

COURT FILE NUMBER 2101-05682

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ATB FINANCIAL

DEFENDANTS W.A. GRAIN HOLDINGS INC., 1309497 ALBERTA LTD. (o/a W.A. GRAIN & PULSE SOLUTIONS), NEW LEAF ESSENTIALS (WEST) LTD., NEW LEAF ESSENTIALS (EAST) LTD. and 1887612 ALBERTA LTD.

APPLICANT BDO CANADA LIMITED, in its capacity as receiver and manager of W.A. GRAIN HOLDINGS INC., 1309497 ALBERTA LTD. (o/a W.A. GRAIN & PULSE SOLUTIONS), NEW LEAF ESSENTIALS (WEST) LTD., NEW LEAF ESSENTIALS (EAST) LTD. and 1887612 ALBERTA LTD.

DOCUMENT **ORDER (Interim Distribution)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MLT AIKINS LLP
Barristers and Solicitors
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Attention: Ryan Zahara/Kaitlin Ward
File: 128056.00003



I hereby certify this to be a true copy of the original Order

Dated this 25 day of January 2022

Jody Abday
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: JANUARY 24, 2022

LOCATION WHERE ORDER WAS PRONOUNCED: CALGARY, ALBERTA

NAME OF JUSTICE WHO MADE THIS ORDER: JUSTICE E. J. SIDNELL

UPON THE APPLICATION by BDO Canada Limited, in its capacity as the court-appointed receiver and manager (the "**Receiver**") of all current and future assets, undertakings and property of W.A. Grain Holdings Inc., 1309497 Alberta Ltd. (o/a W.A. Grain & Pulse Solutions), 1887612 Alberta Ltd., New Leaf Essentials (West) Ltd. and New Leaf Essentials (East) Ltd. for an Order approving an interim distribution of certain sales proceeds, as set out in

the Third Report of the Receiver dated November 30, 2021 (the “**Third Report**”); **AND UPON HAVING READ** the Receivership Order dated April 26, 2021 of Justice Mah (the “**Receivership Order**”), the Third Report, the Receiver’s Brief of Law filed November 30, 2021 and the Affidavit of Service of Nishaljeet Khangura filed on December 8, 2021;

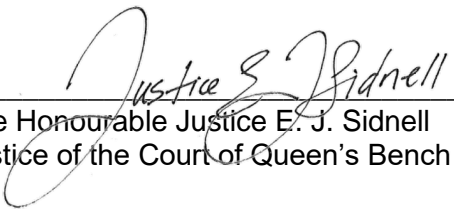
AND UPON directing the Receiver and any interested party to submit supplemental evidence and legal arguments regarding: (1) when the 15-day period (the “**15-Day Period**”) for delivering grain under section 81.2 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”) expired, considering whether Sunday, April 11, 2021 should be treated as a holiday; and (2) whether the delivery of grain to an elevator operator licensed under the *Canada Grain Act*, RSC 1985, c G-10 (the “**Grain Act**”) in exchange for a primary elevator receipt (“**PER**”) creates a bailment relationship or a sale between the grain producer and the elevator operator;

AND UPON HAVING READ the Supplemental Brief of the Receiver, filed on January 4, 2022, the Supplemental Report of the Receiver, dated January 4, 2022, the Brief of Law of the Attorney General of Canada, on behalf of the Canadian Grain Commission (the “**CGC**”), filed on January 13, 2022 and the Affidavit of Service of Nishaljeet Khangura, affirmed on January 21, 2022; **AND UPON HEARING** submissions of counsel for the Receiver, counsel for the CGC, counsel for ATB Financial and all other interested parties; **AND UPON** making a determination that: (1) the 15-Day Period expired on Saturday, April 10, 2021; and (2) the statutory regime of the *Grain Act* entirely governs the ownership of grain delivered to licensed elevator operators, and that grain delivered pursuant to a PER constitutes neither a bailment nor a sale, but a transaction regulated by the provisions of the *Grain Act*;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Third Report.
2. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.
3. The distributions to the 81.2 Priority Creditors set out in paragraph 26 of the Third Report in the amount of \$198,318.00 are hereby approved and authorized.

4. The disallowance by the Receiver of any claims filed by grain producers with a PER under section 81.2 of the BIA is hereby approved.
5. The Receiver is authorized and directed to make a further interim distribution of up to \$2,500,000.00 to ATB Financial.


The Honourable Justice E. J. Sidnell
Justice of the Court of Queen's Bench of Alberta