Further auction proceeds of \$235,000;
 - 3.4.2 Office furniture and equipment;
 - 3.4.3 Insurance claim regarding the barge loss of August 20 2007;
 - 3.4.4 Consideration for assignment of Western Forest Products contracts; and
 - 3.4.5 Proceeds arising from the sale of the Company's property on Smiley Road, Chemainus which remains listed for sale with Colliers International.
 - 3.4.5.1 The property has been listed for sale and lease. The list price is \$2.5 million.
 - 3.4.5.2 Recent economic conditions and statements from the listing agents suggest the list price may be substantially in excess of current market value.
- 3.5 The Receiver's disbursements to October 20, 2008 total \$532,615 and were primarily incurred in preparation of equipment for auction and insurance.

4 VESTING ORDER

- 4.1 Following the marketing of the Bill 13 contracts between the Company and Western Forest Products Ltd. ("WFP"), the Receiver has received offers from 0836793 B.C. Ltd. (as to the logging contract) and to Strathcona Contracting Ltd. (as to the road building contract).
- 4.2 At time of writing, there some relatively minor details being worked out on the language of the assignment agreement and the form of the consent of Western Forest Product Ltd. to the assignment.

TED LEROY TRUCKING LTD. et al
RECEIVER'S FIRST REPORT TO COURT

OCTOBER 28, 2008

- 4.3 A separate application is being made by the Receiver for a Vesting Order in relation to this proposed sale.
- 4.4 The Receiver is satisfied that the proposed consideration for the assignment of these contracts is reasonable and advantageous for the Company.

5 POTENTIAL PRIOR RANKING LIABILITIES

- 5.1 A schedule summarizing the wage related liabilities of the Company is attached as Appendix C. In this schedule, we have allocated the liabilities, to the extent possible, to works related to the lands of TimberWest Forest Company, WFP and Island Timberlands GP Ltd. (collectively, the "Customers").
- 5.2 Such charges might rank prior to the interests of Century Services Inc. by one of two methods:
 - 5.2.1 Priority afforded by the BIA and common law; or
 - 5.2.2 The Set-Off Charge created by the Court in the course of the CCAA proceedings.

BIA Related Priorities

- 5.3 The Receiver is of the view the following charges rank in priority to the interests of Century Services by virtue of the BIA:
 - 5.3.1 CRA's claim for unremitted withholdings - \$22,371 pursuant to section 67.3 of the BIA;
 - 5.3.2 Unpaid wages earned within the period June 14, 2007 to September 3, 2008, up to \$2,000 per employee - \$241,064 pursuant to section 81.3 of the BIA (proclaimed into effect in July 2008); and
 - 5.3.3 Unpaid normal pension employee and employer contributions - \$722,143 pursuant to section 81.5 of the BIA (also proclaimed into effect in July 2008).

TED LEROY TRUCKING LTD. et al
RECEIVER'S FIRST REPORT TO COURT

OCTOBER 28, 2008

- 5.4 Two issues have been raised which affect the determination of the section 81.3 BIA priority:
- 5.4.1 First, CRA is challenging whether the funds previously held by the Receiver are held in trust for it.
- 5.4.1.1 The security interest created by section 81.3 of the BIA is limited to the “current assets” of the Company.
- 5.4.1.2 Claims under section 81.3 could be limited to \$104,743 (being total current assets realized of \$409,945 less the funds CRA is claiming entitlement to of \$305,202) if CRA’s argument is successful.
- 5.4.2 Second, the union is asserting, on behalf of its members, that the Receiver would be in error if it allowed security, and reported unpaid wages to the Wage Earner Protection Program (“WEPP”), on only unpaid amounts payable to employees. Rather, the union asserts, all liabilities arising from the collective agreement ought to be reported irrespective of whether the amount is payable to the employee or to a third party such as the union, a health and welfare trust, or a third party service provider. This issue is more fully addressed in Section 7 of this report.
- 5.4.3 Upon determination of these issues, the Receiver will assist the union and each non-union employee in preparing the requisite Proof of Claim form, in the proper amounts, pay the amount secured by this BIA priority and report any remaining unpaid wages to WEPP.
- 5.5 The Receiver will pay the CRA deemed trust and the unpaid pension amounts upon receipt of Proofs of Claim from each party.
- 5.6 The claim of Worksafe BC (“WCB”) for \$141,558 appears to rank after the interests of Century Services Inc. as there is no registration of its security interest in the Personal Property Registry. This claim does appear to have some protection under the CCAA Set-Off Charge.

TED LEROY TRUCKING LTD. et al
RECEIVER'S FIRST REPORT TO COURT

OCTOBER 28, 2008

CCAA Charges

- 5.7 Within these proceedings the Court has created three charges:
- 5.7.1 The Administrative Charge – Initially established in the December 14, 2007 Order (the “Initial Order”) to be \$250,000.
 - 5.7.2 The Set-Off Charge – Initially created by the Court Order of December 28, 2007, this charge in favour of TimberWest, WFP and Island Timberlands, has been modified by Orders dated February 15, 2008 and September 3, 2008 to now be \$250,000, \$120,000 and \$150,000 respectively for a total of \$520,000.
 - 5.7.3 The Directors and Officers Charge was created in the Initial Order to be \$1 million and was modified by the February 15, 2008 Order to rank after the interests of Royal Bank of Canada.
- 5.8 With the permission of Century Services Inc., the Receiver has paid the pre-receivership amounts due to the Monitor, the Company’s counsel and the Monitor’s counsel.
- 5.9 The Set-Off Charge was created to protect the Customers from certain liabilities of the Company that might attach to the Customers. Those liabilities were limited to wages, severance pay and WCB.
- 5.9.1 The Receiver recognizes WCB has the ability, by virtue of section 51 of the Workers’ Compensation Act, to compel Customers to pay the unpaid obligation of the Company to the extent the unpaid premiums related to work for each customer.
 - 5.9.2 The exposure of the Customers to wages is not clear. To the Receiver’s knowledge no liens have been filed against timber, inventory or lands by employees or sub contractors.

TED LEROY TRUCKING LTD. et al
RECEIVER'S FIRST REPORT TO COURT

OCTOBER 28, 2008

5.9.3 The exposure of the Customers to severance claims is not clear. The Receiver's review of the Coast Master [Collective] Agreement does not indicate that severance, under that agreement, has been triggered. The Receiver has not attempted to calculate severance claims pursuant to the Employment Standards Act.

5.10 The Set-Off Charge may be reduced by payments of the specific liabilities for which the Set-Off Charge was established.

6 CUSTOMER SET-OFF CHARGE

6.1 An analysis of the exposure of the Customers exposure is attached as Appendix D. This analysis is incomplete in two respects:

6.1.1 It does not disclose any estimate of severance; and

6.1.2 It does not include any of other unallocated wage related costs.

6.2 This analysis is based upon the following assumptions:

6.2.1 The Customers are responsible for wage related claims;

6.2.2 The BIA section 81.3 secured claim is based only upon unpaid wages due to the employees;

6.2.3 Customers would be entitled to set-off accounts receivable otherwise due to the Company; and

6.2.4 The payments in respect of CRA's deemed trust, the BIA section 81.3 secured claim for wages and the BIA section 81.5 secured claim for pensions would reduce the Set-Off Charge.

TED LEROY TRUCKING LTD. et al
RECEIVER'S FIRST REPORT TO COURT

OCTOBER 28, 2008

- 6.3 Based upon the aforementioned assumptions, this analysis indicates that:
- 6.3.1 WFP appears to be fully protected, subject to clarification of any responsibilities for severance and the unallocated "other wage related costs". Further, it may be reasonable to expect some recovery from the account receivable due by WFP;
 - 6.3.2 TimberWest remains unprotected to the extent of \$207,000 plus any responsibilities for severance and the unallocated "other wage related costs"; and
 - 6.3.3 Island Timberlands remains unprotected to the extent of \$136,000 plus any responsibilities for severance and the unallocated "other wage related costs".

7 AMOUNTS REPORTABLE TO WEPPA AND SECURED BY BIA SECTION 81.3

- 7.1 Following advice, the Receiver is of the view that both WEPPA and the recent BIA amendments creating the security interest for unpaid wages are intended, within limits, to only involve those amounts payable to the individual employee.
- 7.2 The union is of the view that the amounts, reportable to WEPPA and secured on current assets, ought to include compensation payable to others including Health and Welfare Trusts, the union, and third party service providers.
- 7.3 The Receiver conveyed its position to the union's counsel by letter of October 24, 2008, a copy of which is attached as Appendix E.
- 7.4 Given the novelty of this legislation and the potential significance of the outcome, the Receiver has agreed with the union's counsel to facilitate having this issue addressed by the Court. The Receiver has also sought and received extensions for the time to comply with the WEPPA reporting requirements.

**TED LEROY TRUCKING LTD. et al
RECEIVER'S FIRST REPORT TO COURT**

OCTOBER 28, 2008

8 CONCLUSION AND RECOMMENDATIONS

- 8.1 The Receiver recommends and requests the Court provide an Order vesting title to the WFP Bill 13 contracts to 0836793 B.C. Ltd. and Strathcona Contracting Ltd.
- 8.2 The Receiver requests the Court to provide a forum for determining the scope of unpaid wage amounts reportable under WEPPA and secured by BIA section 81.3 where the union might advance its argument and counsel for Century Services Inc. might advance argument.
- 8.3 The Receiver requests directions on the scope and extent of claims to be paid pursuant to the Set-Off Charge.

This report is respectfully submitted this 28th day of October 2008.

PricewaterhouseCoopers Inc.
Receiver of
Ted LeRoy Trucking Ltd. and
383838 B.C. Ltd.



Richard D. Pallen
Senior Vice President

APPENDIX A

Background of the CCAA and the Receivership

BACKGROUND OF THE CCAA AND THE RECEIVERSHIP

1. Background details and information relating to the Company and the filing are set out in the Petition filed on December 13, 2007. The Initial Order under the CCAA was made on December 14, 2007. Under the Initial Order, the initial stay of proceedings was granted until January 13, 2008 and PricewaterhouseCoopers Inc. (“PwC”) was appointed as Monitor.
2. On December 28, 2007, the Company made an application to Court to deal with an urgent matter that critically affected its cash-flow. The need for this application was driven by the threat of set-off from TimberWest, Island Timberlands and Western Forest Products (collectively referred to as the “Customers”) relating to amounts owing by TLT (i.e. pre-filing amounts owing to the Workers’ Compensation Board (“WCB”), sub-contractors, and other pre-filing advances) that created a potential exposure to the Customers. The requested order was made to provide a charge in favour of the Customers in the amount of \$2.1 million. The quantum of this Set-Off charge was based on the forecast payments to be made by the Customers between the period of December 28, 2007 to January 11, 2008. This charge is referred to as the “Set-Off Charge”.
3. On January 11, 2008, the Company was granted an extension of the stay of proceedings until February 15, 2008.
4. On February 15, 2008, the Company was granted an extension of the stay of proceedings until March 20, 2008, in order to permit the Company to pursue refinancing opportunities.
5. On February 15, 2008, the Set-Off Charge order granted on December 28, 2007 was amended, reducing the aggregate amount to \$1.02 million from \$2.1 million, and specifying the amounts in favour of each of the Customers.
6. On March 20, 2008, the Company was granted an extension of the stay of proceedings until March 29, 2008.
7. On March 28, 2008, the Company was granted an extension of the stay of proceedings until April 8, 2008.

BACKGROUND OF THE CCAA AND THE RECEIVERSHIP

8. On April 7, 2008, the Company was granted an extension of the stay of proceedings until November 28, 2008.
9. On April 29, 2008, the Company was granted authorization by the Court to remit specified payments to its secured creditors, including up to \$5 million to Century Services Inc. (“Century”), and to resume payments on equipment under capital lease.
10. On June 13, 2008, the Monitor filed its 7th report. This report discussed a number of factors that had resulted in a significant deterioration in the Company’s financial performance relative to plan, and identified a number of changes to the Company’s operations and organizational structure which were expected to address the deterioration.
11. On August 18, 2008, the Monitor filed its 8th report. This report communicated that the Company (TLT) was no longer a viable operation, and disclosed the various activities to be undertaken as part of a comprehensive wind-down plan. Full liquidation of the company was agreed to by the Company and Century Services Inc.
12. PwC, in its capacity as Monitor, has filed eight reports with the Court with respect to the CCAA proceedings. The most recent report was dated August 18, 2008.

APPENDIX B

**Receiver's Statement of Receipts and Disbursements
from September 4, 2008 to October 20, 2008**

**PRICEWATERHOUSECOOPERS INC., RECEIVER FOR
TED LEROY TRUCKING LTD.**

**STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD FROM SEPTEMBER 4, 2008 TO OCTOBER 20, 2008**

| RECEIPTS | <u>\$</u> | <u>\$</u> | <i>Note</i> |
|---|------------|----------------------|-------------|
| REALIZATION OF CURRENT ASSETS | | | |
| Cash on hand | 51,712.36 | | |
| Proceeds of Monitor's term deposit | 305,202.30 | | |
| Accounts receivable | 496.13 | | |
| Sale of log inventory | 32,000.00 | | |
| Sale of scrap metal | 19,634.03 | | |
| Miscellaneous refunds | 449.82 | | |
| | | 409,494.64 | |
| SALE OF CAPITAL ASSETS | | | |
| | | 11,826,857.01 | |
| OTHER RECEIPTS | | | |
| Advance from Ritchie Brothers | 33,146.12 | | (1) |
| Interest on trust funds | 8,854.20 | | |
| GST collected | 86,111.37 | | |
| | | 128,111.69 | |
| TOTAL RECEIPTS | | 12,364,463.34 | |
| DISBURSEMENTS | | | |
| LABOUR: | | | |
| Contract Labour | 115,698.25 | | (2) |
| Salaries & wages - net | 80,689.65 | | |
| Source Deductions (employee & employer) | 30,588.70 | | |
| WorkSafeBC premium | 15,338.44 | | |
| | | 242,315.04 | |
| OTHER: | | | |
| Advertising | 338.24 | | |
| Bank Charges | 140.00 | | |
| Equipment rental | 2,025.00 | | |
| Expenses of Norcon Forestry Ltd. | 5,548.71 | | (3) |
| Filing fees | 40.00 | | |
| Freight & Cartage | 7,000.00 | | |
| Insurance | 51,926.92 | | |
| Mileage and Fuel | 2,099.20 | | |
| Miscellaneous expenses | 1,621.75 | | |
| Miscellaneous expenses (employees) | 56.80 | | |
| Postage & courier | 50.05 | | |
| Rent | 2,250.00 | | |
| Repairs & Maintenance | 68,658.51 | | |
| Security | 1,554.41 | | |
| Title Search | 100.00 | | |
| Utilities | 678.12 | | |
| GST remitted | 74,300.11 | | |

**PRICEWATERHOUSECOOPERS INC., RECEIVER FOR
TED LEROY TRUCKING LTD.**

**STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD FROM SEPTEMBER 4, 2008 TO OCTOBER 20, 2008**

| | | |
|--|--------------|----------------------|
| GST paid | 31,588.58 | |
| | | 249,976.40 |
| LEGAL & RECEIVER FEES: | | |
| Legal fees and disbursements | 25.00 | |
| Trustee fees | 7,199.50 | |
| Trustee disbursements | 50.00 | |
| Receivers fees | 32,098.00 | |
| Receivers disbursements | 951.30 | |
| | | 40,323.80 |
| TOTAL DISBURSEMENTS | | 532,615.24 |
| DISTRIBUTIONS TO SECURED CREDITORS | | |
| CCAA Administrative charge (net of GST) | 380,802.70 | |
| Century Services Inc. | 9,900,000.00 | |
| TOTAL DISTRIBUTIONS TO SECURED CREDITORS | | 10,280,802.70 |
| EXCESS OF RECEIPTS OVER DISBURSEMENTS AND DISTRIBUTIONS | | 1,551,045.40 |

Richard D. Pallen
For: PricewaterhouseCoopers Inc.

Date

Notes:

- (1) This line item will be reversed upon the receipt of the accounting of the equipment auction funds from Ritchie Brothers.
- (2) Includes wages for: Norm Slavik, Hayes Stewart Little, Thorne Accounting, NRH Trucking, MP Mechanical, Coast Industrial Machining, White Rapids & Bill Taylor.
- (3) Includes ferry transportation, mileage, meals, etc. of Norm Slavik, all inclusive of GST.

APPENDIX C

Summary of Wage Related Liabilities and Customer Exposure

TED LEROY TRUCKING LTD., IN RECEIVERSHIP

SUMMARY OF WAGE RELATED LIABILITIES AND CUSTOMER EXPOSURE

| | TLT Non- Union | TLT Union | TimberWest | Western Forest Products | Island Timberlands | Total |
|--|-------------------|----------------|----------------|-------------------------------|-----------------------|------------------|
| CRA - Employee Withholdings | 5,526 | 3,894 | 6,456 | 503 | 5,992 | 22,371 |
| WCB - post filing | 320 | 18,690 | 57,007 | 4,414 | 61,127 | 141,558 |
| Unpaid Wages | | | | | | |
| Vacation pay | 82,317 | 7,028 | 42,530 | 4,425 | 17,145 | 153,445 |
| Vacation pay on vacation pay | 53,704 | 14,056 | 82,456 | 8,838 | 110,040 | 269,094 |
| Floater 07 | 0 | 4,225 | 25,152 | 5,061 | 7,152 | 41,590 |
| Floater 08 | 0 | 2,955 | 20,948 | 4,038 | 11,915 | 39,856 |
| Unpaid wages | 15,872 | 1,728 | | 0 | 6,620 | 24,220 |
| Returned cheques | 0 | 0 | 3,031 | 409 | 1,771 | 5,211 |
| Bonuses - 2006 | 127,424 | 0 | | 0 | 0 | 127,424 |
| Total Unpaid Wages | <u>279,317</u> | <u>29,992</u> | <u>174,117</u> | <u>22,771</u> | <u>154,643</u> | <u>660,840</u> |
| Pension | | | | | | |
| Pension - IWA FI-Pre | | 69,608 | 284,632 | 49,621 | 167,076 | 570,937 |
| Pension - IWA FI-Post | | 25,783 | 0 | 27,439 | 97,984 | 151,206 |
| Total Pension | <u>0</u> | <u>95,391</u> | <u>284,632</u> | <u>77,060</u> | <u>265,060</u> | <u>722,143</u> |
| Other Wage Related Liabilities | | | | | | |
| LTD - IWA FI-Pre | - | 13,881 | 52,449 | 7,242 | 29,640 | 103,212 |
| LTD - IWA FI-Post | - | 2,895 | (51) | 3,807 | 15,089 | 21,740 |
| Education - IWA FI-Pre | - | 666 | 1,760 | 478 | 1,623 | 4,527 |
| Education - IWA FI-Post | - | 179 | 1 | 199 | 716 | 1,095 |
| H&S - IWA FI-Pre | - | 111 | 468 | 80 | 272 | 931 |
| H&S - IWA FI-Post | - | 27 | 1 | 33 | 118 | 179 |
| Union Dues - Pre-Filing - Local 180 | | | | | 7,112 | 7,112 |
| Union Dues - Pre-Filing - Local 2171 | | | | 2,100 | | 2,100 |
| Union Dues - Pre-Filing - Local 363 | | | 2,553 | | | 2,553 |
| Union Dues - Post-Filing Debt - Local 180 | | | | | 29,455 | 29,455 |
| Union Dues - Post-Filing Debt - Local 2171 | | | | 21,948 | | 21,948 |
| Union Dues - Post-Filing Debt - Local 363 | | | 2,797 | | | 2,797 |
| | <u>-</u> | <u>17,759</u> | <u>59,978</u> | <u>35,887</u> | <u>84,025</u> | <u>197,649</u> |
| Total Allocated Wage Related Liabilities | <u>285,163</u> | <u>165,726</u> | <u>582,190</u> | <u>140,635</u> | <u>570,847</u> | <u>1,744,561</u> |
| IWA Health & Welfare Plan #1 - Pre | | | | | | 75,498 |
| IWA Health & Welfare Plan #1 - Post | | | | | | 24,195 |
| Medical Services Plan - Pre | | | | | | 78,501 |
| Medical Services Plan - Post | | | | | | 107,736 |
| Pacific Blue Cross - Pre | | | | | | 58,592 |
| Pacific Blue Cross - Post | | | | | | 18,397 |
| IWA Union Humanities - Pre | | | | | | 582 |
| IWA Union Humanities - Post | | | | | | 1,088 |
| Total Unallocated Wage Related Liabilities | | | | | | <u>364,590</u> |
| Total Liabilities | | | | | | <u>2,109,151</u> |

APPENDIX D

Set-Off Charge Analysis

TED LEROY TRUCKING LTD., IN RECEIVERSHIP

SET-OFF CHARGE ANALYSIS

| | TLT Non-Union | TLT Union | TimberWest | Western Forest Products | Island Timberlands | Total |
|--|---------------|-----------|------------|-------------------------|--------------------|-----------|
| CRA - Employee Withholdings | 5,526 | 3,894 | 6,456 | 503 | 5,992 | 22,371 |
| WCB - post filing | 320 | 18,690 | 57,007 | 4,414 | 61,127 | 141,558 |
| Total Unpaid Wages | 279,317 | 29,992 | 174,117 | 22,771 | 154,643 | 660,840 |
| Total Pension | 0 | 95,391 | 284,632 | 77,060 | 265,060 | 722,143 |
| Total Other Wage Related Liabilities | - | 17,759 | 59,978 | 35,887 | 84,025 | 197,649 |
| Severance (not calculated) | | | | | | |
| Subtotal | 285,163 | 165,726 | 582,190 | 140,635 | 570,847 | 1,744,561 |
| Total Unallocated Wage Related Liabilities | | | | | | 364,590 |

| | | | | | | |
|---|-----|-----|----------------|----------------|----------------|-----------|
| Exposure Assuming Customer Liability (before severance and unallocated amounts) | n/a | n/a | 582,190 | 140,635 | 570,847 | 2,109,151 |
| Less: Account receivable from customer | | | 0 | 140,000 | 70,000 | |
| Net Customer Exposure | | | 582,190 | 635 | 500,847 | |
| Set-Off Charge | | | 250,000 | 120,000 | 150,000 | |
| Less: | | | | | | |
| CRA Payment | | | 6,456 | 503 | 5,992 | |
| Estimated BIA s.81.3 payout | | | 83,715 | 11,936 | 93,544 | |
| Estimated BIA s.81.5 payout | | | 284,632 | 77,060 | 265,060 | |
| Estimated WCB payment | | | 0 | 0 | 0 | |
| | | | 374,803 | 89,499 | 364,596 | |
| Estimated Remaining Customer Exposure (excluding any severance or unallocated wage related liabilities) | | | 207,387 | nil | 136,251 | |

Calculation of BIA s. 81.3 Amounts

| Unpaid Wages Earned June 14/07 to Sept 3/08 | | | | | | |
|--|--------|--------|--------|--------|---------|---------|
| Vacation pay | 40,566 | 0 | 0 | 0 | 16,377 | 56,943 |
| Vacation pay on vacation pay | 20,522 | 4,234 | 34,584 | 3,004 | 61,784 | 124,128 |
| Floater 07 | | 4,225 | 25,152 | 5,061 | 7,152 | 41,590 |
| Floater 08 | | 2,413 | 20,948 | 3,462 | 10,668 | 37,491 |
| Unpaid wages | 15,872 | 1,728 | | | 6,620 | 24,220 |
| Returned cheques | | | 3,031 | 409 | 886 | 4,326 |
| Bonuses | | | | | | 0 |
| | 76,960 | 12,600 | 83,715 | 11,936 | 103,487 | 288,698 |
| Estimated s.81.3 payout (up to \$2,000) | 40,035 | 11,834 | 83,715 | 11,936 | 93,544 | 241,064 |

APPENDIX E

Receiver's Position Regarding WEPPA

October 24, 2008

Steven Rogers
Victory Square Law Office LLP
400 - 198 W. Hastings Street
Vancouver, B.C.
V6B 1H2

Dear Sirs:

Ted LeRoy Trucking Ltd., a bankrupt in receivership

We write in response to your written argument regarding unpaid wages for employees of Ted Leroy Trucking Ltd. (“TLT”) and the applicability thereto of the *Wage Earner Protection Program Act* (the “Act”) and the *Bankruptcy and Insolvency Act* (the “BIA”).

We agree with your view that in general “wages”, at common law, are often construed broadly enough to capture payments owing directly to, or on behalf of, the employee and we further agree that the various benefits you list in your argument are legitimate forms of compensation. The issue to be addressed, however, is whether or not such amounts are protected under the Act.

In our view, a plain reading of the statute makes its clear that it protects only a narrow form of unpaid wages – amounts that are owed directly to an employee. The preamble to the Act and the relevant sections all specifically refer to amounts payable to an employee. The reach of the Act does not appear to extend to amounts that are payable to third parties on behalf of an employee. Accordingly, we are not in a position to agree that all of the forms of outstanding compensation you refer to in your argument are covered by the Act.

The federal government, through Human Resources and Skills Development Canada (“HRSDC”) and Service Canada, has developed a website to assist those eligible employees who are seeking protection through the Wage Earner Protection Program (“WEPP”). The website’s homepage states that “WEPP reimburses eligible workers for unpaid wages and vacation pay” but goes on to state that “WEPP payments do not cover severance, termination pay *or other employee benefits*” [emphasis added]. The forms of compensation at issue are employee benefits payable to third parties on behalf of employees. Unfortunately, such forms of indirect compensation do not seem to be covered under WEPP.

For your reference, we provide for you here a link to Service Canada's WEPP webpage which serves as a reference point for a variety of information on issues such as eligibility, application and financial information:

www.servicecanada.gc.ca/en/sc/wepp/index.shtml

Similarly, the recent amendments to the BIA, as reflected in the new sections 81.3 and 81.4, refers to the "the claim of a clerk, servant, travelling salesperson, labourer or worker who is owed wages, salaries, commissions or compensation...". In our view, this would exclude compensation owed to others such as Health & Welfare Trusts and third party service providers.

Given the untested nature and relative newness of the Act and WEPP, we contacted HRSDC directly to discuss our understanding of the program and to ensure that our position on this issue was accurate and complete. Our discussion with HRSDC has confirmed our understanding of WEPP and our interpretation of the Act. HRSDC advised us that the Act protects only those wages that are directly payable to an employee and that such protection does not extend to benefits and other forms of compensation that are only payable on behalf of an employee. In fact, the systems that HRSDC and Service Canada have set up to deal with wage claims are incapable of processing payments to any person other than employees. HRSDC further advises that in drafting the Act and the amendments to the BIA, there was a conscious effort to harmonize those amounts protected by the Act with the security created by the BIA amendments (notwithstanding the different limitations of coverage).

The Act defines 'wages' to include "salaries, commissions, compensation for services rendered, vacation pay and any other amounts prescribed by regulation but does not include severance or termination pay." There is nothing currently in the Regulations to suggest that wages, for purposes of the Act, includes any form of compensation that is not otherwise payable directly to the employee. In fact, by not including severance and termination pay, the Act is even more limiting in that it excludes some amounts that would otherwise be directly payable to an employee.

With respect to amounts that are covered by WEPP, section 7 of the Act provides as follows [emphasis added]:

7.(1) The amount that may be paid under this Act *to an individual* is the amount owing *to the individual* for wages earned during the six months immediately before the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer, as the case may be, less any amount prescribed by regulation. In the case of a former employer who is both bankrupt and subject to a receivership, the

amount owing is the greater of the amount determined in respect of the bankruptcy and the amount determined in respect of the receivership.

(2) The maximum amount that may be paid *to an individual* is the greater of the following amounts, less any amount prescribed by regulation:

(a) \$3,000, and

(b) an amount equal to four times the maximum weekly insurable earnings under the *Employment Insurance Act*.

(3) Unless otherwise prescribed by regulation, payment made under this Act *to an individual* are to be allocated to vacation pay only after payments are first allocated to all other components of wages owing *to the individual*.

Section 7 makes specific reference to amounts “owing to the individual for wages earned” but stops short of making reference to amounts owing to third parties on behalf of an employee, such as benefit payments or union dues.

As was confirmed in our discussion with HRSDC, the intention of the Act appears to be narrower than what your argument suggests. The Act appears to provide priority protection only for certain wages payable directly to an employee. On a strict reading of the Act, it does not reach far enough to protect compensation that is payable on behalf of an employee. While there is little doubt that benefits paid on behalf of employees are part of their overall compensation, the key issue to be addressed here is whether or not the Act protects such forms of compensation. Based on the foregoing, we do not believe it does.

Yours truly,

PricewaterhouseCoopers Inc.
Receiver of Ted LeRoy Trucking Ltd.



R. D. (Rick) Pallen
Senior Vice President