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**CANADA**
**PROVINCE OF QUÉBEC**
**DISTRICT OF MONTRÉAL**
**NO: 500-11-038474-108**

**S U P E R I O R C O U R T**
**Commercial Division**
*Designated tribunal under the*
*Companies' Creditors Arrangement Act*[1]

**IN THE MATTER OF THE PROPOSED PLAN OF COMPROMISE AND ARRANGEMENT OF ESTATE WBPC COMPANY (FORMERLY KNOWN AS WHITE BIRCH PAPER COMPANY) AND VARIOUS SUBSIDIARIES AND AFFILIATES**[2]

**DEBTORS**

**- and -**

**ERNST & YOUNG INC.**

**MONITOR**

# REPORT OF THE MONITOR – MAY 23, 2014

## INTRODUCTION AND BACKGROUND

The on-going negotiation of the Estate Allocation Issues[3] were put on standstill following a recent decision of the Court which could have a significant impact on the entitlement of different stakeholders to the net proceeds of the sale transaction that was previously approved by this Court on September 28, 2010 and closed on September 13, 2012. BDWBI filed a motion on February 13, 2014,[4] regarding the applicability of a decision rendered by the Court in another unrelated matter[5] on the proceedings in respect of WB Canada and took the position that it could no longer continue these negotiations before this issue can be resolved. A hearing has been held on BDWBI's motion and the matter is presently under advisement, but the effect of this stumbling block was that the progress that was hoped for at the time of the last request for an extension of the Initial Order, in March 2014, has not yet occurred.

As a result, the Monitor proposes to limit its report herein to providing an update of the matters discussed in its previous report, dated March 26, 2014. The comments herein should be read in the context of the Monitor's report dated March 26, 2014, and are subject to the same terms of reference and disclaimer, as outlined in paragraphs 7 and 8 of the said report.

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1 *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

2 The entities subject to the Initial Order are Estate WBPHC Company (f/k/a/ White Birch Paper Holding Company), Estate WBPC Company (f/k/a White Birch Paper Company), Estate SGPI Inc. (f/k/a Stadacona General Partner Inc.), Estate BSPI Inc (f/k/a Black Spruce Paper Inc.), Estate FFSGPI Inc. (f/k/a F.F. Soucy General Partner Inc.), 3120772 Nova Scotia Company, Estate GCSI Inc. (f/k/a Arrimage De Gros Cacouna Inc.), Estate PML Inc. (f/k/a Papier Masson Ltée.), SSEC L.P. (f/k/a Stadacona L.P.), FFS L.P. (f/k/a F.F. Soucy L.P.), and FFSIA L.P. (f/k/a F.F. Soucy, Inc. & Partners, Limited Partnership).

3 Terms not otherwise defined herein shall have the meaning ascribed to them in the Initial Order, or in previous reports of the Monitor, as the case may be.

4 Accessible through the Monitor's website at www.ey.com/ca/WhiteBirch, in the folder titled "Motion Materials", in the subfolder titled "Motion for declaratory judgment Feb 13, 2014".

5 In the matter of the plan of compromise and arrangement of Timminco Limitée and Bécancour Silicon Inc., 500-11-043844-121 (Quebec Superior Court, Montreal district, Mongeon J., judgment issued January 24, 2014).

## STATUS OF PROCEEDINGS

1. The Initial Order was made on February 24, 2010 and was extended on several occasions since that date. The most recent order of the Court extending the Initial Order was made on February 14, 2014 and grants an extension until May 28, 2014.

### Timminco issue

2. A hearing was held on May 1, 5 and 6, 2014, to consider the motion filed by BDWBI, requesting essentially that the Court confirm that the decision made in the Timminco file does not apply to the proceedings in respect of WB Canada, together with the related motions, contestations, counterclaims and interventions, and the matter is now under advisement by the Court.

### Closing of the transaction with BDWBI

3. The closing of the transaction with BDWBI occurred on September 13, 2012. In the context of this transaction, BDWBI designated some of its affiliates to be the purchaser of the assets. Although the closing has occurred, there remain certain issues that need to be resolved between the Purchaser, the Companies and certain stakeholders, more particularly the former employees and the retired employees of the Companies, the principal one being the creation and funding of pension plans having hybrid characteristics between a defined benefit and a defined contribution plan.

4. During the May hearing referenced above, the Court also dealt with two motions by Unifor and the Regroupement seeking amongst other things the implementation of the new pension plans as contemplated by certain letters of understandings dated July 13, 2012. BDWBI has confirmed its commitment to implement promptly said pension plans when the Timminco issue is resolved satisfactorily. The Regroupement has also asked the Court to force BDWBI to confirm its commitment in favour of the Stadacona non-unionized retirees following the termination of their pension plan.

5. The Court has indicated its intention to render a single decision dealing with the Timminco issue and the various other issues raised during the May hearing.

### Allocation of proceeds between WB Canada and Bipco

6. As mentioned in the Monitor's report dated March 26, 2014, there has been very little progress in the discussions regarding the allocation of proceeds between WB Canada and Bipco since the hearing held on January 15, 2014, and the lack of progress in this respect is attributed by BDWBI to the Timminco issue, since the motion filed by BDWBI on February 13, 2014 suggests that the Timminco issue could affect the negotiations[6]. In view of this position expressed by BDWBI, the Monitor understands that the Timminco issue needs to be resolved before the negotiations on the estate allocation issues can be completed.

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[6] Motion of BDWBI, paragraph 37.

**Proceedings in the US to recharacterize the claim of WB Canada against Bipco**

7. The hearings that were scheduled to determine the amount of the intercompany claim following the Bankruptcy Court's consideration of the motion to recharacterize the claim of WB Canada against Bipco have been postponed and the issue is left pending for the time being, as there is a possibility that this issue could become moot if a settlement is reached concerning the allocation of proceeds between the estates of Bipco and WB Canada.

**Claims from the Canada Revenue Agency**

8. The issue with the Canada Revenue Agency ("**CRA**") is twofold:

   8.1. CRA claims there is an amount due by the Companies for interest and penalties, based on a purported default in making remittances of payroll source deductions in the early months of the proceedings under the CCAA, due to an administrative mix up that occurred when the provincial and federal governments sought to terminate an administrative agreement allowing the set-off of amounts due to the Companies for GST and QST refunds with amounts due for payroll source deductions, and subsequently acknowledged that this administrative agreement could continue. The administrative mix up while there existed an uncertainty regarding the status of the administrative agreement led to a misapplication of payments and/or a refund that should have been applied in payment of a payroll source deduction debt, which was only fully reconciled in February 2013, when the Companies received an assessment for unremitted source deductions, penalties and interest.

   The Companies paid the assessment relating to the unremitted payroll source deductions, representing approximately $1.0 million, but contested the portion of the assessment that relates to interest and penalties, representing approximately $300K.

   8.2. CRA indicated in a correspondence with the Monitor an intention to modify its claim, to claim a right to preferential treatment under section 6(3) of the CCAA, instead of claiming as an ordinary unsecured creditor as mentioned on CRA's claim dated June 21, 2010. The claim for a preferential treatment would apparently pertain to an amount of approximately $7.1 million, out of CRA's total claim of approximately $42.2 million.

   The Monitor responded to CRA that it does not believe that the claims referred to in CRA's proof of claim are of the nature of a claim that could benefit from the treatment referred to in section 6(3) of the CCAA, and that in any event, CRA would have to seek the Court's authorization to modify its claim.

9. There has been no development regarding the above issues since our report dated March 26, 2014.

**Monitor's report on transactions**

10. The Monitor's report on transactions has been finalized and was filed with the Court on February 6, 2014. A copy of the report is accessible through the Monitor's website at www.ey.com/ca/WhiteBirch. The report was made accessible to creditors without its appendices, as some of the information in the appendices is considered to be sensitive from a competition standpoint. The appendices can be provided to the creditors who request same, if the creditors in question execute a form of confidentiality undertaking. To date, no creditor has requested the appendices by returning an executed copy of the confidentiality undertaking to the Monitor.

**Claims Process to address potential claims against Directors and Officers**

11. The D&O Claims Process was authorized by an order of the Court made on February 10, 2014.[7]

12. The Monitor received 10 claims purporting to be D&O claims, further to the notice sent to creditors and publication made in compliance with the D&O Claims Process Order. To date, 9 claims have been contested, by notice sent on or about April 22, 2014. Essentially, these claims were not really D&O Claims, but rather a restatement by the creditors of claims they had filed in connection with the Claims Process Order made by the Court on May 6, 2010.[7]

13. The remaining D&O claim is still under review and no decision has yet been made in respect of this claim.

## CONCLUSIONS AND RECOMMENDATION

14. The Initial Order as previously extended is scheduled to expire on May 28, 2014, and the Applicants have indicated their intention to seek a further extension of the Initial Order, until July 14, 2014.

15. The estate allocation issues are not yet settled, and it appears discussions cannot continue until the Timminco issue has been clarified by the Court.

16. In the present circumstances, the Monitor believes that a further extension of the stay of proceedings would not be prejudicial to the creditors of WB Group.

17. Based on discussions with representatives of WB Group, the Monitor believes WB Group has acted and is continuing to act in good faith and with due diligence.

18. Based on the foregoing, the Monitor recommends that the Court grant an extension of the stay of proceedings as requested by WB Canada.

All of which is respectfully submitted this 23rd day of May 2014.

**ERNST & YOUNG INC.**
In its capacity as the monitor appointed by the Court
in the matter of the proposed compromise and
arrangement of White Birch Paper Holding Company *et al.*

Per: Martin P. Rosenthal, CPA, CA, CIRP
Senior Vice-President

Per: Jean-Daniel Breton, CPA, CA, FCIRP
Senior Vice-President

7 A copy of the order made by the Court is accessible through the Monitor's website at www.ey.com/ca/WhiteBirch.