

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)**

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF
QUALITY MEAT PACKERS LIMITED**

**FACTUM OF THE MOVING PARTY
(motion returnable April 10, 2014)**

PART I - OVERVIEW

1. This is a motion by the Synergy Swine Group (as defined below) for an order declaring that the initial thirty day period provided to Quality Meat Packers Limited (“QMP”) to file a proposal pursuant to the *Bankruptcy and Insolvency Act*, as amended (the “BIA”), is immediately terminated, or in the alternative, the appointment, subject to their consent, of A. Farber & Associates Inc. or another acceptable licensed trustee as receiver over all or substantially all of the inventory of QMP pursuant to section 101 of the *Courts of Justice Act*.

PART II - THE FACTS

2. The Ontario swine industry is significant in size. It generally produces over 100,000 pigs per week. While some are shipped to the U.S. or Quebec as weanlings (baby pigs) or feeder pigs, Ontario processes approximately 95,000 market hogs a week.¹

¹ Affidavit of Mark Yungblut sworn April 8, 2014, Motion Record, Tab 2 (“Yungblut Affidavit”), para. 4.

3. Synergy Swine Inc. (“**Synergy Swine**”) is a hog production corporation headquartered in Molesworth, Ontario. It is registered as a Farm Business with Agricorp, a provincial crown corporation that, among other things, administers insurance plans for farmers in Ontario.²

4. Synergy Swine buys weanlings from various weanling producers. The weanlings are raised at contract nursery barns and finishing barns across Midwestern Ontario.³

5. Synergy Swine is a part owner of several other hog farming businesses including:⁴

- (a) Synergy Services Inc.;
- (b) Synergy Swine FPR1 Inc.;
- (c) Synergy Swine FPR2 Inc.;
- (d) Mahogany Farms Ltd.;
- (e) PA Pork;
- (f) Molesworth Farm Supply Limited; and
- (g) RNR Swine Inc.

These entities form the **Synergy Swine Group**.

² Yungblut Affidavit, para. 5; Synergy Swine’s Agricorp Registration Card, Exhibit “B” to the Yungblut Affidavit.

³ Yungblut Affidavit, para. 6.

⁴ Yungblut Affidavit, para. 7.

6. Synergy Swine supplies market-ready pigs to pork processing companies in Ontario and Quebec. One of the pork processing companies to which Synergy Swine supplies hogs is QMP.⁵

7. QMP is a processors of pigs in Ontario. It sells processed and butchered pork products. Synergy Swine started shipping market hogs to QMP in 1999. On April 29, 2013, Synergy Swine and QMP entered into a contract for the sale of hogs (the “**Contract**”).⁶

8. Section 2 and Schedule 1 of the Contract provides that Synergy Swine shall supply QMP with approximately 104,000 hogs annually, or approximately 2,000 per week.⁷

9. Schedule 1 of the Contract further provides that Synergy Swine will provide additional quantities of hogs in accordance with other Live Hog Supply Agreements between QMP and the Synergy Swine Group.⁸

10. The formula for calculating the price that QMP will pay Synergy Swine for the hogs supplied under the Contract is set out in Schedules 2A to 2D. Many of the components of the pricing formula cannot be calculated prior to slaughter. For example, in pricing the hogs, QMP must determine the price per kilogram on the basis of the total weight of each butchered hog carcass. For obvious reasons, this factor cannot be assessed before Synergy Swine ships its hogs to QMP. The price is also modified on

⁵ Yungblut Affidavit, para. 8.

⁶ Yungblut Affidavit, para. 9; Live Hog Supply Agreement Using Multi-Component Pricing (the “Contract”), Exhibit “C” to the Yungblut Affidavit.

⁷ Yungblut Affidavit, para. 10; Contract, Exhibit “C” to the Yungblut Affidavit.

⁸ Yungblut Affidavit, para. 11; Contract, Exhibit “C” to the Yungblut Affidavit.

other factors such as the grade of the meat and whether a contract premium applies. Accordingly, Synergy does not invoice QMP for each hog shipment. Instead, section 8 of the Contract provides that payment for each shipment of hogs is due to Synergy within three working days of slaughter. Slaughter typically occurs the date of shipment or the following day.⁹

11. Accordingly, the supply arrangement with QMP is very different than what might be expected in other businesses. Synergy Swine Group's supply terms with QMP are not at all designed to give time for QMP to pay. The delay in payment of 4 or 5 days is only to allow for the required process to determine the price to be paid.¹⁰

12. Under paragraph 4 of the Contract, title to the hogs and risk of loss passes to QMP upon delivery and acceptance of the hogs by QMP.¹¹ Payment is to be made forthwith after value and price is determined as described above.

QMP Accepted Millions of Dollars in Market Hogs Just Days Before It Filed Its NOI

13. QMP filed a Notice of Intention to make a proposal on April 3, 2014 (the "NOI").¹² The Synergy Swine Group delivered hogs to QMP in the days immediately prior to QMP's NOI filing. The deliveries were as follows:¹³

⁹ Yungblut Affidavit, para. 12.

¹⁰ Yungblut Affidavit, para. 13.

¹¹ Yungblut Affidavit, para. 14.

¹² Yungblut Affidavit, para. 3; Exhibit "A" to the Yungblut Affidavit.

¹³ Yungblut Affidavit, para. 15.

- i. Synergy Swine delivered 171 hogs to QMP on March 27, 2014 with an estimated value of \$44,545.71;
- ii. Synergy Services Inc. delivered 201 hogs to QMP on March 26, 2014 and April 2, 2014 with an estimated value of \$57,500;
- iii. Synergy Swine FPR1 Inc. delivered 1,759 hogs to QMP on March 26 and April 2 with an estimated value of \$407,258.14;
- iv. Synergy Swine FPR2 Inc. delivered 45 hogs to QMP on March 26 and April 2 with an estimated value of \$11,631.61;
- v. Mahogany Farms Ltd. delivered 65 hogs to QMP on April 1, 2014 with an estimated value of \$18,500;
- vi. PA Pork delivered 385 hogs to QMP on March 26, April 1 and April 3 with an estimated value of \$99,460.93;
- vii. Molesworth delivered 682 hogs to QMP on March 31, April 1 and April 2 with an estimated value of \$198,994.10; and
- viii. R.N.R. Swine Inc. delivered 230 hogs to QMP on March 31 with an estimated value of \$63,736.37.

14. In total, the Synergy Swine Group delivered market hogs with an estimated value of \$901,626.86 in the days immediately leading up to NOI. The Synergy Swine Group has not been paid for any of these hogs.¹⁴

15. Many other hog suppliers in Ontario (the “**Other Hog Suppliers**”) also supplied hogs to QMP prior to the NOI filing for which they have not been paid. The vast majority of shipments of hogs to QMP were made between March 27 and April 3, 2014.¹⁵

16. QMP knew or ought to have known that it was insolvent at the time it accepted delivery of the hogs from the Synergy Swine Group and that it did not have the ability to pay for the hogs it received.¹⁶

17. The total estimated value of all hogs delivered to QMP for which payment has not been made (the “**Shipments**”) is \$2,825,836.04.¹⁷

QMP Has No Plan To Pay Hog Producers What They Are Owed

18. David Schwartz, President of QMP, advised at a meeting and during a call on April 4 and 5, 2014 (the “**Meeting**”) between QMP management and its pig suppliers that QMP does not have any plan for paying Synergy Swine, or for any of the Shipments, and that QMP is generally looking for pigs to be supplied to it going forward in the near term

¹⁴ Yungblut Affidavit, para. 16.

¹⁵ Yungblut Affidavit, para. 17.

¹⁶ Yungblut Affidavit, para. 17.

¹⁷ Yungblut Affidavit, paras. 18 to 21; Hog Delivery Spreadsheet, Exhibit “D” to the Yungblut Affidavit; Other Hog Suppliers’ Correspondence, Exhibit “E” to the Yungblut Affidavit.

at a price that is discounted from the price it agreed to pay its suppliers before it filed the NOI.¹⁸

19. QMP has not provided Synergy Swine with any plan for its restructuring. In any case, the Synergy Swine Group is not prepared to support any restructuring plan that does not see them being paid in full for their respective Shipments before fifteen days has elapsed from the date of their last shipment for which they have not been paid.¹⁹

Material Prejudice to Synergy

20. Mr. Schwartz further advised at the Meeting that TD Asset Management and a holding company related to QMP were secured creditors of QMP for \$14 million and \$19 million respectively. Having regard to this security, the Synergy Swine Group would be materially prejudiced if it did not have security for the amounts owed by QMP for Synergy Swine's Shipments that ranked in priority to any other security.²⁰

PART III - ISSUES

21. Is Synergy Swine entitled to a declaration that the initial thirty day period provided to QMP to file a proposal pursuant to the BIA should be terminated under subsection 50.4(11) of the BIA or, in the alternative, that a licensed trustee should be appointed as receiver over all or substantially all of the inventory of QMP pursuant to section 101 of the *Courts of Justice Act*?

¹⁸ Yungblut Affidavit, para. 22.

¹⁹ Yungblut Affidavit, para. 23.

²⁰ Yungblut Affidavit, para. 24.

PART IV - THE LAW

22. The Court has the authority to grant the declaratory relief sought by Synergy Swine under subsection 50.4(11) of the BIA. Subsection 50.4(11) of the BIA provides that where a debtor files a notice of intention to make a proposal, a creditor can apply to the Court to terminate the initial thirty day grace period during which an insolvent debtor may file a proposal on the grounds that:

- (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence;
- (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the thirty day period;
- (c) the insolvent person will not likely be able to make a proposal before the expiration of the thirty day period that will be accepted by the creditors; or
- (d) the creditors as a whole would be materially prejudiced if the application to terminate is rejected by the Court.²¹

23. Subsection 50.4(11) of the BIA exhaustively sets out the circumstances under which the initial 30 day period to make a proposal may be terminated. The moving creditors must demonstrate that at least one of the four enumerated grounds exists on a balance of probabilities.²²

24. The relevant enumerated grounds in this case are 50.4(11)(a), (c), and (d).

²¹ BIA, s.50.4 (11).

²² *Re 1512759 Ontario Ltd. (c.o.b. The Post Group)*, [2002] O.J. No. 4457 (Ont. S.C.J.) [*Re 1512759*] at paras. 1 and 3; Book of Authorities of Synergy Swine Inc. (“Book of Authorities”), Tab 1.

QMP Acted in Bad Faith

25. The Court may terminate the proposal filing period if the insolvent person has not acted in good faith. Although some courts have limited their analysis of bad faith conduct to conduct that occurred after the debtor filed a proposal, Justice Farley expressly considered pre-filing conduct in *Com/Mit Hitech Services Inc.* (“*Com/Mit Hitech*”).²³

26. In *Re Com/Mit Hitech*, the debtor and its bank, The Toronto-Dominion Bank, entered into an amended financial agreement under which the debtor agreed to divest itself of certain assets. Instead, the debtor actually acquired more of the assets that it had been directed to divest. Although both the amended agreement and the impugned acquisitions occurred prior to the debtor filing a proposal under the BIA, Justice Farley relied on this pre-filing conduct in making a finding that the debtor had acted in bad faith within the meaning of section 50.4(11)(a).²⁴

27. QMP has acted in bad faith within the meaning of s. 50.4(11) by accepting millions of dollars in market-ready hogs less than one week prior to filing its NOI. QMP has no current plan to pay any of the farmers who supplied these hogs. QMP must have been aware at the time that it accepted these hog shipments that it had no plan to pay for them, but chose to accept the shipments in any event.

28. The creditors list attached to the QMP NOI filing does not show any member of the Synergy Swine Group as a creditor nor does it show a material number of the other hog farmers that shipped in the days leading up to the NOI filing as creditors. One can

²³ *Re Com/Mit Hitech Services Inc.*, [1997] O.J. No. 3360 (Ont. Gen. Div. (In Bankruptcy)) [*Re Com/Mit Hitech*] at para. 8; Book of Authorities, Tab 2.

²⁴ *Re Com/Mit Hitech* at para. 8.

infer at least two facts from the creditor list. First, that the list was prepared at a time prior to the shipments in question being made and when the farmers were not yet creditors. Second, that QMP was indeed preparing for an NOI filing when it accepted delivery of the hogs.

29. This type of conduct amounts to trading while insolvent with virtually all of its hog suppliers at once. This conduct cannot be considered to be acting in good faith.

There is No Viable Proposal that the Creditors Will Accept

30. Courts in Ontario have recognized the futility of waiting for a proposal to be filed by terminating the thirty day time period in circumstances where a creditor with veto powers in respect of a proposal indicates that they will not support any proposal put forth by the debtor company.²⁵

31. In *Cumberland Trading*, a secured creditor with 95% of the value of the secured claims and 67% of all creditors' claims indicated it would not have voted in favour of any proposal put forth by the debtor as the secured creditor had lost its faith and confidence in the debtor's management. In these circumstances, the application for the termination of the initial thirty day period was granted. Justice Farley stated:²⁶

...It seems to me that [s.50.4(11)(c)] deals specifically with the situation where there has been no proposal tabled. It provides that there is no absolute requirement that the creditors have to wait to see what the proposal is before they can indicate that they will vote it down. I do not see anything in the BIA which would affect a creditor (or a group of creditors) with a veto position from reaching the conclusion that nothing

²⁵ *Cumberland Trading Inc.* [1994] O.J. No. 132 (Ont. Gen. Div. [Commercial List]) [*Cumberland Terrace*] at para. 9; Book of Authorities, Tab 3.

²⁶ *Cumberland Trading* at para. 9.

the insolvent debtor does will persuade the creditor to vote in favour of whatever proposal may be forthcoming. I think that this view is strengthened when one considers that the court need only be satisfied that “the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors...”...This implies that there need not be a certainty of turndown....I am of the view that Skyview’s position as indicated above is satisfactory proof that Cumberland will not likely be able to make a proposal that will be accepted by the creditors of Cumberland [emphasis added].

32. Similarly, in *Re Com/Mit Hitech*, the Bank was owed more than 90% of the debtor’s total indebtedness. In allowing the motion under s. 50.4(11) of the BIA, Justice Farley specifically recognized that the Bank was the overwhelming creditor and thus was in a veto position with respect to any proposal. The Bank was “in essence ‘all the creditors’ of the Debtor”. In that respect, Justice Farely stated as follows:²⁷

As for [s.50.4(11)(b) and (c)], it must be recognized that the Bank is the overwhelming creditor and thus is in a veto position. It has seen what the Debtor has done in the past and what it is proposing to do with respect to New Clean. It is justifiably not impressed; to the contrary it has in all fairness lost all confidence in the Debtor ... It would not seem to me that the Debtor can make out any valid case for opposing the Bank on the basis of s. 50.4(11)(b) or (c).

33. In *Re 1512759 Ontario Ltd.*, the Court was satisfied that the debtor could not make a viable proposal before the expiration of the thirty day period and that it was highly unlikely that the debtor could make a proposal within such time frame that would be accepted by the creditors on the basis that the applicant creditor was in a position to veto any proposal put forth by the insolvent debtor and had indicated that it would vote against any proposal offered; that the debtor provided no evidence of any expressions of interest from or any approaches to new lenders or equity investors; and that it was highly

²⁷ *Re Com/Mit Hitech* at para. 9.

unlikely that any new financing could be obtained or that a new equity investor could be found based on the financial condition of the debtor.²⁸

34. In this case, Synergy Swine expects that as of the hearing of this motion, a majority of unsecured creditors of QMP will have indicated that they will oppose any proposal that the does not see their pre-filing claims paid in full. Accordingly, it would appear that there is thus no viable proposal that can be enforced on the unsecured creditors.

Farmers will be Materially Prejudiced if the Thirty Day Period is Not Terminated

35. If the thirty day period is not terminated under s. 50.4(11) of the BIA, the Synergy Swine Group and other farmers, unsecured creditors of QMP, would be materially prejudiced.

36. Upon QMP's bankruptcy, the Synergy Swine Group is entitled to security over inventory in priority to all other creditors (except a supplier's right, under section 81.1, to repossess goods) ("**Section 82.1 Priority**"). Subsection 81.2 of the BIA provides that:

(a) where a farmer has delivered products of agriculture 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

²⁸ *Re 1512759* at para. 2.

(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... has not been fully paid for the products, and

(d) the farmer...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),

the claim of the farmer...for the unpaid amount in respect of the products is secured by security on all the inventory of or held by the purchaser as of the day referred to in subparagraph (b)(i) or (ii), and the security ranks above every other claim, right, charge or security against that inventory, regardless of when that other claim, right, charge or security arose, except a supplier's right, under section 81.1, to repossess goods, despite any other federal or provincial Act or law...²⁹

37. For the purposes of this section of the BIA, "farmer" includes a owner, occupier, lessor and lessee of a farm, and "farm" means land in Canada used for the purpose of farming, which term includes livestock raising. The Synergy Swine Group are farmers within the meaning of s. 81.2 of the BIA.³⁰ The Other Hog Farmers would also qualify themselves as "farmers" in submitting their claims in due course.

²⁹ BIA, s. 81.2.

³⁰ BIA, s. 81.2.

38. “Products of agriculture” includes “livestock” such as hogs. Accordingly, the hogs delivered to QMP were “products of agriculture” under 81.2 of the BIA.³¹

39. The automatic stay in effect during the thirty day proposal period prevents the Synergy Swine Group from petitioning QMP into bankruptcy. However, Section 82.1 Priority is only available to the Synergy Swine Group if QMP’s bankruptcy occurs within fifteen days after the date of each Shipment.

40. The first shipment was delivered on March 27, 2014; therefore, the fifteen day period in which the Synergy Swine Group and Other Hog Farmers can secure their Section 82.1 Priority will expire on April 11, 2014 with respect to the first Shipment.

41. Without court intervention, the thirty day proposal period will not expire until May 4, 2014, by which time the fifteen day periods applicable to all of the Shipments for securing Section 82.1 Priority will have elapsed.

42. Without court intervention, the Synergy Swine Group and the Other Hog Farmers will have been involuntary financiers of QMP’s NOI proceedings without security. The inventory that they shipped just a few days before the NOI filing will be used to generate accounts receivable that will fund the proposal proceedings. Any incremental financing provided by QMP’s operating lender will rely on in a material way the inventory shipped to QMP immediately prior to the filing. This is simply unfair and causes material prejudice to the farmers while enriching the beneficiaries of the proceedings, including the related party second secured creditor.

³¹ BIA, s. 81.2.

43. The Synergy Swine Group and the Other Hog Farmers who filed correspondence in support of this motion believe that, because of the Section 82.1 Priority, a bankruptcy or receivership gives them the only realistic hope of any recovery in these proceeding for recovery on account of the inventory shipped to QMP.

Appointment of a Receiver is Just and Convenient

44. Under section 101 of the *Courts of Justice Act*, this Court may appoint a receiver over all or substantially all of the assets of an insolvent person where it is just and convenient to do so, and on such terms as it may consider just.³²

45. The court's ability to grant a s. 101 receiver is not limited to appointments on the application of secured creditors.³³

46. In the circumstances of this case, in the alternative to the declaration sought above, the appointment by the court of a receiver is just and convenient for the following reasons:

- (a) It will remedy the harm to farmers arising from QMP accepting shipments when it could not pay for them in order to trigger the s.82.1 claim and allow the receiver to receive the proceeds of sale and administer an s. 82.1 claims process;
- (b) The fees of a receiver will be limited due to the narrow scope of the appointment; and

³² *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 101.

³³ *Tool-Plas Systems Inc., Re .*, 2008 CarswellOnt 6257 (S.C.J. [Commercial List]).

(c) The appointment of a receiver would not terminate the NOI proceedings and would still potentially allow a restructuring effort to continue.

PART V - ORDER REQUESTED

47. The Synergy Swine Group respectfully requests an Order declaring that the initial thirty day period provided to QMP to file a proposal pursuant to the BIA is immediately terminated, or in the alternative, the appointment, subject to their consent, of A. Farber & Associates Inc. or another acceptable licensed trustee as receiver over all or substantially all of the inventory of QMP pursuant to section 101 of the *Courts of Justice Act*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

April 7, 2014



MCMILLAN LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON, M5J 2T3

Jeffrey Levine LS#: 55582H
Tel: 416.865.7791
Fax: 416.865.7048

Lawyers for Synergy Swine Inc.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Re 1512759 Ontario Ltd. (c.o.b. The Post Group)*, [2002] O.J. No. 4457 (Ont. S.C.J.).
2. *Re Com/Mit Hitech Services Inc.*, [1997] O.J. No. 3360 (Ont. Gen. Div. (In Bankruptcy)).
3. *Re Cumberland Trading Inc.*, [1994] O.J. No. 132 (Ont. Gen. Div. [Commercial List]).
4. *Tool-Plas Systems Inc., Re .*, 2008 CarswellOnt 6257 (S.C.J. [Commercial List]).

**SCHEDULE “B”
RELEVANT STATUTES**

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, s.50.4(11)

50.4(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

(a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,

(b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,

(c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or

(d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

81.2 (1) 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),

the claim of the farmer, fisherman or aquaculturist for the unpaid amount in respect of the products is secured by security on all the inventory of or held by the purchaser as of the day

referred to in subparagraph (b)(i) or (ii), and the security ranks above every other claim, right, charge or security against that inventory, regardless of when that other claim, right, charge or security arose, except a supplier's right, under section 81.1, to repossess goods, despite any other federal or provincial Act or law; and if the trustee or receiver, as the case may be, takes possession or in any way disposes of inventory covered by the security, the trustee or receiver is liable for the claim of the farmer, fisherman or aquaculturist to the extent of the net amount realized on the disposition of that inventory, after deducting the cost of realization, and is subrogated in and to all rights of the farmer, fisherman or aquaculturist to the extent of the amounts paid to them by the trustee or receiver.

Marginal note:Definitions

(2) In this section,

“aquaculture”

« *aquiculture* »

“aquaculture” means the cultivation of aquatic plants and animals;

“aquaculture operation”

« *exploitation aquicole* »

“aquaculture operation” means any premises or site where aquaculture is carried out;

“aquaculturist”

« *aquiculteur* »

“aquaculturist” includes the owner, occupier, lessor and lessee of an aquaculture operation;

“aquatic plants and animals”

« *organismes animaux et végétaux aquatiques* »

“aquatic plants and animals” means plants and animals that, at most stages of their development or life cycles, live in an aquatic environment;

“farm”

« *ferme* »

“farm” means land in Canada used for the purpose of farming, which term includes livestock raising, dairying, bee-keeping, fruit growing, the growing of trees and all tillage of the soil;

“farmer”

« *agriculteur* »

“farmer” includes the owner, occupier, lessor and lessee of a farm;

“fish”

« *poisson* »

“fish” includes shellfish, crustaceans and marine animals;

“fisherman”
« *pêcheur* »

“fisherman” means a person whose business consists in whole or in part of fishing;

“fishing”
« *pêche* »

“fishing” means fishing for or catching fish by any method;

“products of agriculture”
« *produits agricoles* »

“products of agriculture” includes

(a) grain, hay, roots, vegetables, fruits, other crops and all other direct products of the soil, and

(b) honey, livestock (whether alive or dead), dairy products, eggs and all other indirect products of the soil;

“products of aquaculture”
« *produits aquicoles* »

“products of aquaculture” includes all cultivated aquatic plants and animals;

“products of the sea, lakes and rivers”
« *produits aquatiques* »

“products of the sea, lakes and rivers” includes fish of all kinds, marine and freshwater organic and inorganic life and any substances extracted or derived from any water, but does not include products of aquaculture.

Marginal note: Interpretation — products and by-products

(3) For the purposes of this section, each thing included in the following terms as defined in subsection (2), namely,

(a) “products of agriculture”,

(b) “products of aquaculture”, and

(c) “products of the sea, lakes and rivers”,

comprises that thing in any form or state and any part thereof and any product or by-product thereof or derived therefrom.

Marginal note: Section 81.1 applies

(4) For greater certainty, “goods” in section 81.1 includes products of agriculture, products of the sea, lakes and rivers, and products of aquaculture.

Marginal note: Other rights saved

(5) Nothing in this section precludes a farmer, fisherman or aquaculturist from exercising

(a) the right that that person may have under section 81.1 to repossess products of agriculture, products of the sea, lakes and rivers, or products of aquaculture; or

(b) any right that that person may have under the law of a province.

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

Court File No. 31-1855569

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF QUALITY MEAT PACKERS LIMITED**

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

FACTUM OF SYNERGY SWINE INC.
(motion returnable April 10, 2014)

McMILLAN LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON, M5J 2T3

Jeffrey Levine LS#: 55582H
Tel: 416.865.7791
Fax: 416.865.7048

Lawyers for Synergy Swine Inc.