

COURT FILE NUMBER 2101 05682

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT ATB FINANCIAL

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

DOCUMENT **SUPPLEMENTARY REPORT TO THE THIRD REPORT  
OF BDO CANADA LIMITED,  
IN ITS CAPACITY AS RECEIVER OF WA GRAIN  
HOLDINGS INC., 1309497 ALBERTA LTD. (o/a W.A.  
GRAIN & PULSE SOLUTIONS), NEW LEAF  
ESSENTIALS (WEST) LTD., 1887612 ALBERTA LTD.  
and CERTAIN ASSETS OF NEW LEAF ESSENTIALS  
(EAST) LTD.**

**January 4, 2022**

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**SUPPLEMENTARY REPORT TO THE THIRD REPORT  
OF THE RECEIVER  
BDO CANADA LIMITED  
January 4, 2022**

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## **INTRODUCTION**

1. This supplementary report dated January 4, 2022 (the “**Supplementary Report**”) is filed by BDO Canada Limited in its capacity as the Receiver and Manager (the “**Receiver**”) of the assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof of W. A. Grain Holdings Inc. (“**WA Holdings**”), 1887612 Alberta Ltd. (“**1887612**”), 1309497 Alberta Ltd. o/a W. A. Grain & Pulse Solutions Inc. (“**1309497**”), New Leaf Essentials (West) Ltd. (“**NLEW**”) and certain assets of New Leaf Essentials (East) Ltd. (“**NLEE**”) (collectively “**WA Grain**” or the “**Company**”).
2. This Supplementary Report and all other Court materials and Orders issued and filed in this receivership proceeding (the “**Proceeding**”) are available on the Receiver’s case website (the “**Receiver’s Website**”) at: <https://www.bdo.ca/en-ca/extranets/wagrainholdings/> and will remain available on the Receiver’s Website for a period of six months following the Receiver’s discharge.

## **PURPOSE**

3. On December 10, 2021, the Court granted an Order partially granting the relief sought and adjourned the Receiver’s request for approval of an interim distribution. The adjournment was to allow interested parties to provide further submissions to the Court by no later than 4:00 p.m. on January 4, 2022.
4. The Court also directed the Receiver to prepare this Supplementary Report to address:
  - a) whether there was any supply of grain to 1309497 on April 11, 2021;
  - b) whether 1309497 commingled grain (the “**PER Inventory**”) that was delivered to it by grain producers holding outstanding Primary Elevator Receipts (the “**PER Holders**”); and

- c) whether it would be possible for the Receiver to trace the PER Inventory, or funds realized from the PER Inventory, that was sold by 1309497 prior to the Receivership Order.

5. The purpose of this Supplementary Report is to:

- a) respond to the above, noting that:
  - i. there were no deliveries of grain on April 11, 2021;
  - ii. grain received by 1309497 was comingled; and
  - iii. the Receiver cannot trace the PER Inventory beyond delivery to each of 1309497's five Primary Elevators (the "**Plants**") or the funds realized from PER Inventory.
- b) to provide this Honourable Court with additional information, in respect of claims filed pursuant to Section 81.2 the *Bankruptcy and Insolvency Act* ("**BIA 81.2**") and the 15-day window used for reviewing such claims ("**BIA 81.2 Claims**"); and
- c) to provide further information in relation to the processing of grain, from the delivery of the grain from a producer ("**Producer Grain**") to the Primary Elevator through to the sale of Producer Grain and the role of the Canadian Grain Commission ("**CGC**") with respect to licensing and reporting.

**BIA 81.2**

6. The Receiver, when calculating the period for BIA 81.2 Claims looked to the BIA for guidance. Pursuant to BIA 81.2:

*"Where*

- a) *a farmer has sold and delivered products of agriculture, a fisherman has sold and delivered products of the sea, lakes and rivers, or an aquaculturist has sold and delivered products of aquaculture, to another person (in this section referred to as the "purchaser") for use in relation to the purchaser's business,*
- (b) *the products were delivered to the purchaser within the fifteen-day period preceding*
  - (i) *the day on which the purchaser became bankrupt, or*

*(ii) the first day on which there was a receiver, within the meaning of subsection 243(2), in relation to the purchaser,*

*(c) as of the day referred to in subparagraph (b)(i) or (ii), the farmer, fisherman or aquaculturist has not been fully paid for the products, and*

*(d) the farmer, fisherman or aquaculturist files a proof of claim in the prescribed form in respect of the unpaid amount with the trustee or receiver, as the case may be, within thirty days after the day referred to in subparagraph (b)(i) or (ii).”*

7. The Receiver determined that the fifteen-day period preceding the first day on which there was a receiver, was April 11, 2021 (“**15 Day 81.2 Period**”). April 11, 2021 was a Sunday and there were no plant operations on the weekend. WA Grain’s staff were onsite to receive grain only Monday through Friday.
8. At the Court’s request, the Receiver has reviewed the grain delivered on Friday April 9, 2021 and found that two producers delivered grain on April 9, 2021 totalling \$25,227.
9. Pursuant to section 81.2 4(d) of the BIA, the producers would need to file their proofs of claim within 30 days of the date of the receivership; however, the two producers who delivered grain on April 9, 2021, did not file a proof of claim with the Receiver within the 30 day period, or later.
10. It is the Receiver’s opinion that these two grain receipts can not be classified as BIA 81.2 Claims as:
  - a) they fall outside the 15 Day 81.2 Period; and
  - b) notwithstanding, these two producers did not file a claim within the required 30-day post-receivership time frame.

### **GRAIN PROCESSING PROCEDURES OF 1309497**

11. 1309497 would negotiate a contractual agreement with a producer to buy a certain amount of grain, over a certain period at a clearly identified and agreed upon rate per metric tonne (“**Producer Grain**”).

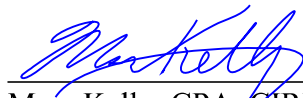
12. 1309497 and the producer would agree to a delivery date and the time for the Producer Grain to be delivered to the Primary Elevator. When the Producer Grain was delivered to a Primary Elevator, the producer was either issued a Cash Purchase Ticket (cheque/payment) or, in the alternative, a Primary Elevator Receipt if payment was not made on at the time of delivery.
13. The Producer Grain is accepted at the Primary Elevator and stored in silos specific to the commodity delivered. By way of example, there were 18 producers holding Primary Elevator Receipts as at the Receivership Date who delivered grade #2 peas to 1309497's Bashaw, Alberta elevator and 5 producers who delivered grade #2 Red Lentils to the 1309497's Vanguard Saskatchewan Primary Elevator.
14. The Producer Grain was stored by commodity and grade, not by producer, and therefore comingled. This is typical practice at Primary Elevators by processors of grain.
15. The CGC determines if grain companies must be licensed according to the Canada Grain Act and the Canada Grain Regulations. The CGC determined that 1309497 was required to be licensed in order to receive Primary Elevator and Grain Dealer licenses.
16. In order for 1309497 to continue to hold its Primary Elevator licenses in good standing, it was required to attend to the following:
  - a) Issue authorized elevator receipts on delivery of grain;
  - b) Issue authorized cash purchase tickets for grain upon purchase;
  - c) Fulfill requests for a CGC inspector's grade and dockage determination;
  - d) Submit a monthly report to the CGC listing all outstanding liabilities to producers by the 15<sup>th</sup> day of the month following the reporting period;
  - e) Submit a weekly grain handling report each Wednesday by 4:30 pm (Central Time);
  - f) Submit an annual report of net handlings by October 15 each year; and
  - g) Hold a \$4 million insurance policy for the unpaid producers, the CGC holds the bond on this policy.
17. 1309497 was required to report its liabilities to producers monthly to the CGC by the 15<sup>th</sup> day of the following month ("**CGC Monthly Liability Reports**"). The Monthly Liability Reports detail what payments for Producer Grain remain outstanding for issued Primary Elevator Receipts and Grain Receipts.

18. As noted above, in order for 1309497 to be issued licenses by the CGC, it was required to hold an insurance policy in an amount predetermined by the CGC. The insurance held by 1309497 was required to be \$4 million (the “**Secured Bond**”). This was arranged through Intact Insurance.
19. On April 19, 2021, the CGC suspended the licenses of 1309497. Included in the reasons for the suspension was that the outstanding producer liabilities exceeded the \$4 million value of the Secured Bond.
20. The Producer Grain was kept in silos at the Plants. When an order was being processed for a sale by 1309497, the required commodity would be removed, cleaned to eliminate the dockage (rocks, debris, etc.) and weighed. As silos contained comingled grain from several producers, the dockage percentage would also vary as the grain was processed. Consequently, the Receiver has no ability to trace which Producer Grain was sold to which customer. In certain cases, specifically with Producer Grain delivered to the Primary Elevator in Bowden, Alberta, the Producer Grain may have been blended with one or more other commodity and another Producer’s Grain in order to fulfill a pet food contract.
21. Furthermore, any proceeds of sale were also comingled and immediately reduced the operating line upon deposit.

All of which is respectfully submitted this 4<sup>th</sup> day of January 2022.

**BDO Canada Limited**  
**in its capacity as Receiver and Manager of W.A. Grain Holdings Inc.**  
**1887612 Alberta Ltd. 1309497 Alberta Ltd. New Leaf Essentials (West) Ltd.**  
**and certain assets of New Leaf Essentials (East) Ltd.**  
**and not in its personal or corporate capacity**

Per:

  
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 Marc Kelly, CPA, CIRP, LIT  
 Senior Vice President

  
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 Anna Koroneos, CIRP, LIT  
 Vice President