



Donald P. Hayes #1
Sworn: July 30, 2008

No. **S-085453**
Vancouver Registry

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 *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57

- AND -

IN THE MATTER OF
HAYES FOREST SERVICES LIMITED
HAYES HOLDING SERVICES LIMITED
and **HAYES HELICOPTER SERVICES LIMITED**

AFFIDAVIT

I, **DONALD P. HAYES**, Businessman, of 7233 Trans Canada Highway, Duncan, British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of Hayes Forest Services Limited, Hayes Holding Services Limited and Hayes Helicopter Services Limited, the Petitioners herein, and as such have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are stated to be made upon information and belief and where so stated I verily believe them to be true.
2. I have read the Petition herein and that the facts stated therein are true.

3. The Petitioners have, in conjunction with The Bowra Group Ltd., developed an operational plan for the balance of 2008 and a cash flow projection based on that operational plan.
4. The cash flow indicates that the Petitioners will run out of working capital in early August 2008.
5. The Canadian Imperial Bank of Commerce has agreed to provide the Petitioners with a debtor in possession ("DIP") loan of up to \$3 million.
6. The DIP facility will allow the Petitioners to continue to operate, albeit on a scaled down basis, and effect an orderly sale of redundant assets to maximize values. The DIP loan will allow the Petitioners to continue to employ most of its staff and give those that are redundant working notice of the termination of their employment. A copy of the commitment letter from the CIBC in respect of the DIP loan is now produced and shown to me and marked as Exhibit "A" to this my affidavit.
7. Absent the DIP loan the Petitioners would have to cease operations almost immediately.
8. It is anticipated that much of the equipment to be sold, including helicopters, will be sold privately, as opposed to auctioned off, to obtain better values. This will take some time to achieve. Given the state of the logging industry on the coast, there is currently a glut of logging equipment on the market. Better values will be obtained if the logging equipment can be sold in an orderly fashion as opposed to putting it all on the market at once in an auction.

9. The Petitioners lease a significant amount of equipment. Most of the leases provide the Petitioners an option to purchase the equipment. The leased equipment has significant value over and above the option prices in the leases, such that the Petitioners have several millions of dollars of "equity" in the leased equipment.

10. Many of the leases are, what I understand, "Financing" leases, as opposed to "True Leases". The Petitioners' cash flow does not anticipate making payments on the Financing leases during the CCAA process. To the extent that the suspension of payments on these leases may constitute a default under the leases and may prevent the Petitioners from exercising their option to purchase, the Petitioners need relief from the Court to permit the exercise of such options notwithstanding a default in payment.

11. During the last year, the Petitioners have not been able to make all of the payments due to Worksafe BC. The arrears to Worksafe BC are \$470,000. The Petitioners and Worksafe BC have agreed on a schedule of payments, \$120,000 a month, to pay off these arrears. The Petitioners have two "Bill 13" contracts, one with Teal Forest Products Ltd ("Teal") and the other with Western Forest Products Ltd. ("Western"). Under these contracts the counterparties have the right to set off unpaid obligations of the Petitioners that could become a liability of the counterparties if not paid, and this includes payments to Worksafe BC. Unless the Petitioners are permitted to continue to make the agreed monthly payments to Worksafe BC, the whole amount owing could be set off by Teal and or Western.

12. The Petitioners operate various timber licenses from the Province of British Columbia. The Petitioners sell the fibre from these timber licenses through an agent. The agent collects the

gross selling price and deducts the stumpage, which the agent then pays directly to the Province. Unless the stumpage is paid the Province will impose the stumpage on the Petitioners' customers. The Petitioners need to ensure that all stumpage, whether in respect of sales before this CCAA proceeding or after, is paid.

13. The Petitioners have identified approximately 7 employees who may ultimately be redundant but whose services are essential for the restructuring of the Petitioners in the CCAA process. The Petitioners propose establishing a key employee retention plan ("KERP"). The KERP would guarantee these key employees would get a least three months working notice plus three months severance pay in return for continuing to work for the Petitioners during the CCAA process. The maximum cost of such a program would not exceed \$500,000.

14. The Petitioners current estimate is that the assets of the Petitioners should be more than sufficient to allow the Petitioners to pay off or service all of the existing debt, and permit the Petitioners to restructure their business into a smaller but profitable and sustainable enterprise.

SWORN BEFORE ME at VANCOUVER,
British Columbia, on the 20 day of July,
2008.

A Commissioner for taking Affidavits for
British Columbia.

DONALD P. HAYES

JOHN I. McLEAN
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GOWLING LAFLEUR HENDERSON LLP
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DIP COMMITMENT LETTER

This Commitment Letter dated as of July 30th, 2008.

WHEREAS Canadian Imperial Bank of Commerce ("CIBC") has agreed to provide to Hayes Forest Services Limited ("Hayes"), Hayes Helicopter Limited and Hayes Holding Services Limited funding in order to provide short-term liquidity of the Hayes Companies in the context of its proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA") and in accordance with the terms set out herein.

NOW THEREFORE the parties, in consideration of the foregoing and the mutual covenants herein contained, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. DIP Facility

Subject to paragraphs 4 and 5 hereof, CIBC shall make available to Hayes a revolving line of credit to a maximum amount of \$3,000,000 by way of a super priority credit facility (the "DIP Facility") to provide short term liquidity to Hayes while under CCAA protection. Hayes agrees that at no time shall the amount owing under the DIP Facility exceed \$3,000,000 and that CIBC shall have no obligation to honor any request for funds which would have the effect of making the amount owing exceed such limit.

2. Maturity Date

The DIP Facility shall be due and payable on the earlier of:

- i. 30 days after the CIBC demands payment, which demand shall not be issued before November 30, 2008;
- ii. the date of the termination of the Stay Period as that term is defined in the Initial Order (as those terms are hereafter defined) as may be extended by subsequent Court Order in the CCAA Proceedings; and
- iii. such date upon which there occurs an Event of Default as that term is defined below,

(such earlier date being the "Maturity Date").

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This is Exhibit "A" referred to in the affidavit of DUNN P. HAYES sworn before me at W.A. COULIN this 30 day of July, 2008

.....
 A Commissioner for taking Affidavits
 within British Columbia

The commitment in respect of the DIP Facility shall expire on the Maturity Date and all amounts outstanding under the DIP Facility shall be repaid in full no later than the Maturity Date without CIBC being required to make demand upon Hayes therefor or to give notice to Hayes that the DIP Facility has expired and that the obligations are due and payable.

3. Cash Flow Projections

Prior to the granting of the Initial Order, Hayes shall provide to CIBC cash flow projections in form and substance satisfactory to CIBC and its financial advisor, KPMG, and the Monitor appointed in Hayes' CCAA Proceedings (the "Monitor") reflecting the projected cash requirements of Hayes from the date of the granting of the Initial Order through the Maturity Date, calculated on a weekly basis (the "Initial Cash Flow Projections"). The Initial Cash Flow Projections may be amended by Hayes from time to time, on the written consent of CIBC. To the extent that the Maturity Date is extended pursuant to this Commitment Letter, cash flow projections with respect to such period of extension shall be provided to CIBC in form and substance satisfactory to CIBC prior to the expiration of the initial Maturity Date.

Notwithstanding any other provision of this Commitment Letter, CIBC shall not be obligated to make any advance under the DIP Facility which does not comply with or adhere to the Initial Cash Flow Projections and any subsequent cash flow projections that may be agreed to by CIBC.

4. Draw Down

CIBC agrees to advance as required pursuant to the Initial Cash Flow Projection pursuant to the DIP Facility upon the granting of the Initial Order under the CCAA (the "Initial Order") and in reliance upon the charge contained in the Initial Order

5. Formal DIP Approval

The parties acknowledge that the DIP Facility, except to the extent of \$600,000, is conditional upon internal approval by CIBC.

6. Provision of Documents

Prior to the granting of the Initial Order, Hayes shall provide to CIBC the following documents:

- i. detailed assumptions in support of July 29 Forecast and the CCAA Cash Flow or those related to any updated Forecast and CCAA Cash Flow; and

7. Interest

Hayes agrees to pay interest ("Interest") on amounts drawn under the DIP Facility, both before and after the Maturity Date, at a variable nominal rate per annum of 5% above CIBC's prime lending rate, being the rate of interest established from time to time as CIBC's prime lending rate for loans denominated in Canadian dollars, adjusted automatically upon any change thereto by CIBC. CIBC's prime lending rate is 4.75% per annum as of the date hereof.

Interest on amounts drawn under the DIP Facility shall be payable monthly in arrears on the last business day of each month. Such Interest shall constitute an advance under the DIP Facility, to the extent that a payment is not made. Interest shall be calculated daily for the actual number of days elapsed in the period during which it accrues based on a year of 365 days. For the purposes of the *Interest Act*, (Canada) the yearly rate of interest to which the rate is equivalent is the rate multiplied by the number of days in the year for which the calculation is made and divided by 365.

Notwithstanding paragraph 1 hereof, if at any time amounts advanced or outstanding under the DIP Facility exceed such limit, and such excess is permitted by CIBC in its sole discretion, such excess shall bear Interest at a rate of interest equal to CIBC's highest overdraft interest rate established and published from time to time and chargeable on overdraft balances, even though such interest rate may be higher than the rate set out above, with Interest on overdue Interest at the same rate.

8. Advances

The DIP Facility shall be advanced through the CIBC Operating Account Number 44-19715, Transit Number 00010 upon request by Hayes and in accordance with the Initial Cash Flow Projections.

9. Use of Funds

The DIP Facility shall be used substantially in accordance with the Initial Cash Flow Projection or such other subsequent cash flow projections to which CIBC may agree.

10. Structuring Fees

Hayes shall pay to CIBC coincidental with the granting of the Initial Order, a placement fee in the amount of \$75,000 (the "Structuring Fee"). The Structuring Fee shall be paid to CIBC by way of debit to the General Operating Account. Hayes shall also pay to CIBC an Administration Fee in the amount of \$7,500/month. Hayes shall pay such fees when due, failing which such amount shall constitute an advance under the DIP Facility to the extent the entire DIP Facility is not drawn down.

11. Costs

Hayes shall pay to CIBC all reasonable fees and disbursements of CIBC (including travel costs) and its legal and financial advisors engaged by it in connection with the preparation, negotiation, execution, delivery, administration, interpretation or enforcement of this Commitment Letter and the DIP Priority Charge (as hereafter defined) and in the case of legal costs, such costs shall be charged by CIBC to Hayes on a solicitor and his own client basis. CIBC shall forward to Hayes for approval the account of its legal advisor and Consultant to the date of filing the Initial Order and CIBC is hereby authorized to pay the same and debit the Operating Line.

12. DIP Security

All obligations of Hayes under or in connection with the DIP Facility shall be secured by a Court-ordered first charge over all present and after acquired property, assets and undertakings of Hayes in priority and senior to all other creditors, interest holders, lessors, lien holders and claimants of any kind whatsoever, except financing leases, on the terms set out in the Initial Order.

13. Repayments of DIP

All monies received by CIBC in repayment of amounts owing under the DIP Facility, whether by way of debit as aforesaid or otherwise, may be applied and allocated by CIBC to such parts of the outstanding DIP Facility, whether by principal, interest, fees or other costs, as CIBC determines in its sole discretion.

14. Repayment of Bank Indebtedness

CIBC and Hayes agree that any excess cash shall be paid to reduce the CIBC's pre-filing indebtedness every 90 days, based on a 90 day rolling cash forecast, in an amount equal to 90% of the free cash available on the assumption that the outstanding balance on the DIP Facility is nil.

15. Conditions Precedent

The DIP Facility shall be made available by CIBC to Hayes upon:

- i. Hayes filing for protection under the CCAA;
- ii. the Court granting the Initial Order in a form acceptable to CIBC;
- iii. delivery of the Initial Cash Flow Projections to CIBC in form and substance acceptable to CIBC in its sole and absolute discretion; and
- iv. Hayes requesting an advance under the DIP Facility.

Notwithstanding the foregoing, the DIP Facility shall not be made available to Hayes or may be cancelled by CIBC if previously made available to Hayes, if:

- v. the Initial Order is vacated, stayed or otherwise caused to become ineffective or is amended in a manner not acceptable to CIBC, or
- vi. an Event of Default has occurred and is continuing.

16. Additional Conditions Precedent

Prior to the making of any advance under the DIP Facility:

- a. CIBC shall be satisfied that Hayes has complied with and is continuing to comply in all material respects with all applicable laws, regulations and policies in relation to its business; and
- b. CIBC shall be satisfied that there are no liens, charges or encumbrances ranking in priority to the DIP Charge, unless expressly agreed to by CIBC.

17. Representations and Warranties

Hayes represents and warrants to CIBC that the transactions contemplated by this Commitment Letter and the DIP Facility, including the DIP Charge:

- a. Are within the powers of Hayes;
- b. Have been duly authorized by all necessary corporate approval;
- c. Have been duly executed and delivered by or on behalf of Hayes;
- d. Upon the granting of the Initial Order, constitute legal, valid and binding obligations of Hayes, enforceable in accordance with their terms;
- e. Upon the granting of the Initial Order, do not require the consent or approval of, or registration or filing with, or any other action by, any governmental authority, other than filings which may be made to register or otherwise record the DIP Priority Charge; and
- f. Will not violate the constating documents of Hayes or any applicable law relating to such entity.

18. Affirmative Covenants

Hayes covenants and agrees to do the following:

- a. Allow CIBC and its Consultant full access to the books and records of Hayes and cause management thereof to fully cooperate with CIBC and its Consultant;

- b. Use reasonable efforts to keep CIBC and its Consultant apprised on a timely basis of all material developments with respect to the business and affairs of Hayes;
- c. Deliver to CIBC and its Consultant the reporting and other information from time to time reasonably requested by CIBC and its Consultant, including cash flow projections, summaries of sales and accounts receivable and any information pertaining to the business and affairs of Hayes reasonably requested by CIBC and its Consultant;
- d. Comply with the provisions of the Initial Order as may be subsequently amended, provided that if any such order contravenes this Commitment Letter in a manner detrimental to CIBC, the same shall be an Event of Default hereunder;
- e. Preserve, renew and keep in full force its corporate existence with all material licenses;
- f. Maintain at all times adequate insurance coverage of such type, in such amounts and against such risks as is prudent for a business of an established reputation with financially sound and reputable insurers in coverage and scope acceptable to CIBC;
- g. Operate its business in accordance with the restructuring business plan subject always to the Initial Cash Flow Projections and such subsequent cash flow projections to which CIBC may agree, and within the credit limits established for the DIP Facility as set out herein;
- h. Duly and punctually pay or cause to be paid to CIBC all principal, interest, fees and other amounts payable by it under this Commitment Letter on the dates, at the places and in the amounts set forth herein;
- i. Forthwith notify CIBC of the occurrence of any Event of Default or of any event or circumstance which may constitute a material adverse change to the Initial Cash Flow Projections or any subsequent cash flow projections to which CIBC has agreed;
- j. Comply in all material respects with all applicable laws, rules and regulations applicable to its business, including environmental laws; and
- k. Authorize and direct the Monitor to provide regular reports to CIBC with respect to Hayes' compliance with the foregoing affirmative covenants and the following negative covenants.

19. Negative Covenants

Hayes covenants and agrees not to do the following:

- a. Transfer, lease or otherwise dispose of all or any of its property, assets or undertakings except in compliance with the Initial Order as may be subsequently amended and without the prior written consent of CIBC in the case of any single disposition in excess of \$100,000 or a series of related dispositions totaling in excess of \$500,000. All sales shall be reported to CIBC monthly;
- b. Make any payment of principal or interest in respect of obligations owed by Hayes to parties other than CIBC as at the date of the Initial Order, except in accordance with the Initial Order and the Initial Cash Flow Projections;
- c. Create or permit to exist indebtedness for borrowed money secured by a charge upon any of its assets ranking or potentially ranking in priority to the DIP Priority Charge, without the prior approval of CIBC;
- d. Enter into any transaction with any affiliate (as that term is defined in the *British Columbia Business Corporations Act*) or any of its senior officers or employees, except in the ordinary course of business and upon fair and reasonable terms comparable to arm's length transactions of a similar type;
- e. Increase the compensation for any director, officer or employee of Hayes or otherwise directly or indirectly provide additional compensation for any such person or his or her affiliates (as that term is defined in the *British Columbia Business Corporations Act*) to a level materially higher than the level at which such persons were compensated prior to the date of this Order;
- f. Make any investments or acquisitions of any kind, direct or indirect, in any business or otherwise where to do so would be inconsistent with the Initial Cash Flow Projections and such subsequent cash flow projections as to which CIBC may agree;
- g. Make any payment outside of the ordinary course of business in accordance with the restructuring business plan, subject always to the Initial Cash Flow Projections and such subsequent cash flow projections as to which CIBC may agree, and the maximum availability under the DIP Facility;
- h. Make any payments on account of bonuses or retainers, other than retainers relating to Hayes' legal counsel, the Monitor appointed pursuant to the Initial Order and the Monitor's counsel, payments pursuant to the KERP; or
- i. Amalgamate, consolidate with or merge into or enter into any similar transaction with any other entity.

20. Indemnity

Hayes agrees to indemnify and hold harmless CIBC and each of its directors, officers, employees, agents, attorneys, advisors and affiliates (all of such persons and entities

being referred to hereafter as "Indemnified Persons") from and against any and all actions, suits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever which may be incurred by or asserted against or involve any Indemnified Person as a result of or arising out of or in any way related to or resulting from any bankruptcy or insolvency proceedings or the CCAA Proceedings or this Commitment Letter, and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal costs on a solicitor and his own client basis or other out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding or claim whether or not any Indemnified Person is a party to any action or proceeding out of which any such expenses arise; provided, however, Hayes shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability to the extent it resulted from the gross negligence or willful misconduct of such Indemnified Person as finally determined by a court of competent jurisdiction.

The indemnities granted under this Commitment Letter shall survive any termination of the DIP Facility.

21. Waiver and Release

The following capitalized terms are as defined in the Forebearance Agreement, dated May 1, 2007.

HAYES hereby:

- (a) acknowledges and agrees that the administration of the Credit Facility Letter and the Security by CIBC, and CIBC's actions in entering into this Agreement, have been fair and reasonable;
- (b) waives and agrees not to assert or cause to be asserted on its behalf, and is hereby estopped from asserting or causing to be asserted on its behalf, any defences, rights or claims with respect to the administration of the Credit Facility Letter, the Security, or CIBC's actions in entering into this Agreement;
- (c) releases and remises CIBC, its agents and solicitors from any and all claims with respect to the administration of the Credit Facility Letter, the Security, and CIBC's actions in entering into this Agreement, all up to the date of this Agreement; and
- (d) acknowledges and agrees that, in executing and delivering this Agreement, HAYES is acting freely and without duress and has obtained independent legal advice.

22. Events of Default

The occurrence of any one or more of the following events shall constitute an event of default ("Event of Default") under this Commitment Letter:

- a. The entry of an order dismissing the CCAA Proceedings or lifting the stay in the CCAA Proceedings to permit the enforcement of any security against Hayes or the appointment of a Receiver, Interim Receiver or similar official or the making of a receiving order against Hayes;
- b. The entry of an order granting any other claim super priority status or a lien equal or superior to the DIP Priority Charge, without CIBC's prior consent;
- c. The entry of an order staying, reversing, vacating or otherwise modifying the DIP Facility or the Initial Order or the entry of an order by the Court having the equivalent effect, without the prior written consent of CIBC;
- d. Failure of Hayes to pay (A) interest or fees when due under the Commitment Letter, (B) principal when due under the DIP Facility, or (C) legal and advisor fees of CIBC within five (5) business days of being invoiced therefor;
- e. Failure of Hayes to comply with any positive or negative covenants in this Commitment Letter; provided that where such failure is capable of being cured, such failure has continued for more than five (5) business days after written notice thereof from CIBC to Hayes;
- f. Failure of Hayes to perform or comply with any term or covenant under this Commitment Letter (other than as set out in subparagraph (d) and (e) above) and such default shall continue unremedied for a period of five (5) days after written notice thereof from CIBC to Hayes;
- g. Hayes ceases or threaten to cease to carry on business in the ordinary course in accordance with the restructuring business plan, except where such cessation occurs in connection with a sale of all or substantially all of the assets of Hayes consented to by CIBC;
- h. Any representation or warranty by Hayes is incorrect or misleading in any material respect when made; and
- i. The filing of any pleading by Hayes seeking any of the matters set forth in paragraphs (a) through (c).

23. Remedies

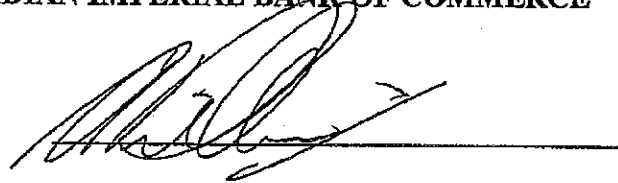
Upon the occurrence of an Event of Default, CIBC may:

- i. declare the obligations in respect of the DIP Facility to be immediately due and payable,
- ii. apply to a court for the appointment of an Interim Receiver or a Receiver and Manager of the undertaking, property and assets of Hayes or for the appointment of a Trustee in Bankruptcy of Hayes,
- iii. exercise the powers and rights of a secured creditor under the *Personal Property Security Act* (B.C.) or any legislation of similar effect applicable to the DIP Security, and
- iv. exercise all such other rights and remedies under the DIP Facility and the CCAA court orders.

IN WITNESS HEREOF, the parties hereby execute this Commitment Letter as of the date first above mentioned.

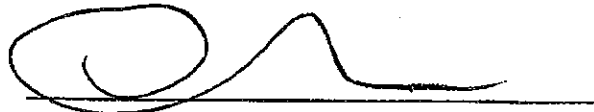
CANADIAN IMPERIAL BANK OF COMMERCE

Per:



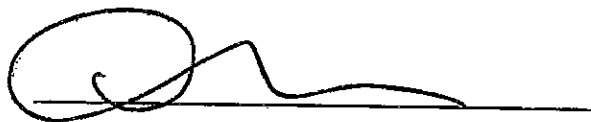
HAYES FOREST SERVICES LIMITED

Per:



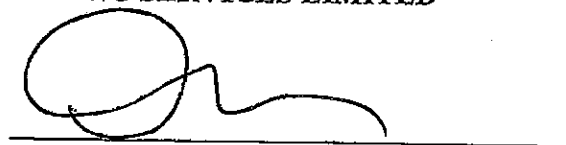
HAYES HELICOPTER LIMITED

Per:

A handwritten signature in black ink, consisting of a large, stylized initial 'H' followed by a series of loops and a long horizontal stroke extending to the right.

HAYES HOLDING SERVICES LIMITED

Per:

A handwritten signature in black ink, identical in style to the one above, featuring a large initial 'H' and a long horizontal stroke.

No. _____
Vancouver Registry

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 *BUSINESS CORPORATIONS*
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- AND -

**IN THE MATTER OF
HAYES FOREST SERVICES LIMITED
HAYES HOLDING SERVICES LIMITED
and HAYES HELICOPTER SERVICES LIMITED**

AFFIDAVIT

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JIM/msh