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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
DEBTORS

- and -

ERNST & YOUNG INC.
MONITOR

REPORT OF THE MONITOR – NOVEMBER 28, 2012

INTRODUCTION AND BACKGROUND

1. On February 24, 2010, on a Motion made by Estate WPBC Company (formerly known as White Birch Paper Holding Company and hereinafter referred to as "**White Birch**") and various of its affiliates (collectively referred to as the "**Applicants**"), the Superior Court of the Province of Québec for the District of Montréal ("**Court**"), sitting as the designated tribunal pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**")[1] issued an order ("**Initial Order**") declaring that the Applicants are debtor companies to which the CCAA applies, appointing Ernst & Young Inc. ("**EYI**" or "**Monitor**") as monitor and granting certain relief to the Applicants and various partnerships in which the Applicants have an interest ("**Partnerships**") (the Applicants and the Partnerships are hereinafter referred to collectively as "**WB Canada**")[2]. The Initial Order has since been extended and is now scheduled to expire on November 30, 2012.

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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 limited Partnership (f/k/a Stadacona Limited Partnership), FFA Limited Partnership (f/k/a F.F. Soucy Limited Partnership), and FFSIP Limited Partnership (f/k/a F.F. Soucy, Inc. & Partners, Limited Partnership).

2. Also on February 24, 2010, Estate Bipco LLC (formerly known as Bear Island Paper Company, LLC and hereinafter referred to as "**Bear Island**"), a subsidiary of White Birch with activities in the U.S., commenced a case under the provisions of Chapter 11 of the U.S. *Bankruptcy Code*[3] (the "**Code**") (Bear Island and WB Canada are hereinafter referred to collectively as "**WB Group**" or "**Companies**"). The information regarding the proceedings initiated by Bear Island under the Code, together with the "first day orders" made by the Bankruptcy Court for the Eastern District of Virginia, Richmond Division ("**U.S. Court**") at the request of Bear Island, can be found on the website of the claims agent retained by Bear Island, Garden City Group, Inc., at www.gardencitygroup.com/cases/bip.

3. Also on February 24, 2010, some of the entities within WB Canada[4] applied for relief under the provisions of Chapter 15 of the Code. On February 26, 2010, the U.S. Court issued a temporary restraining order under the provisions of Chapter 15 of the Code, and on March 5, 2010, it granted a preliminary injunction, pending a more complete hearing to be held on March 22, 2010. At the hearing held on March 22, 2010, the U.S. Court granted recognition of the Canadian proceedings under the CCAA as foreign main proceedings, recognised Estate WBPC Company (formerly known as White Birch Paper Company) as the duly appointed foreign representative, declared that all of the provisions of section 1520 of the Code apply to the proceedings initiated by some of the entities within WB Canada, and gave full force and effect to the Initial Order[5] in the U.S., provided that the Initial Order[5] is not revoked, terminated or expired.

4. The orders granted by this Court and by the U.S. Court (collectively, the "**Courts**"), together with the relief provided under the CCAA and the Code[6] (collectively, the "**Orders**") provide, among other things, for a stay of proceedings against the entities comprising WB Group while they restructure their business and financial affairs.

5. The Initial Order as previously extended is scheduled to expire on November 30, 2012, and the Applicants have indicated their intention to seek a further extension of the Initial Order.

6. The present report is intended to provide the Court with information relevant to the motion for an extension of the Initial Order, and more particularly on the current activities of WB Group and the progress of its restructuring efforts. This report is presented under the following headings:

   6.1. Introduction and background;

   6.2. Terms of reference and disclaimer;

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3 *U.S. Code,* title 11, chapter 11.

4 The entities which requested relief under Chapter 15 of the Code are Estate WBPC Company (f/k/a White Birch Paper Company), Estate SGPI Inc. (f/k/a Stadacona General Partner Inc.), Estate PML Inc. (f/k/a Papier Masson Ltée.), SSEC limited Partnership (f/k/a Stadacona Limited Partnership), FFA Limited Partnership (f/k/a F.F. Soucy Limited Partnership), and FFSIP Limited Partnership (f/k/a F.F. Soucy, Inc. & Partners, Limited Partnership).

5 As amended, modified or extended from time to time by the Court.

6 Sections §361 and §362 of the U.S. *Bankruptcy Code*.

6.3. Comparison of actual to projected results;

6.4. Status of Proceedings; and

6.5. Conclusions and recommendations.

TERMS OF REFERENCE AND DISCLAIMER

7. In preparing this report, EYI has relied upon unaudited financial information, company records, company prepared financial information and projections, discussions with management and employees of WB Group, and information from various other sources.

While we reviewed various documents and believe that the information therein provides a fair summary of the transactions as presented to us or as reflected in the documents presented to us, such work does not constitute an audit or verification of such information for accuracy, completeness, or compliance with generally accepted accounting principles. Accordingly, EYI expresses no opinion or other form of assurance in respect of such information.

Some of the information used in preparing this report consists of financial projections. We caution the reader that these projections are based upon assumptions about future events and conditions that are not ascertainable, and that the actual results may vary from the projections, even if the assumptions materialize, and the variations could be significant.

In the course of our mandate, we have assumed the integrity and truthfulness of the information and explanations presented to us, within the context in which it was presented. To date, nothing has come to our attention which would cause us to question the reasonableness of this assumption.

Finally, we have requested that management bring to our attention any significant matters which were not addressed in the course of our specific inquiries. Accordingly, this report is based solely on the information (financial or otherwise) made available to us.

This report has been prepared for the use of this Court and WB Group's stakeholders as general information relating to the entities comprising WB Group and their operations. Accordingly, the reader is cautioned that this report may not be appropriate for any other purpose. We will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

8. 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.

COMPARISON OF ACTUAL TO PROJECTED RESULTS

9. The Monitor prepared several reports to the Court addressing the activities of the WB Group. The matters discussed in the said reports are still relevant, and will not be repeated herein. The present report only addresses matters that have changed since our latest report dated September 12, 2012.

Cash flow results

10. The most recent cash flow projections filed with the Court were prepared for the 13 weeks ending November 30, 2012. For ease of reference, these cash flow projections are attached hereto as Appendix A.

11. WB Group and its advisors prepared a comparison of the actual and projected results, for the 2 weeks ended September 14, 2012, annexed to this report as Appendix B. The Monitor reviewed this comparison with management, and as a result of this review, the Monitor has no reason to doubt the reasonableness of the explanations provided for the variances.

12. Essentially, the comparison of actual and projected results for the 2 weeks ended September 14, 2012 indicates that the projections contemplated a negative cash flow of US$11.5 million for the 2 week period,[7] and the actual results yielded a negative cash flow of US$8.8 million,[7] or a favourable variance of US$2.6 million.

    However, the actual results for the 2 weeks ended September 14, 2012 include an entry in the amount of US$6.3 million that relates to the closing of the transaction with BDWBI, and which was not included in the projections (the closing of the transaction with BDWBI is addressed in greater detail later in this report). Excluding the impact of this entry, the actual results from on-going operations yielded a negative cash flow of US$15.1 million,[7] or an unfavourable variance of US$3.6 million. The variance is attributed primarily to a combination of the following:

    12.1. Lower than projected receipts by US$4.7 million or 19.9% of the projected amount.

    12.2. Lower than projected disbursements, by approximately US$1.1 million,[7] or 3.1% of the projected amount.

    From the Monitor's perspective, the variance is not very significant, as it is likely due primarily to the fact that the closing of the transaction with BDWBI fell in mid week during the week of September 11 to 14 2012. Historically, the Companies' cash receipts have tended to be heavily concentrated towards the latter part of the week, while disbursements tend to be made in mid week. The closing of the transaction with BDWBI occurred at a time when some disbursements had been released for the week in question, but before all receipts for the week had materialized.

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[7] Including operating disbursements, professional fees and interest.

13. The comparison of actual and projected results (Appendix B) also presents data compiled to isolate the results of WB Canada. The results for WB Canada indicate an unfavourable variance of US$2.7 million or 15.3% in receipts, and a favourable variance of US$0.7 million or 2.5% in disbursements[8], for a net unfavourable variance of US$2.0 million in the cash flow as compared with the projections. The explanations for the variances are similar to those outlined above in paragraph 12.

14. The comparison of actual and projected results for the 2 weeks ended September 14, 2012 indicates that there are no funds remaining in the Companies' accounts as at September 14, 2012, and that the Interim Financing had been repaid in full as at September 14, 2012. While it is true that the Companies' accounts were emptied in the context of the transaction with BDWBI and had a nil balance at September 14, 2012, this was only to fulfill the request of BDWBI to maintain the existing banking structure, to avoid disruption to the operations as and when customers sent payments to the newly formed entities that will operate the plants. The funds remaining on hand at the date of the closing and the proceeds from the sale of the assets were used in part in the manner contemplated in the asset sale agreement approved by the Court in September 2010[9] (as modified from time to time by agreement between the Companies and BDWBI), to pay certain professional fees and obligations of the Companies. The funds remaining after the closing of the transaction were transferred to various escrow accounts.

    In all, approximately US$90.0 million remained in various trust accounts or escrow accounts after the closing of the transaction with BDWBI. The flow of funds schedule used for the purposes of the closing of the transaction with BDWBI is attached to this report as Appendix C.

15. There has been very little change in the cash position from that reflected on the flow of funds attached as Appendix C, since the date of the closing. The most significant change relates to the payment of CDN$1,748,858 to Service d'impartition industrielle inc., in payment of its claim secured by a legal hypothec, in view of the judgement of the Court issued on May 2, 2012.

Updated projections

16. Updated financial projections have not been prepared, in view of the stage of advancement of the restructuring proceedings. The Companies do not presently have any activity other than working towards a resolution of the remaining issues arising from the closing of the transaction with BDWBI, winding down the estates and preparing a plan of distribution of the proceeds. In view of these limited activities, the Companies considered that financial projections would not be relevant, and the Monitor concurs with this decision.

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8 Including operating disbursements, professional fees and interest, but excluding the impact of the entry made in connection with the closing of the transaction with BDWBI.

9 Judgment of the Court dated September 28, 2010. A motion for leave to appeal from this judgment was filed on October 15, 2010, and a judge of the Court of Appeal dismissed such motion on October 25, 2010.

STATUS OF PROCEEDINGS

17. 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 September 14, 2012 and grants an extension until November 30, 2012.

Closing of the transaction with BDWBI

18. The closing with BDWBI of the asset sale agreement dated August 10, 2010, as amended from time to time (the "**ASA**") has occurred on September 13, 2012. A copy of the certificate signed by the Monitor in connection with this closing is attached to this report as Appendix D.

19. The Purchase Price[10] paid pursuant to the ASA includes:

    19.1. a US$78 million credit bid against the assets of WB Canada charged in favour of the First Lien Secured Creditors;

    19.2. an assumption of Assumed Liabilities[10];

    19.3. the payment of the Cash Component[10] in the amount of US$90 million;

    19.4. the payment of the Reserve Payment Amount[10];

    19.5. the payment of the Fixed Asset Cash Amount[10] not to exceed US$4.5 million;

    19.6. the payment of all requisite filing fees;

    19.7. the delivery of the Wind-Down Amount[10], including the Canadian Wind-Down Amount[10] of US$3 million and the U.S. Wind-Down Amount[10] of US$600,000.

20. The issue of allocation of proceeds between the Canadian and US estates could not be resolved prior to the closing, and in order to avoid further delays, the closing occurred without a full determination of the entitlement to the proceeds between the estates. Funds were transferred to escrow accounts pending resolution of the allocation issues.

    A copy of the escrow agreements and the reservation of rights agreement signed contemporaneously with the closing are attached to this report (en liasse) as Appendix E.

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[10] As defined in the ASA.

21. As more fully detailed in the Flow of Funds Schedule in connection with the closing of the ASA (Appendix C):

21.1. US$44.5 million was placed in escrow, as explained more fully below;

21.2. the balance of the Cash Component, after payment of different amounts as provided by the ASA, in the aggregate amount of US$31.2 million was paid in part to the Bear Island Estate (US$8.5 million) and to the Monitor (US$22.7 million).

22. At closing, a sum of US$44.5 million in the aggregate was placed in escrow as follows:

22.1. a sum of US$25.0 million was made subject to the Canadian Estate Allocation Escrow Agreement;

22.2. a sum of US$19.5 million was made subject to the U.S. Estate Allocation Escrow Agreement.

23. The Canadian Estate Allocation Escrow Agreement is governed by the laws of the Province of Quebec and provides that the parties thereto irrevocably submit to the exclusive jurisdiction of the Superior Court of Quebec, District of Montreal, and the U.S. Estate Allocation Agreement is governed by the laws of the State of New York and provides that the parties thereto irrevocably to submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York or the New York State Court located in Manhattan, it being specifically agreed that the execution of said escrow agreements shall not be used to subject the Canadian Monitor to the jurisdiction of the U.S. Court.

24. Subject to the foregoing jurisdiction and choice of law provisions, both escrow agreements are very similar:

24.1. <u>Estate Allocation Issues</u>. This term is defined the same way in both escrow agreements as follows:

> WHEREAS, the Parties have been unable to consensually resolve, among other items, (a) the allocation of the Cash Component (as defined in the Purchase Agreement) between the estate of the U.S. Seller (the "**U.S. Estate**") and the estates of the Canadian Sellers (the "**Canadian Estates**"), (b) the repayment obligations between the U.S. Seller and the Canadian Sellers under the DIP Credit Facility, including without limitation any alleged subrogation rights of the U.S. Seller against the Canadian Sellers, (c) any alleged setoff rights of White Birch Paper Company whereby any subrogation claim could be setoff against all or a part of the Intercompany Claim, (d) the interpretation of the Purchase Agreement, including section 5.17 thereof, (e) whether the Intercompany claim should be disallowed or recharacterized as equity, (f) allocation of fees, expenses, and expenditures, including but not limited to professional fees, expenses and expenditures, between the U.S. Seller and the Canadian Sellers collectively, along with any other issues raised or to be raised by any Party which could affect estate allocation or distribution of proceeds, whether previously identified or not, the "**Estate Allocation Issues**");

24.2. Intention and Preservation of Rights. The first Section to both escrow agreements provides:

> Section 1.1 Intent of the U.S Seller, the Canadian Sellers and the Purchaser. It is the intent of the U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor in establishing the Escrow Funds to facilitate closure of the Sale pursuant to the Purchase Agreement and enable the U.S. Seller and the Canadian Sellers to emerge from Bankruptcy and the CCAA proceedings, respectively, without impairing any party's rights with respect to the Escrow Funds and the Estate Allocation Issues.
>
> Section 1.2 Preservation of Rights. The U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor agree that the Reservation of Rights Settlement Agreement, attached hereto as Exhibit A, reserves the rights of all parties to the Reservation of Rights Settlement Agreement as more fully set forth therein.

24.3. Disbursement of Escrowed Funds. Both escrow agreements provide that the Escrowed Funds can only be disbursed under two circumstances, "upon the issuance of joint final non appealable orders from the U.S. Bankruptcy Court and the Canadian Court resolving the Estate Allocation Issues" (section 3.1) or "upon joint written instructions by the U.S. Seller and the Canadian Sellers and the Purchaser and the Canadian Monitor" (section 3.2).

Allocation of proceeds between WB Canada and Bear Island

25. In the course of discussions on the question of the allocation of proceeds, both before and since the closing, several issues have been identified, each having varying degrees of complexity, all of which could affect the outcome. These issues consists essentially of:

25.1. The basis of allocation of the Cash Component of the sale price amongst the estates.

25.2. The sequence of events during the closing.

25.3. The allocation of common expenses between the estates and the recovery by WB Canada of amounts paid on behalf of or for the benefit of Bear Island;

25.4. Who derived a benefit from the Interim Financing and who should bear the responsibility to repay the Interim Financing amount, and whether this repayment could give rise to a claim against the other debtor, by subrogation.

25.5. Whether a subrogation claim advanced by Bear Island, if one can be asserted, could be extinguished through compensation or set-off in view of the large amount due by Bear Island to White Birch of approximately US$136 million (discussed later in this report).

25.6. Whether the claim of WB Canada against Bear Island would give rise to a right to participate in an eventual distribution of funds in the context of the proceedings of Bear Island pursuant to Chapter 11 of the Code (discussed later in this report).

26. The various issues outlined above are complex and sometimes interdependent. By way of example, the determination of an allocation of the common expenses and of expenses paid by one party for the account or for the benefit of the other would have a direct impact on the quantum of the purported claim of one debtor against the other, by subrogation.

27. Unless the issues can be resolved by agreement amongst the parties, the involvement of the Courts will be required, and substantially all of the issues, if not all of them, affect both estates directly.

28. In view of this fact, the Monitor is of the view that all Estate Allocation Issues should be addressed globally and that separate and discrete litigations with respect to each Estate Allocation Issue, each with its own discovery path rules of procedure and evidence, time schedule and appeal rights will create an endless tangle of expensive and protracted litigation at the expense of creditors of both Estates and in the end will not allow for the disbursement of Escrowed Funds, unless the parties agree to coordinate their efforts.

29. To this end, the Monitor invited the interested parties in both estates to participate to a telephone conference on November 21, 2012 and suggested that further telephone conferences be scheduled to identify all Estate Allocation Issues and to discuss a process to negotiate, mediate or litigate same before the U.S. and Canadian Courts in a coordinated manner.

30. Whether the issues can be resolved by agreement or through litigation before the Courts, the Monitor cautions that further information is required to properly quantify the issues that may separate the parties. Conducting negotiations in the absence of this information would result in an information imbalance that is not conducive to a fair result. The Monitor has requested this information following the closing of the transaction and further information is required for it to properly assess the issues and report to the Court.

31. Based on the (incomplete) information presently available, the Monitor believes that the issues, in aggregate, could represent a difference in outcome of approximately US$43.0 million for each of WB Canada and Bear Island.

32. Although there has not yet been agreement on the Estate Allocation Issues, the Monitor has not abandoned hope of a consensual resolution of the issues.

Proceedings in the US to recharacterize the claim of WB Canada against Bear Island

33. On September 17, 2012, the Official Committee of Unsecured Creditors of Bear Island Paper Company, LLC ("**UCC**") filed a Notice of Objection and Motion to Recharacterize ("**Motion to Recharacterize**"), in connection with the intercompany claim shown as due to White Birch by Bear Island, in the records of the Companies. A copy of the Motion to Recharacterize is attached to this report as Appendix F.

34. The amount presented as due by Bear Island to White Birch had been presented as a scheduled debt in documentation filed by Bear Island in connection with the proceedings under Chapter 11 of the Code, including in Bear Island's monthly operating reports[11]. As well, Bear Island's plan filed pursuant to the Code and the disclosure statement prepared in connection therewith, both refer to an amount due to White Birch that would be entitled to participate in a distribution on a *pari passu* basis with the ordinary unsecured creditors. The disclosure statement had been filed with the U.S. Court and approved by it as containing adequate information[12], and we understand Bear Island's plan has been accepted by the required majority of creditors.

35. In view of the entries in the records of both White Birch and Bear Island, the contents of the plan and disclosure statement and the discussions previously held with the Companies' Management and financial advisers, the Monitor was convinced that the intercompany amount was properly presented as an intercompany debt of approximately US$136 million. Some inference had been made in the past by the attorneys representing the UCC regarding the possibility that the claim may be treated as equity, although this inference was expressed in the context of discussions of the relative positions of the parties regarding the allocation of proceeds amongst the estates and was perceived as a negotiation position.

36. Approximately two weeks after the filing of the Motion to Recharacterize, a resolution of the Board of Directors passed in April 2005 was located and was communicated for the first time to the Monitor. The said resolution indicates that the original amount transferred to Bear Island of approximately US$143 million, which was the first and most significant entry in the intercompany account, was intended to be a capitalization of Bear Island through a purchase of units, rather than a loan. A copy of the resolution forwarded to the Monitor on October 3, 2012 is attached as Appendix G.

37. Although the above-mentioned resolution suggests that the originating entry giving rise to the intercompany debt was mis-recorded in the Companies' books, the Monitor felt it was necessary to intervene in the proceedings in the U.S. in respect of the Motion to Recharacterize, for the following reasons:

37.1. The intercompany amount is a significant asset of White Birch, and more investigation is required to assess why the transactions were recorded as an intercompany debt instead of equity as is suggested by the resolution.

37.2. The existence of an intercompany debt could have an impact on the allocation of proceeds between the Canadian and US estates, in view of the fact that one of the arguments of the parties that favour a high distribution to the U.S. estate is based on a claim against White Birch by subrogation, while White Birch might assert a claim against Bear Island for compensation as a result of amounts due to it by Bear Island. As such, the issue of the existence of an intercompany debt between Bear Island and

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11 See for example docket entries 661 and 922 in the Bear Island proceedings, accessible through Garden City's website at www.gcginc.com/cases/bip/.

12 See docket entries no 958 and 961 in the Bear Island proceedings, accessible through Garden City's website at www.gcginc.com/cases/bip/.

White Birch does not affect only a residual distribution to ordinary creditors from proceeds allocated to Bear Island, but may also affect the entitlement to the proceeds generated from the sale transaction with BDWBI.

37.3. The Monitor's view based on the wording of the reservation of rights and the escrow agreements executed in connection with the closing of the transaction with BDWBI is that recharacterization of the intercompany debt (amongst others) is an allocation issue and should be resolved in the context of a joint hearing. The UCC and Black Diamond disagreed and the U.S. Court concluded that a joint hearing with respect to recharacterization of the intercompany debt was not required.

37.4. Even if the original entry was misrecorded as debt rather than equity, there are a number of other sizeable entries in the intercompany records, in connection with expenses charged back to Bear Island, expenses paid on behalf of Bear Island and payments made by Bear Island to White Birch. The expenses comprise primarily an allocation of interest charges incurred by White Birch in view of the fact that White Birch acted as WB Group's financing structure and miscellaneous expenses such as insurance charges paid on behalf of Bear Island. Based on our cursory review of the records, there could remain a sizeable intercompany debt as at the date of inception of the restructuring proceedings under the Code.

38. In view of the above, the Monitor first applied to the Court for an order approving the cross border protocol. The protocol was approved by the Court by judgment rendered on October 10, 2012. Contemporaneously, the Monitor obtained from the attorneys representing the UCC an extension of the delay to file a contestation to the Motion to Recharacterize, as the process in the U.S. contemplated a deadline of October 10, 2012 to file a contestation of the Motion to Recharacterize, and a hearing on the Motion to recharacterize on October 17, 2012. In view of the importance of the claim; the fact that the Monitor arguably had no standing to contest unless and until the cross border protocol was approved; and the inconsistency between the accounting treatment and the resolution, the Monitor could not file a contestation by the originally scheduled deadline.

39. The Monitor and its attorneys attended at an examination of Mr. Ed Sherrick, the Companies' Senior Vice-President and CFO, on October 23, 2012. As a result of the deposition of Mr. Sherrick, the Monitor believes that further information is required regarding the intercompany amount, and in particular the reasons why the records would reflect a debt if the original entry was intended to be a subscription for equity interests in Bear Island.

40. In view of the Monitor's conclusion regarding the need for further information, and in view of the factors and considerations as outlined in paragraph 37 above, the Monitor instructed its attorneys to file a contestation to the Motion to Recharacterize. A copy of the contestation filed on behalf of the Monitor is attached to this report as Appendix H.[13]

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[13] A response, a joinder and response, and a surreply were also filed by the attorneys representing the UCC and the attorneys representing Black Diamond. These are not described in detail herein, as they merely emphasize the difference of opinion regarding the characterization of the intercompany amount presented as due from Bear Island to White Birch, or comment the perceived strength or weakness of the arguments already put forward in the

41. A hearing was held in the U.S. Court connection with the Motion to Recharacterize, on November 19, 2012. During said hearing, the Monitor asked for an adjournment to allow the parties and the Courts to make use of the procedures available under the Cross-Border Protocol, including holding joint hearing(s) "with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Case or the [CCAA Proceedings] if both Courts determine and agree that such Joint Hearings are necessary and advisable", or to depose further witnesses knowledgeable about the treatment of the Intercompany Claim by both Bear Island and White Birch Canada for the past seven years.

42. Both requests were objected to by the UCC and BDWBI, and were denied by the U.S. Court, which tentatively ruled in favour of the UCC (at. p. 62 of the transcript of the hearing in the U.S. Court, attached to this report as Appendix "I"):

> I'm not going to make a ruling today on the specific numbers. I recognize there may be some exceptions. What I am going to do is I'm going to tentatively rule in favor of the Committee's and Black Diamond's motion. I'm going to ask the Committee and Black Diamond to submit proposed findings of fact and conclusions of law. Since we're in the holiday season I'm going to suggest that they come in by January the 7th.
>
> Mr. Coleman, the monitor will have 30 days to submit its own response. And both of you, of course, could have more time if it's necessary.

Correspondence pertaining to the pension plans

43. The Monitor is aware that correspondence is still being exchanged between the attorney representing the Regroupement des Employés Retraités de White Birch Stadacona ("**Regroupement**") and the attorneys representing BDWBI, in connection with the pension plans that were terminated, and the commitment made by BDWBI in the context of the negotiations towards a new collective bargaining agreement, to contribute an amount for the benefit of employees and pensioners, on account of past services. The Monitor understood from this correspondence that the Regroupement complains that BDWBI has not yet adequately explained the extent of its commitment regarding such a contribution. The Monitor has been informed that counsel representing the Regroupement will be unable to attend the hearing on November 30, 2012, but would like to attend by way of telephone conference should issues relating to pensioners and retirees be dealt with during the hearing.

CONCLUSIONS AND RECOMMENDATIONS

44. The Initial Order as previously extended is scheduled to expire on November 30, 2012, and the Applicants have indicated their intention to seek a further extension of the Initial Order.

45. The Companies have made substantial progress, in that the closing of the transaction with BDWBI has occurred, and the operations of the plants are continuing, through new entities. However, the process is not complete, as the parties have not yet been able to agree on an

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Motion to Recharacterize or in the contestation filed by the Monitor. The response, the joinder and response, and the surreply are accessible on Garden City's website at www.gcginc.com/cases/bip/.

allocation of the proceeds resulting from the sale transaction. While there have been difficulties in discussing a settlement of the issues surrounding the allocation of proceeds amongst the estates, the Monitor has not abandoned hope of a consensual resolution of the issues.

46. 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.

47. 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.

48. 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 28th day of November 2012.

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

Appendix A – Cash flow projections of WB Group - 13 weeks ending November 30, 2012

White Birch Paper

13-Week Cash Flow Forecast

Weeks Ending Sep. 7 through Nov. 30, 2012

9/6/2012

Confidential

White Birch Paper **CONSOLIDATED** **CONFIDENTIAL**

Rolling Weekly Forecast In $000's

Weeks Ended Sep. 7 - Nov. 30, 2012

	1	2	3	4	5	6	7	8	9	10	11	12	13	
	Wk Ended	Wk Ending	Wk Ending	Wk Ending	Wk Ending	Wk Ending	Wk Ending	Wk Ending	Wk Ending	Wk Ending	Wk Ending	Wk Ending	Wk Ending	13 Week
	9/7	9/14	9/21	9/28	10/5	10/12	10/19	10/26	11/2	11/9	11/16	11/23	11/30	Total
Operating Receipts														
Bear Island	$ 3,547	$ 2,452	$ 3,737	$ 4,737	$ 2,672	$ 2,150	$ 3,700	$ 2,430	$ 4,250	$ 2,455	$ 2,350	$ 3,565	$ 4,260	$ 42,303
Stadacona	1,017	1,127	1,464	3,086	4,346	3,665	3,540	3,870	4,505	4,603	4,347	3,988	4,825	44,382
F. F. Soucy	6,160	1,975	2,554	3,499	3,443	2,078	3,671	2,745	4,326	3,411	3,115	2,699	4,249	43,926
Papier Masson	4,247	3,085	3,838	3,282	4,655	2,606	3,090	2,544	3,071	3,461	2,942	2,503	2,386	41,710
Total Operating Receipts	14,971	8,638	11,593	14,603	15,116	10,498	14,000	11,590	16,152	13,930	12,754	12,755	15,721	172,322
Operating Disbursements														
Fiber	(2,981)	(3,060)	(3,054)	(3,177)	(3,197)	(3,288)	(3,324)	(3,288)	(3,324)	(3,324)	(3,324)	(3,294)	(3,244)	(41,876)
Chemicals	(546)	(586)	(352)	(393)	(600)	(387)	(617)	(442)	(421)	(592)	(617)	(387)	(443)	(6,385)
Electricity	(3,007)	(2,875)	(2,885)	(2,875)	(3,042)	(2,882)	(3,138)	(2,893)	(3,047)	(2,935)	(2,880)	(2,479)	(3,031)	(37,971)
Recycle Material	(430)	(432)	(451)	(459)	(575)	(500)	(500)	(500)	(625)	(550)	(550)	(550)	(625)	(6,744)
Other Materials and Other Utilities	(1,539)	(1,713)	(1,566)	(1,482)	(1,263)	(1,492)	(1,355)	(1,484)	(1,490)	(1,528)	(1,606)	(1,447)	(1,435)	(19,399)
Property Taxes	-	(5)	-	(108)	-	(5)	-	-	-	(5)	(24)	-	-	(147)
Salaried and Hourly Payroll- Gross	(1,482)	(1,581)	(1,247)	(1,462)	(1,377)	(1,606)	(1,161)	(1,411)	(1,402)	(1,411)	(1,122)	(1,487)	(1,377)	(18,123)
Pension Plan and Group insurance	(405)	(2)	(329)	(360)	(405)	(2)	(151)	(538)	(104)	(303)	(104)	(538)	(2)	(3,243)
Freight	(1,617)	(1,584)	(1,533)	(1,487)	(1,557)	(1,587)	(1,424)	(1,613)	(1,657)	(1,687)	(1,657)	(1,771)	(1,657)	(20,831)
Maintenance Equipment	(518)	(292)	(461)	(329)	(525)	(321)	(463)	(342)	(302)	(271)	(291)	(335)	(266)	(4,718)
Major Maintenance	(80)	(62)	(70)	(20)	(10)	(20)	(366)	(382)	(163)	(60)	(10)	(20)	(10)	(1,276)
Capital Expenditures	(173)	(729)	(626)	(480)	(613)	(105)	(309)	(314)	(303)	(73)	(413)	-	-	(4,138)
Professional Fees	(4)	(25)	(28)	(25)	(25)	(33)	(25)	(25)	(28)	(25)	(25)	(36)	(25)	(328)
Leases	-	(21)	(5)	(1)	-	(0)	(21)	(6)	-	(30)	(2)	(5)	-	(90)
Other	(129)	(27)	(27)	(2)	(27)	(257)	(27)	(27)	(27)	(282)	(27)	(27)	(27)	(915)
Management Fee	-	(606)	-	(925)	-	(781)	-	-	(925)	-	(781)	-	(925)	(4,942)
Total Operating Disbursements	(12,913)	(13,601)	(12,636)	(13,584)	(13,215)	(13,267)	(12,880)	(13,264)	(13,817)	(13,077)	(13,431)	(12,376)	(13,068)	(171,128)
Net Operating Cash Flow	2,058	(4,963)	(1,043)	1,019	1,901	(2,768)	1,120	(1,674)	2,335	853	(677)	379	2,653	1,194
Non Operating Cash Flow and Restructuring														
Restructuring Professional Fees	(523)	(7,613)	-	-	-	-	(1,605)	-	-	-	-	(1,300)	-	(11,042)
Restructuring Bank Fees and Other Expenses	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Transfers	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest Payments	(207)	(207)	(207)	(207)	(207)	(207)	(207)	(207)	(207)	(207)	(207)	(207)	(207)	(2,691)
Total Non-Operating Cash Flow and Restructuring	(730)	(7,820)	(207)	(207)	(207)	(207)	(1,812)	(207)	(207)	(207)	(207)	(1,507)	(207)	(13,733)
Net Operating Receipts (Disbursements)	$ 1,328	$ (12,783)	$ (1,250)	$ 812	$ 1,694	$ (2,975)	$ (692)	$ (1,881)	$ 2,128	$ 646	$ (884)	$ (1,128)	$ 2,446	$ (12,539)
BEG. BOOK CASH BALANCE	$ 96,774	$ 98,102	$ 85,319	$ 84,068	$ 84,880	$ 86,574	$ 83,599	$ 82,907	$ 81,026	$ 83,154	$ 83,800	$ 82,916	$ 81,788	$ 96,774
Net Receipts (Disbursements)	1,328	(12,783)	(1,250)	812	1,694	(2,975)	(692)	(1,881)	2,128	646	(884)	(1,128)	2,446	(12,539)
DIP Term Loan (Repayment) / Borrowing	-	-	-	-	-	-	-	-	-	-	-	-	-	-
ENDING BOOK CASH BALANCE	98,102	85,319	84,068	84,880	86,574	83,599	82,907	81,026	83,154	83,800	82,916	81,788	84,235	84,235
Unused DIP Commitment	34,045	34,045	34,045	34,045	34,045	34,045	34,045	34,045	34,045	34,045	34,045	34,045	34,045	34,045
LIQUIDITY	$ 132,147	$ 119,364	$ 118,113	$ 118,925	$ 120,619	$ 117,644	$ 116,952	$ 115,071	$ 117,199	$ 117,845	$ 116,961	$ 115,833	$ 118,280	$ 118,280
DIP TERM LOAN BALANCE														
DIP Loan Balance at Beg. of Week	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955
DIP Term Loan (Repayment) / Borrowing	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Loan Balance at End of Week	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955	$ 87,955

Key Assumptions:

1 - **Bankruptcy Filing:**
- Petition Date was February 24, 2010
- Prior service cost component of pension contributions in Canada of CAD $1.5 million are assumed suspended until emergence - savings of approximately $1.5 million CAD per month
- Except for restructuring professional fees (as discussed below), no cash payments or other assumptions regarding emerging from CCAA and Chapter 11 Bankruptcy, or a 363 Sale of the Company, are reflected in the forecast
- Restructuring professional fees for the week ended Sept. 14, 2012 includes approximately $5.0 million for estimated professional fees accrued and unpaid through that date, as well as a $2.6 million sale transaction fee

2 - **Includes the Following DIP Financing Assumptions:**
- Pre-petition ABL facility was replaced with a super priority delayed draw term loan facility of $140 million (DIP Facility) on March 1, 2010 with terms, as follows:
  - Interest at L+1,000 bps; 2% Libor floor
  - DIP facility priced with a 250bps arrangement fee, a 250bps commitment fee and $100k annual administrative fee
  - Interest on borrowings paid weekly, as due
  - DIP loans paid or repaid may be reborrowed (subject to the prior written consent of the Majority Lenders)
- Aggregate reserves approximate $18.0 million for the D&O charge and the administrative charge, a carve-out for professional fees and a Canadian Priority Reserve
- Liquidity reflected at any given week includes unused DIP commitment
- Forecast does not reflect any repayment of DIP loans that may occur in connection with emerging from CCAA and Chapter 11 Bankruptcy, or a 363 Sale of the Company

3 - **Assumes spot rate of C$0.98 to US $1.00 throughout the forecast period**

4 - **Stadacona mill start-up was effective August 2, 2012**
Full production at all other mills

5 - **Assumes no payment will be made for notice, severance or other similar labour cost in connection with the prior closure of the Stadacona mill, as the initial order contemplates these will be dealt with through the plan of arrangement.**

6 - **Preliminary and subject to change**

Appendix B –Comparison of actual and projected results for the 2 weeks ended September 14, 2012

White Birch Paper

Cash Flow Forecast - Variance Report
Actual Compared With 13-Week CFF (Dated September 6, 2012)

For the Weeks Ended September 14, 2012

11/22/2012

Confidential

White Birch Paper (Consolidated)
Cash Flow Forecast Variance Report to 13-Week CFF (Dated 9/6/12)
Weeks Ended September 14, 2012

	In $000's		
	Cumulative 2-Week Variance to 13-Week CFF		
	Actual 9/1 Through 9/14	Forecast 9/1 Through 9/14	B (W) than Forecast 9/14
Operating Receipts			
Bear Island	$ 3,994	$ 5,998	$ (2,004)
Stadacona	1,995	2,144	(149)
F.F. Soucy	6,996	8,135	(1,139)
Papier Masson	5,930	7,332	(1,402)
Total Operating Receipts	18,915	23,609	(4,694)
Operating Disbursements			
Fiber	(5,906)	(6,041)	135
Chemicals	(1,391)	(1,132)	(258)
Electricity	(7,014)	(5,883)	(1,131)
Recycle Material	(697)	(862)	165
Other Materials and Other Utilities	(3,709)	(3,252)	(457)
Property Taxes	(5)	(5)	(0)
Salaried and Hourly Payroll - Gross	(3,774)	(3,063)	(711)
Pension Plan and Group Insurance	(1,467)	(407)	(1,060)
Freight	(4,046)	(3,201)	(845)
Maintenance Equipment	(915)	(810)	(104)
Major Maintenance	(234)	(143)	(92)
Capital Expenditures	(212)	(902)	690
Professional Fees	(29)	(29)	(0)
Leases	-	(21)	21
Other	(44)	(156)	112
Management Fee	(1,277)	(606)	(671)
Total Operating Disbursements	(30,720)	(26,513)	(4,207)
Net Operating Cash Flow	(11,805)	(2,904)	(8,901)
Non Operating Cash Flow and Restructuring			
Restructuring Professional Fees	(2,756)	(8,137)	5,381
Net Cash Flow From Asset Sale Transaction	6,256	-	6,256
Intercompany Transfers	-	-	-
Interest Payments	(513)	(414)	(99)
Total Non-Operating Cash Flow and Restructuring	2,987	(8,551)	11,538
Net Operating Receipts (Disbursements)	$ (8,819)	$ (11,455)	$ 2,636
BEG. BOOK CASH BALANCE	$ 96,774	$ 96,774	$ 0
Net Receipts (Disbursements)	(8,819)	(11,455)	2,636
DIP Term Loan Borrowing	(87,955)	-	(87,955)
GE ABL Borrowing (Repayment)	-	-	-
ENDING BOOK CASH BALANCE	(0)	85,319	(85,319)
Unused DIP Commitment	-	34,045	(34,045)
LIQUIDITY	$ (0)	$ 119,364	$ (119,364)
DIP TERM LOAN BALANCE			
DIP Loan Balance at Beg. of Week / Period	$ 87,955	$ 87,955	$ -
DIP Term Loan Borrowing	(87,955)	-	(87,955)
DIP Loan Balance at End of Week / Period	$ -	$ 87,955	$ (87,955)

White Birch Paper Holding Company - WB Canada Only
Cash Flow Forecast - Cumulative Variance Report to 13-Week CFF (Dated 9/6/12)
Weeks Ended September 14, 2012

	In $000's		
	Cumulative 2-Week Variance to 13-Week CFF		
	Actual 9/1 to 9/14	Forecast 9/1 to 9/14	B (W) than Forecast 9/14
Operating Receipts			
Stadacona	1,995	2,144	(149)
F.F. Soucy	6,996	8,135	(1,139)
Papier Masson	5,930	7,332	(1,402)
Total Operating Receipts	14,921	17,611	(2,690)
Operating Disbursements			
Fiber	(5,164)	(5,236)	72
Chemicals	(878)	(640)	(237)
Electricity	(5,809)	(4,678)	(1,131)
Recycle Material	(325)	(508)	183
Other Materials and Other Utilities	(2,594)	(2,444)	(150)
Property Taxes	(5)	-	(5)
Salaried and Hourly Payroll - Gross	(3,082)	(2,204)	(878)
Pension Plan and Group Insurance	(1,467)	(407)	(1,060)
Freight	(3,485)	(2,655)	(830)
Maintenance Equipment	(784)	(543)	(240)
Major Maintenance	(164)	(31)	(134)
Capital Expenditures	(104)	(808)	704
Professional Fees	(29)	(29)	-
Leases	-	-	-
Other	(44)	(156)	112
Management Fee	(1,016)	(464)	(552)
Total Operating Disbursements	(24,949)	(20,803)	(4,146)
Net Operating Cash Flow	(10,028)	(3,192)	(6,836)
Non Operating Cash Flow and Restructuring			
Restructuring Professional Fees	(1,704)	(5,914)	4,210
Net Cash Flow From Asset Sale Transaction	34,296	-	34,296
Intercompany Transfers	724	-	724
Interest Payments	(513)	(414)	(99)
Total Non-Operating Cash Flow and Restructuring	32,803	(6,328)	39,131
Net Operating Receipts (Disbursements)	$ 22,775	$ (9,519)	$ 32,295
BEG. BOOK CASH BALANCE	$ 65,180	$ 65,180	$ -
Net Receipts (Disbursements)	22,775	(9,519)	32,295
DIP Term Loan Borrowing	(87,955)	-	(87,955)
GE ABL Borrowing (Repayment)	-	-	-
ENDING BOOK CASH BALANCE	(0)	55,660	(55,660)
Unused DIP Commitment	-	34,045	(34,045)
LIQUIDITY	$ (0)	$ 89,705	$ (89,705)
DIP TERM LOAN BALANCE			
DIP Loan Balance at Beg. of Week / Period	$ 87,955	$ 87,955	$ -
DIP Term Loan Repayment/Credit	(87,955)	-	(87,955)
DIP Loan Balance at End of Week / Period	$ -	$ 87,955	$ (87,955)

Appendix C – Flow of Funds Schedule used in connection with the closing of the transaction with BDWBI on September 13, 2012

White Birch Paper Company
Funds Flow
Updated: 9/14/12

CONFIDENTIAL DRAFT - PREPARED AT THE REQUEST OF COUNSEL FOR SETTLEMENT DISCUSSIONS - SUBJECT TO FRE 408

(in US Dollars, unless otherwise noted)

	MEMO			DEBTOR Pre-Closing Bear Island Estate	DEBTOR Pre-Closing Canadian Estate	DEBTOR Pre-Closing Consolidated White Birch	CASH INFLOWS/(OUTFLOWS) Purchaser	CASH INFLOWS/(OUTFLOWS) Post-Closing Bear Island Estate	CASH INFLOWS/(OUTFLOWS) Post-Closing Canadian Estate	CASH INFLOWS/(OUTFLOWS) Reservation of Rights Escrow	CASH INFLOWS/(OUTFLOWS) OTHER PARTIES
Pre-Closing:											
Sellers Estimated Book Cash at Closing **(A)**				30,252,249.13	50,919,315.91	81,171,565.04					
Repayment of BIPCO of Letter of Credit to CAD **(B)**				(1,820,253.00)	1,820,253.00	-					
Closing Allocation of HSBC Lockbox Amounts				462,375.64	1,895,089.65	2,357,465.29					
Adjusted Seller's Estimated Cash at Closing				28,894,371.77	54,634,658.56	83,529,030.33					
Closing:											
1. Cash Outflows (Per Section 5.17 of the ASA):											
a. Cure cost cap overage **(C)**				-	-	-	$ -	$ -	$ -	$ -	$ -
b. Professional fees (not requiring Court approval, or approved) **(D)**				(143,631.34)	(877,299.72)	(1,020,931.06)	-	-	-	-	1,020,931.06
c. Professional fees (requiring Court approval) **(D)**				(711,055.52)	-	(711,055.52)	-	-	-	-	711,055.52
d. Professional fees to be held in segregated account **(D)**				-	(5,325,860.95)	(5,325,860.95)	-	-	-	-	5,325,860.95
e.1 Canadian Wind-down Amount **(E)**				-	(3,000,000.00)	(3,000,000.00)	-	-	3,000,000.00	-	-
e.2 U.S. Wind-down Amount **(F)**				(600,000.00)	-	(600,000.00)	-	600,000.00	-	-	-
Sub-total cash available				27,439,684.91	45,431,497.89	72,871,182.80		27,439,684.91	45,431,497.89		
Note: Ratio for Each Estate				37.7%	62.3%	100.0%					
2. Cash Purchase Price:	Note: FX Rate		1.0249								
a. Purchase Price			90,000,000.00								
a.i. Adj. for Section 6.6 Periodic Taxes - US Property	Note: CAD$		(47,169.86)								
a.ii. Adj. for Section 6.6 Periodic Taxes - CAD		359,553.62	368,506.51								
Less: Book Adjustment with DIP Agent **(G)**			(75,015,905.28)								
Balance of Cash Purchase Price			15,305,431.37	-	15,305,431.37	15,305,431.37	(15,305,431.37)	-	15,305,431.37	-	-
Note: Ratio for Each Estate				0.0%	100.0%	100.0%					
Estimated DIP balance at 9/13 (including est. unpaid interest) **(H)**			88,054,116.11								
Less: Book Adjustment with DIP Agent			(75,015,905.28)								
Remaining DIP Balance			13,038,210.83								
Repayment of DIP - if necessary:			(13,038,210.83)	-	(13,038,210.83)	(13,038,210.83)	-	-	(13,038,210.83)	-	13,038,210.83
Note: Ratio for Each Estate				0.0%	100.0%	100.0%					
b. Fixed Asset Cash Amount	Note: CAD$										
i. S3I **(I)**		(1,748,857.76)	(1,792,404.32)				(1,792,404.32)	-	-	-	1,792,404.32
ii. KSH **(J)**	Balance to KSH		(2,707,595.68)				(2,707,595.68)	-	-	-	2,707,595.68
Total Fixed Asset Cash Amount		(4,388,959.33)	(4,500,000.00)								
3. ASA Deposit Escrow **(K)**			(5,000,979.53)				4,897,772.00	103,207.53	-	-	(5,000,979.53)
4. Land Transfer Taxes and Title Insurance:											
a. Bear Island			(29,403.00)				-	(29,403.00)	-	-	29,403.00
b. Canadian Transfer Taxes			-				-	-	-	-	-
5. Reservation of Rights Escrow **(L)**			44,500,000.00 #				-	(19,500,000.00)	(25,000,000.00)	44,500,000.00	-
6. Canadian Wind-Down Amount - Held by Monitor			(3,000,000.00)				-	-	(3,000,000.00)	-	3,000,000.00
7. Allowed 503(b)(9) Claims **(M)**			(870,790.34)								
Credit from ASA Deposit Escrow			103,207.53								
Net Amount Due from Purchaser			(767,582.81)				(767,582.81)	767,582.81	-	-	-
8. Reserve Payment Amount **(N)**	Note: CAD$	(701,617.00)	(719,087.26)				(719,087.26)	-	-		719,087.26
9. U.S. UCC Agreed Upon Payment **(O)**			(400,000.00)				(400,000.00)	400,000.00	-	-	-

White Birch Paper Company
Funds Flow
Updated: 9/14/12

CONFIDENTIAL DRAFT - PREPARED AT THE REQUEST OF COUNSEL FOR SETTLEMENT DISCUSSIONS - SUBJECT TO FRE 408

(in US Dollars, unless otherwise noted)

				DEBTOR			CASH INFLOWS/(OUTFLOWS)				
				Pre-Closing Bear Island Estate	**Pre-Closing Canadian Estate**	**Pre-Closing Consolidated White Birch**	**Purchaser**	**Post-Closing Bear Island Estate**	**Post-Closing Canadian Estate**	**Reservation of Rights Escrow**	**OTHER PARTIES**
Note: Secondary Disbursements - Shortly After Closing:											
Rappahannock Cure Amount			(4,097,207.31)				(4,097,207.31)	-	-	-	4,097,207.31
BIPCO Cure Amounts (x-Rappahannock)			(800,564.69)				(800,564.69)	-	-	-	800,564.69
BIPCO Allowed 503(b)(9) Claims **(M)**			(870,790.34)				-	(870,790.34)	-	-	870,790.34
U.S. UCC Agreed Upon Payment **(O)**	Note: CAD$		(400,000.00)				-	(400,000.00)	-	-	400,000.00
CAD Cure Amounts		(905,488.16)	(928,034.82)				(928,034.82)	-	-	-	928,034.82
NET CASH FLOW / INITIAL ESTATE DISTRIBUTION				**$ (28,894,372)**	**$ (54,634,659)**	**$ (83,529,030)**	**$ (22,620,136)**	**$ 8,510,282**	**$ 22,698,718**	**$ 44,500,000**	**$ 30,440,166**
								Paid		cad	
									1,537,350.00	Partial Payment	
									21,161,368.42	Payment 2 needed	

NOTES TO FUNDS FLOW:

A - Represents estimated ending book cash balance at June 12, 2012 (cash amount will be left to cover o/s checks as of closing). Note amount excludes restricted cash of $3.2 million related to cash collateralized letters of credit (and outside of the Company's control)

B - Cash collateral of $1,820,253 is currently held by the State of Virginia. L/C amount, plus premium (totaling $1,911,266) was funded by White Birch Canada, on Bear Island's behalf, upon the repayment of the ABL loan. This adjustment is to settle the payable from Bear Island to White Birch Canada (premium was already returned to Canada).

C - There will not likely be any Cure Cost overage. Thus, this amount is currently estimated at zero

D - Professional fees requiring Court approval will be paid to the Escrow Agent, to be held in escrow, for future disbursement to the respective professionals, whereas, fees not requiring Court approval will be paid directly to such professionals. Amounts in dispute will be held in a segregated account by the Monitor. Please see separate analysis, attached

E - The Canadian Wind-down Amount will be paid to the Monitor, to be held for future disbursement to the professionals

F - The US Wind-down Amount will be paid to the Bear Island Estate, to be held in for future disbursement to the professionals

G - Amount represents Purchase Price that has been has been "round tripped" by the Purchaser (as DIP Lender), as directed by the DIP Agent

H - Represents unpaid principal and accrued interest balance at closing (as confirmed by the DIP Agent), as follows:

DIP (Principal)	$ (87,955,000.00)		$ (87,955,000.00)
DIP (accrued interest)	(58,636.67)		
DIP (commitment fees)	(40,479.44)		
TOTAL DIP	$ (88,054,116.11)		

I - To be paid by the Purchaser to SI3 (face amount of claim is $1,780,000 CAD). Order has been received to pay amount

J - To be paid by the Purchaser, to be held in escrow by Monitor, and disbursed pending litigation resolution (face amount of claim is $2,720,000 CAD - however, will likely be limited to the residual after SI3 is paid).

K - Escrowed Funds (US$5,000,000 plus earnings) is paid by direction of payment to the ASA Escrow Agent as reduction of Cure Costs and 503(b)9 payments for the Bear Island Estate

L - Amounts agreed to by all parties-in-interest in the closing

M - To be paid by the Purchaser to the Bear Island Estate, for disbursement to 503(b)(9) claim holders - note amount will be partly offset by ASA Escrow amount

N - *Reserve Amount* , as defined in the APA, to be paid by the Purchaser to Monitor, then to CRA/MRQ, as applicable.

O - To be paid by the Purchaser to the UCC (Floor amount is $400K; ceiling is $650K)

Appendix D – Monitor’s Certificate – closing of the transaction with BDWBI on September 13, 2012

CANADA

SUPERIOR COURT
(Commercial Division)
The *Companies' Creditors Arrangement Act*

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-11-038474-108

MONTRÉAL, this 13th day of September, 2012

IN THE PRESENCE OF:
THE HONOURABLE ROBERT MONGEON, J.S.C.

IN THE MATTER OF THE PLAN OF ARRANGEMENT AND COMPROMISE OF:

WHITE BIRCH PAPER HOLDING COMPANY

-and-

WHITE BIRCH PAPER COMPANY

-and-

STADACONA GENERAL PARTNER INC.

-and-

BLACK SPRUCE PAPER INC.

-and-

F.F. SOUCY GENERAL PARTNER INC.

-and-

3120772 NOVA SCOTIA COMPANY

-and-

ARRIMAGE DE GROS CACOUNA INC.

-and-

PAPIER MASSON LTÉE

Debtors

-and-

ERNST & YOUNG INC.

Monitor

-and-

STADACONA LIMITED PARTNERSHIP

-and-

F.F. SOUCY LIMITED PARTNERSHIP

-and-

F.F. SOUCY, INC. & PARTNERS, LIMITED PARTNERSHIP

Mises en Cause

MONITOR'S CERTIFICATE

RECITALS:

A. Pursuant to an Order of the Honourable Robert Mongeon, J.S.C. dated February 24, 2010, the Debtors commenced proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) and Ernst & Young Inc. was appointed as the monitor (the "**Monitor**") of the Debtors and the Mises en Cause.

B. Pursuant to an Order of the Court dated September 28, 2010 and an Order of the Court dated December 9, 2010, the Court approved a sale transaction (the "**Transaction**") contemplated by an asset sale agreement (the "**Sale Agreement**") dated August 10, 2010 and amended on August 23, August 31, 2010 and on September 23, 2010, amongst White Birch Paper Company and the other entities identified therein as sellers (collectively, the "**Sellers**"), as sellers, and BD White Birch Investment LLC (the "**Purchaser**"), as purchaser, for the sale of substantially all of the Assets of the Sellers and provided for the vesting in the Purchaser or a Designated Purchaser of the Debtor and the Mises en Cause's right, title and interest in and to the Assets, which vesting is to be effective with respect to the Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in Article VIII of the Sale Agreement have been satisfied or waived by the Purchaser and/or the Sellers, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Monitor has received the Purchase Price for the Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in Article VIII of the Sale Agreement have been satisfied or waived by the Purchaser and/or the Sellers, as applicable; and

3. The Transaction has been completed to the satisfaction of the Monitor;

4. This Certificate was delivered by the Monitor at Montréal on September 13th, 2012.

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: ______________________
Name: Mario Denis, CA, CIRP
Title: Senior Vice-President

Appendix E – Reservation of Rights Agreement and Escrow Agreements

Reservation of Rights Settlement Agreement

This Settlement Agreement (the "**Agreement**") dated as of September 13, 2012 is entered into by and between Bear Island Paper Company, L.L.C., a Virginia limited liability company (the **"U.S. Seller"**), White Birch Paper Company, a Nova Scotia Unlimited Liability Company, along with its subsidiaries Stadacona General Partner Inc., Stadacona L.P., F.F. Soucy General Partner Inc., F.F. Soucy, Inc. & Partners, Limited Partnership, F.F. Soucy L.P., Arrimage de Gros Cacouna Inc. and Papier Masson Ltée, (the "**Canadian Sellers**"), BD White Birch Investment LLC, a Delaware limited liability company (the "**Purchaser**"), the Official Committee of Unsecured Creditors of Bear Island Paper Company, L.L.C. (the "**Unsecured Creditors' Committee**"), the Monitor appointed in the CCAA Proceedings (as defined below) (the "**Canadian Monitor**"), acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity, Credit Suisse AG, Cayman Islands Branch, solely in its capacity as US collateral agent (in such capacity, the "**US Collateral Agent**") under that certain *First Lien Term Loan Credit Agreement* entered into on or about April 8, 2005 (as amended and restated on January 27, 2006 and May 8, 2007, the "**First Lien Credit Agreement**") by White Birch Paper Holding Company, a Nova Scotia Unlimited Liability Company and the ultimate corporate parent to both the U.S. Seller and the Canadian Sellers, with Credit Suisse First Boston, as sole lead arranger, sole bookrunner, syndication agent and documentation agent, Credit Suisse AG, Cayman Islands Branch (f/k/a Credit Suisse, Cayman Islands Branch), as US collateral Agent, Credit Suisse AG, Toronto Branch (f/k/a Credit Suisse, Toronto Branch), as Canadian collateral agent and Administrative Agent and TD Securities (USA) LLC, as Co-Arranger, and Credit Suisse AG, Toronto Branch, solely in its capacity as Canadian Collateral Agent under the First Lien Credit Agreement (in such capacity, the "**Canadian Collateral Agent**") and Administrative Agent under the First Lien Credit Agreement (in such capacity, the "**Administrative Agent**" and collectively with the US Collateral Agent and Canadian Collateral Agent, the "**Agents**," and the Agents, collectively with the U.S. Seller, the Canadian Sellers, the Purchaser, the Unsecured Creditors' Committee, the Canadian Monitor, the "**Parties**," each of which is a "**Party**").

Recitals

WHEREAS, U.S. Seller is a debtor-in-possession under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "**Bankruptcy Code**") which commenced a voluntary proceeding (the "**Chapter 11 Case**") on February 24, 2010 by filing a petition for relief in the United States Bankruptcy Court for the Eastern District of Virginia (the "**U.S. Bankruptcy Court**");

WHEREAS, U.S. Seller continues to operate its business and manage its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Canadian Sellers are party to proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**," and the proceedings thereunder, the "**CCAA Proceedings**") which commenced on February 24, 2010 when the Canadian Sellers along with certain affiliates filed an application for protection pursuant to the CCAA in the Quebec Superior Court, District of Montreal (the "**Canadian Court**") and the Canadian Court issued an initial order for protection (the "**Initial CCAA Order**") on February 24, 2010;

WHEREAS, U.S. Seller, Canadian Sellers, and Purchaser have entered into that certain Asset Sale Agreement dated as of August 10, 2010 (as amended, modified, superseded or substituted from time to time, the "**Purchase Agreement**"), pursuant to which Purchaser has agreed, subject to the terms and conditions of the Purchase Agreement, to purchase certain assets from the U.S. Seller and the Canadian Sellers;

WHEREAS, pursuant to the Purchase Agreement, among other things, the purchase price includes a cash component of $90 million (the "**Cash Component**");

WHEREAS, the U.S. Seller and White Birch Paper Company, Stadacona L.P., F.F. Soucy L.P. and Papier Masson Ltée are party to the *$140,000,000 Senior Secured Super Priority Debtor-In-Possession Term Loan Credit Agreement*, dated as of March 1, 2010 and as amended, modified, supplemented or otherwise approved in the Initial CCAA Order and by an order of the Bankruptcy Court (the "**DIP Credit Agreement**" and the facility contemplated thereunder, the "**DIP Credit Facility**");

WHEREAS, White Birch Paper Company has booked an intercompany claim against the U.S. Seller for $135,920,395.00 (the "**Intercompany Claim**");

WHEREAS, the Parties have not consensually resolved, among other items, (a) the allocation of the Cash Component (as defined in the Purchase Agreement) between the estate of the U.S. Seller (the "**U.S. Estate**") and the estates of the Canadian Sellers (the "**Canadian Estates**"), (b) the repayment obligations between the U.S. Seller and the Canadian Sellers under the DIP Credit Facility, including without limitation any alleged subrogation rights of the U.S. Seller against the Canadian Sellers, (c) any alleged setoff rights of White Birch Paper Company whereby any subrogation claim could be setoff against all or a part of the Intercompany Claim, (d) the interpretation of the Purchase Agreement, including section 5.17 thereof, (e) whether the Intercompany Claim should be disallowed or recharacterized as equity, (f) allocation of fees, expenses, and expenditures, including but not limited to professional fees, expenses and expenditures, between the U.S. Seller and the Canadian Sellers (collectively, along with any other issues raised or to be raised by any Party which could affect Estate Allocation or distribution of proceeds, whether previously identified or not, the "**Estate Allocation Issues**");

WHEREAS, the sale contemplated pursuant to the Purchase Agreement is scheduled to close on September 13, 2012 (the "**Closing Date**"); and

WHEREAS, in order to close the sale on the Closing Date without impairing any Party's rights with respect to the Estate Allocation Issues, the Parties have agreed to establish an escrow fund in the United States (the "**U.S. Escrow Fund**") pursuant to the U.S. Estate Allocation Escrow Agreement (the "**U.S. Escrow Agreement**"), substantially in the form attached hereto as Exhibit A, to hold $19,500,000.00 and an escrow fund in Canada (the "**Canadian Escrow Fund**") pursuant to the Canadian Estate Allocation Escrow Agreement (the "**Canadian Escrow Agreement**"), substantially in the form attached hereto as Exhibit B, to hold $25,000,000.00 (collectively, the "**Escrow Funds**," which together hold $44,500,000.00) because of anticipated litigation in connection with the Estate Allocation Issues.

Agreement

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. All Parties acknowledge and agree that this Agreement and the Escrow Funds mechanism contemplated hereby are being used to facilitate the consummation of the Purchase Agreement. All Parties reserve and retain all rights with respect to the Estate Allocation Issues and the Escrow Funds. No admission shall be construed against any Party as a result of its execution of this Agreement, including but not limited to the jurisdiction in which any of the Escrow Funds are located.

2. All Parties acknowledge and agree that neither this Agreement, the U.S. Escrow Agreement, the Canadian Escrow Agreement, the deposit of the Escrow Funds in accordance therewith, nor the holding of such Escrow Funds will in any way affect or alter any Party's rights or the rights of any Party's successors and assigns with respect to the Estate Allocation Issues and the Escrow Funds.

3. All Parties acknowledge and agree that neither this Agreement, the U.S. Escrow Agreement, the Canadian Escrow Agreement, the deposit of the Escrow Funds in accordance therewith, nor the holding of such Escrow Funds will in any way limit or impose a cap on the recovery of any Party or its successors and assigns or alter, affect, or prejudice the rights of any Party or its successors and assigns to recover amounts in excess of the Escrow Funds from cash or property held by the U.S. Estate or the Canadian Estates as applicable.

4. No action, event, or outcome related to the flow of funds at closing (including, without limitation, cash balances after closing of each of the U.S. Seller and the Canadian Sellers), which occurred to close the transaction contemplated by the Purchase Agreement, shall be used in any way by any Party hereto or its successors and assigns against any other Party hereto and its successors and assigns. Moreover, neither this Agreement, nor any statement made or action taken in connection with the negotiation of this Agreement, shall be offered or received in evidence or in any way referred to in any legal action or administrative proceeding among, between or involving the Parties hereto or their successors and assigns, other than as may be necessary (a) to obtain approval of and to enforce this Agreement or (b) to seek any and all remedies related thereto.

5. All Parties acknowledge and agree that the entry into and the execution of this Agreement shall not be used to subject the Canadian Monitor to the jurisdiction of the U.S. Bankruptcy Court.

6. All Parties acknowledge and agree that Ernst & Young Inc. acts herein in its representative capacity as the Canadian Monitor appointed by the Canadian Court in the matter of the proceedings commenced by Canadian Sellers in connection with the CCAA Proceedings, and shall assume no personal liability whatsoever under the terms of the present agreement.

7. Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary or appropriate in conjunction with the performance of their respective obligations hereunder; provided, however, the Agents shall be entitled to request and receive prior direction from the Majority Lenders (as defined in the First Lien Credit Agreement) with respect thereto in accordance with the terms of the First Lien Credit Agreement and to receive an indemnity from the Majority Lenders (as defined in the First Lien Credit Agreement) with respect thereto, in each case on terms and conditions satisfactory to the Agents.

8. This Agreement shall be binding upon and inure to the benefit of the Parties and to all successors and assigns of the Parties.

9. Except where preempted by applicable Federal law, this Agreement shall be governed by and construed in accordance with the internal laws of the Province of Ontario without regard to any choice of law provisions.

10. This Agreement may be signed in counterpart originals and delivered by facsimile or email, which, when fully executed, shall constitute a single original.

11. This Agreement constitutes the entire agreement and understanding of the Parties regarding the Agreement and the subject matter thereof.

12. Each person or entity who executes this Agreement on behalf of another person or entity represents and warrants that he, she, or it is duly authorized to execute this Agreement on behalf of such person or entity, has the requisite authority to bind such person or entity, and such person or entity has full knowledge of and has consented to this Agreement. The representations and warranties set forth in this paragraph shall survive execution of this Agreement.

13. This Agreement shall not be modified, altered, amended or vacated without the written consent of all Parties hereto.

IN WITNESS WHEREOF, this Agreement is hereby executed as of September 13, 2012.

Accepted and Agreed to By:

BEAR ISLAND PAPER COMPANY L.L.C.

By: [signature]
Name: Edward Sherrick
Title: Chief Financial Officer

WHITE BIRCH PAPER COMPANY

By: [signature]
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

STADACONA GENERAL PARTNER INC.

By: [signature]
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

STADACONA L.P., by White Birch Paper Company, a General Partner

By: [signature]
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

F.F. SOUCY GENERAL PARTNER INC.

By: ______________________
Name: Edward Sherrick
Title: Vice President

F.F. SOUCY, INC. & PARTNERS LIMITED PARTNERSHIP, by White Birch Paper Company, a General Partner

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

F.F. SOUCY L.P., by White Birch Paper Company, a General Partner

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer.

ARRIMAGE DE GROS CACOUNA INC.

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

PAPIER MASSON LTÉE

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

BD WHITE BIRCH INVESTMENT LLC

By: ______________________________
Name: Tim Butler
Title: Treasurer

[Signature Page to Reservation of Rights Settlement Agreement]

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity.

By: ______________________

Name: MARTIN P. ROSENTHAL

Monitor Appointed in the CCAA Cases

[Signature Page to Reservation of Rights Settlement Agreement]

HUNTON & WILLIAMS LLP

By: Jason W. Harbour

Name: Jason W. Harbour (VA Bar #68220)

As *Counsel to the Official Committee of Unsecured Creditors of Bear Island, L.L.C.*

[Signature Page to Reservation of Rights Settlement Agreement]

Credit Suisse AG, Cayman Islands Branch,
as US Collateral Agent

By: ______________________________
Name: Didier Siffer
Title: Authorized Signatory

By: ______________________________
Name: Megan Kane
Title: Authorized Signatory

Credit Suisse AG, Toronto Branch,
as Administrative Agent and Canadian
Collateral Agent

By: ______________________
Name: Alain Daoust
Title: Director

By: ______________________
Name: Ash Bisaria
Title: Vice President, Financial Accou

Exhibit A

Form of U.S. Estate Allocation Escrow Agreement

<u>**Exhibit B**</u>

Form of Canadian Estate Allocation Escrow Agreement

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity.

By: ______________________
Name: MARTIN P. ROSENTHAL
Monitor Appointed in the CCAA Cases

CANADIAN ESTATE ALLOCATION ESCROW AGREEMENT

ESCROW AGREEMENT, dated as of September 13, 2012 (this "**Escrow Agreement**"), among Bear Island Paper Company, L.L.C., a Virginia limited liability company, and its successors and assigns (the "**U.S. Seller**"), White Birch Paper Company, a Nova Scotia Unlimited Liability Company, along with its subsidiaries Stadacona General Partner Inc., Stadacona L.P., F.F. Soucy General Partner Inc., F.F. Soucy, Inc. & Partners, Limited Partnership, F.F. Soucy L.P., Arrimage de Gros Cacouna Inc. and Papier Masson Ltée, and their successors and assigns (the "**Canadian Sellers**"), BD White Birch Investment LLC, a Delaware limited liability company (the "**Purchaser**"), the Monitor appointed in the CCAA Proceedings (as defined below) (the "**Canadian Monitor**"), acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity, and BNY Trust Company of Canada (in its capacity as escrow agent hereunder, the "**Escrow Agent**").

WHEREAS, U.S. Seller is a debtor-in-possession under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "**Bankruptcy Code**") which commenced a voluntary proceeding (the "**Chapter 11 Case**") on February 24, 2010 by filing a petition for relief in the United States Bankruptcy Court for the Eastern District of Virginia (the "**U.S. Bankruptcy Court**");

WHEREAS, U.S. Seller continues to operate its business and manage its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Canadian Sellers are party to proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**," and the proceedings thereunder, the "**CCAA Proceedings**") which commenced on February 24, 2010 when the Canadian Sellers along with certain affiliates filed an application for protection pursuant to the CCAA in the Quebec Superior Court, District of Montreal (the "**Canadian Court**") and the Canadian Court issued an initial order for protection (the "**Initial CCAA Order**") on February 24, 2010;

WHEREAS, Ernst & Young Inc. has been appointed the Canadian Monitor;

WHEREAS, U.S. Seller, Canadian Seller, and Purchaser have entered into that certain Asset Sale Agreement dated as of August 10, 2010 (as amended, modified, superseded or substituted from time to time, the "**Purchase Agreement**"), pursuant to which Purchaser has agreed, subject to the terms and conditions of the Purchase Agreement, to purchase certain assets from the U.S. Seller and the Canadian Sellers;

WHEREAS, pursuant to the Purchase Agreement, among other things, the purchase price includes a cash component of $90 million (the "**Cash Component**");

WHEREAS, the U.S. Seller and White Birch Paper Company, Stadacona L.P., F.F. Soucy L.P. and Papier Masson Ltée are party to the *$140,000,000 Senior Secured Super Priority Debtor-In-Possession Term Loan Credit Agreement*, dated as of March 1, 2010 and as amended, modified, supplemented or otherwise approved in the Initial CCAA Order and by an order of the Bankruptcy Court (the "**DIP Credit Agreement**" and the facility contemplated thereunder, the "**DIP Credit Facility**");

WHEREAS, White Birch Paper Company has booked an intercompany claim against the U.S. Seller for $135,920,395.00 (the "**Intercompany Claim**");

WHEREAS, the Parties have been unable to consensually resolve, among other items, (a) the allocation of the Cash Component (as defined in the Purchase Agreement) between the estate of the U.S. Seller (the "**U.S. Estate**") and the estates of the Canadian Sellers (the "**Canadian Estate**s"), (b) the repayment obligations between the U.S. Seller and the Canadian Sellers under the DIP Credit Facility, including without limitation any alleged subrogation rights of the U.S. Seller against the Canadian Sellers, (c) any alleged setoff rights of White Birch Paper Company whereby any subrogation claim could be setoff against all or a part of the Intercompany Claim, (d) the interpretation of the Purchase Agreement, including section 5.17 thereof, (e) whether the Intercompany Claim should be disallowed or recharacterized as equity, (f) allocation of fees, expenses, and expenditures, including but not limited to professional fees, expenses and expenditures, between the U.S. Seller and the Canadian Sellers (collectively, along with any other issues raised or to be raised by any Party which could affect estate allocation or distribution of proceeds, whether previously identified or not, the "**Estate Allocation Issues**");

WHEREAS, the sale contemplated pursuant to the Purchase Agreement is scheduled to close on September 13, 2012 (the "**Closing Date**");

WHEREAS, in order to close the sale on the Closing Date without impairing any party's rights with respect to the Estate Allocation Issues, the parties to this Escrow Agreement have agreed to establish this escrow fund to be funded by the Canadian Sellers in an amount equal to US$25,000,000 (the "**Canadian Estate Allocation Escrow Fund**" or **"Escrowed Canadian Funds**") and the escrow fund in the U.S. pursuant to the *U.S. Estate Allocation Escrow Agreement* by and between the U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor of even date to be funded by the U.S. Seller in an amount equal to US$19,500,000 (the "**U.S. Estate Allocation Escrow Fund**" and with the Canadian Estate Allocation Escrow Fund, the "**Escrow Funds**") to hold, collectively, US$44,500,000 as security for anticipated litigation in connection with the Estate Allocation Issues;

WHEREAS, simultaneously with the execution of this Escrow Agreement, the U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor will execute the *U.S. Estate Allocation Escrow Agreement* establishing the U.S. Estate Allocation Escrow Fund;

WHEREAS, should the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor fail to execute the *U.S. Estate Allocation Escrow Agreement* and to establish the U.S. Estate Allocation Escrow Fund within 10 days of the date hereof and the Escrow Agent is so advised in writing by the U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor, this Escrow Agreement shall be terminated and any amounts funded to the Escrow Agent by the Canadian Sellers shall be promptly returned less any applicable taxes and fees to be charged to the U.S. Seller and the Canadian Sellers in accordance with direction given pursuant to section 3.2 hereof;

WHEREAS, all dollar ($) amounts herein are US$ (unless otherwise expressly indicated);

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

INTENTION AND PRESERVATION OF RIGHTS

Section 1.1 Intent of the U.S. Seller, the Canadian Sellers and the Purchaser. It is the intent of the U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor in establishing the Escrow Funds to facilitate closure of the Sale pursuant to the Purchase Agreement and enable the U.S. Seller and the Canadian Sellers to emerge from Bankruptcy and the CCAA proceedings, respectively, without impairing any party's rights with respect to the Escrow Funds and the Estate Allocation Issues.

Section 1.2 Preservation of Rights. The U.S Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor agree that the Reservation of Rights Settlement Agreement, attached hereto as Exhibit A, reserves the rights of all parties to the Reservation of Rights Settlement Agreement as more fully set forth therein.

ARTICLE II

ESCROW

Section 2.1 Appointment of Escrow Agent. The U.S. Seller, Canadian Sellers, Purchaser and the Canadian Monitor hereby appoint and designate BNY Trust Company of Canada as Escrow Agent. The Escrow Agent hereby accepts such appointment and designation upon the terms, conditions and provisions provided in this Escrow Agreement.

Section 2.2 Establishment of the Canadian Estate Allocation Escrow Fund. The Escrow Agent has established the Canadian Estate Allocation Escrow Fund as an account segregated on its books and records that shall be maintained, and from which funds shall be disbursed, in accordance with the terms and conditions of this Escrow Agreement.

Section 2.3 Purpose of the Canadian Estate Allocation Escrow Fund. The Canadian Estate Allocation Escrow Fund has been established for the purpose of holding the Escrowed Funds, in contemplation of the consummation of the transactions contemplated by the Purchase Agreement in accordance with its terms. Except for the offset described in Section 5.4 hereof, the Escrowed Funds shall be maintained free and clear of all Liens (as defined in the Purchase Agreement) whatsoever.

Section 2.4 Funding of the Canadian Estate Allocation Escrow Fund. On the date of this Escrow Agreement White Birch Paper Company shall deliver to the Escrow Agent US$25,000,000 by wire transfer of immediately available funds, and the Escrow Agent shall deposit such amount into the Canadian Estate Allocation Escrow Fund.

Section 2.5 Canadian Estate Allocation Escrow Fund to Remain In Canada. The parties hereto agree that the Escrowed Canadian Funds shall, for so long as such funds are held by the Escrow Agent, remain in accounts located in Canada.

Section 2.6 No Offset. The Escrowed Funds shall be held by the Escrow Agent in accordance with the terms of this Escrow Agreement and, except as set forth in Section 5.4 hereof, shall not be available to, and shall not be used by, the Escrow Agent to set-off any obligations owing to the Escrow Agent in any capacity.

ARTICLE III

DISBURSEMENT OF THE ESCROWED CANADIAN FUNDS

Section 3.1 Disbursement upon Court Orders. Upon issuance of joint final non appealable orders from the U.S. Bankruptcy Court and the Canadian Court resolving the Estate Allocation Issues (the "**Joint Court Orders**"), the U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor will provide the Escrow Agent with a joint written direction which shall direct the distribution of the Canadian Estate Allocation Escrow Fund and shall contain copies of the Joint Court Orders. Subject to Section 5.4, the Escrow Agent shall, within two (2) business days, promptly disburse the Canadian Estate Allocation Escrow Fund in accordance with such joint written direction.

Section 3.2 Disbursement upon Joint Written Instructions. Upon joint written instructions by the U.S. Seller and the Canadian Sellers and the Purchaser and the Canadian Monitor (the "**Joint Written Disbursement Instructions**"), subject to Section 5.4, the Escrow Agent shall, within two (2) business days, promptly disburse the Canadian Estate Allocation Escrow Fund in accordance with the Joint Written Disbursement Instructions.

Section 3.3 Termination. Subject to Section 5.4, upon (a) the disbursement of all of the Escrowed Funds by either Joint Court Orders or Joint Written Disbursement Instructions or (b) the receipt by the Escrow Agent of joint written instructions from the U.S. Seller and the Canadian Sellers and the Purchaser and the Canadian Monitor, this Escrow Agreement shall terminate and be of no further force and effect except that the provisions of Section 5.1(b), Section 5.3 and Section 5.4 hereof shall survive termination, the resignation or removal of the Escrow Agent and/or any conclusion of the U.S. Seller's Chapter 11 Case and CCAA Proceedings to which the Canadian Sellers are a party. In the event that this Escrow Agreement terminates prior to the distribution of all of the Escrowed Funds, the U.S. Seller, Canadian Sellers, the Purchaser, and the Canadian Monitor shall deliver joint written instructions to the Escrow Agent regarding the disposition of the Escrowed Funds.

Section 3.4 Reporting. Other than reporting earnings in accordance with Section 4.2, the Escrow Agent shall have no tax reporting duties with respect to any disbursements made pursuant to this Article 3.

Section 3.5 Tax Withholding. Notwithstanding anything contained herein, the Escrow Agent shall have the right to deduct and withhold taxes from any payments to be made hereunder if such withholding is required by applicable law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Escrow Agreement as having been delivered and paid to the recipient of payments in respect of which such deduction and withholding was made.

ARTICLE IV

INVESTMENTS

Section 4.1 Investment of Canadian Estate Allocation Escrow Fund. The Escrow Agent is authorized, subject to the receipt of directions from White Birch Paper Company, to invest the Escrowed Funds in one or a combination of the following: (a) direct obligations by the Government of Canada or any province of Canada; (b) obligations guaranteed by the Government of Canada; or (c) certificates of deposit, bankers acceptances and other instruments issued or endorsed by any Schedule 1 Canadian chartered bank. The term of any such investment shall not exceed ninety (90) days. All earnings shall become part of the Escrowed Funds and shall be disbursed in accordance with this Escrow Agreement. The Escrow Agent is authorized to liquidate promptly any portion of the Canadian Estate Allocation Escrow Fund consisting of investments to provide for payments required to be made under this Escrow Agreement. The Escrow Agent will not be liable for any loss incurred at such liquidation which is due to fluctuations in market rates, depreciation in the value of the investment or penalties incurred in connection with any such liquidation. The Escrow Agent will not be liable for any losses resulting from any investment made in accordance with the terms of this Section 4.1.

Section 4.2 Taxes. In the event of any earnings on the Canadian Estate Allocation Escrow Fund, or any portion thereof, White Birch Paper Company shall be treated as the owner of such earnings, the Escrow Agent shall disburse to White Birch Paper Company such earnings, if any, at the end of each Calendar Quarter and, accordingly, White Birch Paper Company will report all such income in such proportions, in the taxable year or years in which such income is properly includible and pay any taxes attributable thereto. The Escrow

Agent shall provide any necessary information reporting forms as required under Canadian federal, provincial, and local laws, if any.

ARTICLE V

ESCROW AGENT

Section 5.1 Responsibilities and Duties of the Escrow Agent.

(a) The duties, responsibilities and obligations of the Escrow Agent shall be limited to those expressly set forth in this Escrow Agreement, and no duties, responsibilities or obligations shall be inferred or implied. The Escrow Agent shall not be subject to, nor required to comply with, any other agreement among Purchaser or the U.S. Seller or the Canadian Sellers or the Canadian Monitor, even though reference thereto may be made herein, including, but not limited to the Reservation of Rights Settlement Agreement and the Purchase Agreement, or to comply with any direction or instruction (other than those contained herein or delivered in accordance with this Escrow Agreement) from the Purchaser or the U.S. Seller or the Canadian Sellers or the Canadian Monitor. The Escrow Agent shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. The Escrow Agent is authorized to rely in good faith upon any joint written instruction of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor believed by it to be genuine and to have been sent or given by the foregoing parties, and the Escrow Agent shall incur no liability in connection with acting in accordance with any such joint written instruction. The Escrow Agent shall have no responsibility to investigate or confirm whether any direction it receives hereunder is in compliance with the Joint Court Orders, any order of the Bankruptcy Court, or any order of the Canadian Court.

(b) The Escrow Agent shall not be liable for any action taken or omitted or for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder in the absence of bad faith, gross negligence or willful misconduct. In no event shall the Escrow Agent be liable (i) for any consequential, punitive or special damages or (ii) for the acts or omissions of its nominees, correspondents, designees, subagents or subcustodians appointed with due care by the Escrow Agent.

(c) The Escrow Agent may act through agents and attorneys and may consult with legal counsel (with the reasonable fees and disbursements of such counsel to be paid as provided in Section 5.4) as to any matter relating to this Escrow Agreement, and the Escrow Agent shall not incur any liability in acting in good faith in accordance with any advice from such counsel.

(d) The Escrow Agent shall provide to the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor monthly statements identifying transactions, transfers or holdings of the Canadian Estate Allocation Escrow Fund.

(e) The Escrow Agent shall not be responsible in any respect for the form, execution, validity, value or genuineness of documents or securities deposited hereunder, or for any description therein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document, security or endorsement.

(f) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Escrow Agent hereunder, the Escrow Agent may, in its sole discretion, refrain from taking any action other than retaining possession of the Canadian Estate Allocation Escrow Fund, unless the Escrow Agent receives joint written instructions, signed by the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor which eliminates such ambiguity or uncertainty.

(g) In the event of any dispute between or conflicting claims by or between the U.S. Seller, the Canadian Sellers, the Purchaser, and/or the Canadian Monitor with respect to the Canadian Estate Allocation Escrow Fund, the Escrow Agent shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to the Canadian Estate Allocation Escrow Fund so long as such dispute or conflict shall continue, and the Escrow Agent shall not be or become liable in any way for failure or refusal to comply with such conflicting claims, demands or instructions. The Escrow Agent shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction (a "**Court Order**"), which order, judgment or decree is not subject to appeal (as certified in writing by the Purchaser, U.S. Seller, Canadian Sellers and the Canadian Monitor), or settled by agreement between the conflicting parties as evidenced in a writing reasonably satisfactory to the Escrow Agent or (ii) the Escrow Agent shall have received security or an indemnity reasonably satisfactory to it sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Escrow Agent may, in addition, elect, in its sole discretion, to commence an interpleader action or seek other judicial relief or orders as it may deem, in its sole discretion, necessary.

(h) The Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Escrow Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or telex or other wire or communication facility).

(i) If at any time Escrow Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Canadian Estate Allocation Escrow Fund (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of the Canadian Estate Allocation Escrow Fund), Escrow Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if Escrow Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, Escrow Agent shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

Section 5.2 Removal; Resignation. The U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor may jointly remove the Escrow Agent at any time by giving the Escrow Agent at least thirty (30) calendar days' prior written notice. The Escrow Agent may resign as escrow agent at any time, by giving at least thirty (30) calendar days' prior written notice of such resignation to the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor. In either event, the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor will jointly and promptly select a successor escrow agent, and the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor will enter into an agreement with such successor escrow agent in substantially the form of this Escrow Agreement. The removal or resignation of the Escrow Agent shall relieve the Escrow Agent of any responsibility or duty thereafter arising hereunder, but shall not relieve the Escrow Agent of responsibility to account to the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor for funds received by the Escrow Agent prior to the effective date of such removal or resignation. If a substitute for the Escrow Agent hereunder shall not have been selected prior to the expiration of sixty (60) calendar days following the date of the notice of removal or resignation, the Escrow Agent shall be entitled to petition any court of competent jurisdiction with the fees and expenses of such petition being payable under section 5.4 hereof, for the appointment of a substitute for it hereunder or, in the alternative, it may (i) transfer and deliver the Escrowed Funds to or upon the order of such court or (ii) keep safely all Escrowed Funds until it receives joint notice from the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor of a substitute appointment. The Escrow Agent shall be discharged from all subsequently arising duties hereunder upon acceptance by the substitute escrow agent of the Escrow Agent's duties hereunder or upon transfer and delivery of the funds in the escrow account to or upon the order of any court.

Section 5.3 Indemnification of the Escrow Agent. The U.S. Seller and the Canadian Sellers each, jointly and severally, agree to hold the Escrow Agent harmless from and to indemnify the Escrow Agent against, any loss, liability, cost, damage, expense, claim or demand (collectively, "Losses") arising out of or in connection with the performance of its obligations in accordance with the provisions of this Escrow Agreement or in anyway arising from or in connection with this Escrow Agreement or its acting as Escrow Agent hereunder (including but not limited to Losses incurred by Escrow Agent in connection with its successful defense, in whole or in party, of any claim of gross negligence, willful misconduct or bad faith on its part), except to the extent such loss, liability, claim or demand arises from the bad faith, gross negligence or willful misconduct of the Escrow Agent.

Section 5.4 Fees and Expenses. The fees for the services rendered by the Escrow Agent pursuant to the provisions of this Escrow Agreement with respect to the Canadian Estate Allocation Escrow Fund, in accordance with the fee schedule attached hereto as Exhibit B, shall be paid by the the Canadian Sellers. The Escrow Agent shall be entitled to receive all reasonable, out-of-pocket expenses, disbursements and advances incurred or made by the Escrow Agent in connection with this Escrow Agreement. All such expenses, disbursements and advances shall be paid in cash to the Escrow Agent by the Canadian Sellers. The Escrow Agent does not have and will not have any interest in the funds deposited hereunder but is serving only as escrow holder and having only possession thereof; provided, however, if any fees, expenses or costs incurred by, or any obligations owed to (including any obligations owed pursuant to Section 5.3 hereof), the Escrow Agent hereunder are not paid within five Business Days of the date requested, the Escrow Agent may reimburse itself therefor from the Escrowed Funds and may sell, convey or otherwise dispose of any Escrowed Canadian Funds for such purpose and (ii) the Escrow Agent shall retain $100,000.00 (the "**Holdback Amount**") of the Escrowed Canadian Funds for the payment of any such fees, expenses, costs or obligations until the later of (1) the termination of this Agreement pursuant to Section 3.3 hereof, (2) the conclusion of the U.S. Seller's bankruptcy proceedings pursuant to the United Stated Code and the conclusion of the Canadian Sellers' proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**Holdback Termination Date**") or (3) the conclusion of any litigation that the Escrow Agent is a party to relating to this Agreement. Upon the occurrence of the Holdback Termination Date, the Escrow Agent shall distribute the remainder of the Holdback Amount in accordance with the joint written direction of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor.

Section 5.5 Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notices, demands or other communication required to be sent or given hereunder by any of the parties shall in every case be in writing and shall be deemed properly served if (a) delivered personally to the recipient, (b) sent to the recipient by reputable express courier service (charges paid) or mailed to the recipient by registered or certified mail, return receipt requested and postage paid, or (c) sent to the recipient by facsimile or electronic mail. Date of service of such notice shall be the date such notice is actually received by the recipient, unless such notice is received after 5:00 p.m. eastern time, in which case the date of service will be deemed to be the next business day. Such notices, demands and other communications shall be sent to the addresses indicated below or such other address or to the attention of such other person as the recipient has indicated by prior written notice to the sending party in accordance with this Section 6.1::

(a) If to the U.S. Seller:

Bear Island Paper Company L.L.C.
c/o White Birch Paper Company
80 Field Point Road
Greenwich, CT 06830
Attention: Ed Sherrick & Tim Butler
Facsimile: (203) 661-3349
E-Mail: edsherrick@whitebirchpaper.com

with a copy to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York
10022-4611
Attention: Christopher J. Marcus
Facsimile: (212) 446-4900
E-Mail: cmarcus@kirkland.com

(b) If to Canadian Sellers:

White Birch Paper Company
80 Field Point Road
Greenwich, CT 06830
Attention: Ed Sherrick & Tim Butler
Facsimile: (203) 661-3349
E-Mail: edsherrick@whitebirchpaper.com

with a copy to:

Stikeman Elliott LLP
1155 René-Lévesque Blvd. West
40th Floor
Montréal, Quebec
H3B 3V2
Attention: Kevin Kyte & Jean Fontaine
Facsimile: (514) 397-3222
E-Mail: kkyte@stikeman.com
E-Mail: jfontaine@stikeman.com

(c) If to the Canadian Monitor:

Ernst & Young Inc.
800 René-Lévesque Blvd. West
Bureau 1900
Montréal, Quebec
H3B 1X9
Attention: Jean-Daniel Breton & Martin Rosenthal
Facsimile: (514) 395-4933
E-Mail: martin.rosenthal@ca.ey.com
E-Mail: jean-daniel.breton@ca.ey.com

Norton Rose OR S.E.N.C.R.L., s.r.l./LLP
1 Place Ville Marie
Bureau 2500
Montréal, Quebec
H3B 1R1
Attention: Sylvain Rigaud
Facsimile: (514) 286-5474
E-Mail: sylvain.rigaud@nortonrose.com

(d) If to Purchaser:

B.D. White Birch Investment LLC
c/o Black Diamond Capital Management, L.L.C.
100 Field Drive, Suite 300
Lake Forest, IL 60045
Attention: Les Meier
Facsimile: (847) 615-9064
E-Mail: les@bdcm.com

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive
Suite 2700
Chicago, Illinois 60606
Attention: Kimberly A. deBeers, Esq.
Facsimile: (312) 407-8576
E-Mail: Kimberly.debeers@skadden.com

(e) If to the Escrow Agent:

BNY Trust Company of Canada
320 Bay Street, 11^{th} floor
Toronto, Ontario M5H 4A6
Attention: Vice President, Transaction Management Group
Facsimile: (416) 360-1711
E-Mail:

with a copy to:
BNY Trust Company of Canada
1001 de Maisonneuve Blvd. West
Suite 650
Montreal, Quebec
H3A 3C8
Facsimile: (514) 228-8662

Section 6.2 Severability. Whenever possible, each provision of this Escrow Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Escrow Agreement is held to be prohibited by or invalid under applicable law or rule in any jurisdiction, in any respect, such invalidity shall not affect the validity, legality and enforceability of any other provision or any other jurisdiction and, the remaining terms and provisions of this Escrow Agreement shall not in any way be affected or impaired thereby, all of which shall remain in full force and effect, and the affected term or provision shall be modified to the minimum extent permitted by law so as to achieve most fully the intention of this Escrow Agreement.

Section 6.3 Amendment and Waiver. This Escrow Agreement may be amended, or any provision of this Escrow Agreement may be waived, provided that any such amendment must be signed by each party hereto. Any provision of this Escrow Agreement may be waived, provided such waiver will be binding on a party only if such amendment or waiver is set forth in a writing executed by such party. The waiver by any party hereto of a breach of any provision of this Escrow Agreement shall not operate or be construed as a waiver of any other breach.

Section 6.4 Counterparts. This Escrow Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other.

Section 6.5 Construction. This Escrow Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Escrow Agreement shall be governed by, the laws of the Province of Quebec, without giving effect to provisions thereof regarding conflict of laws.

Section 6.6 Headings. The Section captions used hereunder are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

Section 6.7 Parties in Interest; Assignment. This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Other than pursuant to Section 5.5, neither this Escrow Agreement nor any of the rights interests or obligations hereunder shall be assigned by either of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party, such consent not to be unreasonably withheld.

Section 6.8 Entire Agreement. Subject to Section 5.1(a) hereof, this Escrow Agreement (including the documents and the instruments referred to herein) constitutes the entire agreement and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

Section 6.9 No Strict Construction. The language used in this Escrow Agreement will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party hereto.

Section 6.10 Jurisdiction. Each party hereby irrevocably submits to the exclusive jurisdiction of the Superior Court of Quebec, district of Montreal, in respect of any claim relating to the interpretation and enforcement of the provisions of this Escrow Agreement, and hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding in which any such claim is made that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Escrow Agreement or any such document may not be enforced in or by such courts.

Section 6.11 Not Subjecting the Canadian Monitor to the jurisdiction of the U.S. Bankruptcy Court. All Parties acknowledge and agree that the entry into and the execution of this Escrow Agreement shall not be used to subject the Canadian Monitor to the jurisdiction of the U.S. Bankruptcy Court.

Section 6.12 Ernst & Young Inc.'s capacity as the Canadian Monitor. All Parties acknowledge and agree that Ernst & Young Inc. acts herein in its representative capacity as the Canadian Monitor appointed by the Canadian Court in the matter of the proceedings commenced by the Canadian Sellers in connection with the CCAA Proceedings, and shall assume no personal liability whatsoever under the terms of this Escrow Agreement.

Section 6.13 WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES (TO THE FULLEST EXTENT PERMITTED BY LAW) ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS ESCROW AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS ESCROW AGREEMENT. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS ESCROW AGREEMENT OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. IN THE EVENT OF LITIGATION, THIS ESCROW AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 6.14 Electronic Communications. The Escrow Agent shall be entitled to treat a facsimile, pdf or e-mail communication or communication by other similar electronic means in a form satisfactory to the Escrow Agent ("Electronic Methods") from a person purporting to be (and whom such Escrow Agent, acting reasonably, believes in good faith to be) the authorized representative of the Purchaser, the U.S. Seller, the Canadian Sellers or the Canadian Monitor, as the case may be, as sufficient instructions and authority of the issuer for the Escrow Agent to act and shall have no duty to verify or confirm that person is so authorized. The Escrow Agent shall have no liability for any losses, liabilities, costs or expenses incurred by it as a result of such reliance upon or compliance with such instructions or directions. The Purchaser, the U.S. Seller, the Canadian Sellers and the Canadian Monitor agree: (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that each of them is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Escrow Agent and that there may be more secure methods of transmitting instructions than the method(s) selected by them; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

Section 6.15 Representations. Each of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor hereby represents and warrants (a) that this Escrow Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation and (b) that the execution, delivery and performance of this Escrow Agreement by does not and will not violate any applicable law or regulation.

Section 6.16 Change of Name. The Canadian Sellers and the U.S. Seller hereby advise the other parties hereto that they will be changing their names shortly after the date hereof.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereunto have duly caused this Escrow Agreement to be executed as of the date first above written.

BEAR ISLAND PAPER COMPANY L.L.C.

By: ______________________________
Name:
Title:

WHITE BIRCH PAPER COMPANY

By: ______________________________
Name:
Title:

STADACONA GENERAL PARTNER INC.

By: ______________________________
Name:
Title:

STADACONA L.P., by WHITE BIRCH PAPER COMPANY, a general partner

By: ______________________________
Name:
Title:

F.F. SOUCY GENERAL PARTNER INC.

By: ______________________________
Name:

Title:

F.F. SOUCY, INC. & PARTNERS LIMITED PARTNERSHIP, by WHITE BIRCH PAPER COMPANY, a general partner

By: ____________________________
Name:
Title:

F.F. SOUCY L.P., by WHITE BIRCH PAPER COMPANY, a general partner

By: ____________________________
Name:
Title:

ARRIMAGE DE GROS CACOUNA INC.

By: ____________________________
Name:
Title:

PAPIER MASSON LTÉE.

By: ____________________________
Name:
Title:

BD WHITE BIRCH INVESTMENT LLC

By: ____________________________
Name:
Title:

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity.

By: ____________________________
Name:
Monitor Appointed in the CCAA Cases

BNY TRUST COMPANY OF CANADA, as Escrow Agent

By: ______________________________
Name:
Title:

<u>Exhibit A</u>

Reservation of Rights Settlement Agreement

<u>Exhibit B</u>

Escrow Agent Fee Schedule

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity.

By: ________________________

Name: MARTIN P. ROSENTHAL

Monitor Appointed in the CCAA Cases

U.S. ESTATE ALLOCATION ESCROW AGREEMENT

ESCROW AGREEMENT, dated as of September 13, 2012 (this "**Escrow Agreement**"), among Bear Island Paper Company, L.L.C., a Virginia limited liability company, and its successors and assigns (the "**U.S. Seller**"), White Birch Paper Company, a Nova Scotia Unlimited Liability Company, along with its subsidiaries Stadacona General Partner Inc., Stadacona L.P., F.F. Soucy General Partner Inc., F.F. Soucy, Inc. & Partners, Limited Partnership, F.F. Soucy L.P., Arrimage de Gros Cacouna Inc. and Papier Masson Ltée, and their successors and assigns (the "**Canadian Sellers**"), BD White Birch Investment LLC, a Delaware limited liability company (the "**Purchaser**"), the Monitor appointed in the CCAA Proceedings (as defined below) (the "**Canadian Monitor**"), acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity, and The Bank of New York Mellon (in its capacity as escrow agent hereunder, the "**Escrow Agent**").

WHEREAS, U.S. Seller is a debtor-in-possession under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "**Bankruptcy Code**") which commenced a voluntary proceeding (the "**Chapter 11 Case**") on February 24, 2010 by filing a petition for relief in the United States Bankruptcy Court for the Eastern District of Virginia (the "**U.S. Bankruptcy Court**");

WHEREAS, U.S. Seller continues to operate its business and manage its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Canadian Sellers are party to proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**" and the proceedings thereunder, the "**CCAA Proceedings**") which commenced on February 24, 2010 when the Canadian Sellers along with certain affiliates filed an application for protection pursuant to the CCAA in the Quebec Superior Court, District of Montreal (the "**Canadian Court**") and the Canadian Court issued an initial order for protection (the "**Initial CCAA Order**") on February 24, 2010;

WHEREAS, Ernst & Young Inc. has been appointed the Canadian Monitor;

WHEREAS, U.S. Seller, Canadian Seller, and Purchaser have entered into that certain Asset Sale Agreement dated as of August 10, 2010 (as amended, modified, superseded or substituted from time to time, the "**Purchase Agreement**"), pursuant to which Purchaser has agreed, subject to the terms and conditions of the Purchase Agreement, to purchase certain assets from the U.S. Seller and the Canadian Sellers;

WHEREAS, pursuant to the Purchase Agreement, among other things, the purchase price includes a cash component of $90 million (the "**Cash Component**");

WHEREAS, the U.S. Seller and White Birch Paper Company, Stadacona L.P., F.F. Soucy L.P. and Papier Masson Ltée are party to the *$140,000,000 Senior Secured Super Priority Debtor-In-Possession Term Loan Credit Agreement*, dated as of March 1, 2010 and as amended, modified, supplemented or otherwise approved in the Initial CCAA Order and by an order of the Bankruptcy Court (the "**DIP Credit Agreement**" and the facility contemplated thereunder, the "**DIP Credit Facility**");

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity.

By: ______________________
Name: MARTIN P. ROSENTHAL
Monitor Appointed in the CCAA Cases

WHEREAS, White Birch Paper Company has booked an intercompany claim against the U.S. Seller for $135,920,395.00 (the "**Intercompany Claim**");

WHEREAS, the Parties have been unable to consensually resolve, among other items, (a) the allocation of the Cash Component (as defined in the Purchase Agreement) between the estate of the U.S. Seller (the "**U.S. Estate**") and the estates of the Canadian Sellers (the "**Canadian Estate**s"), (b) the repayment obligations between the U.S. Seller and the Canadian Sellers under the DIP Credit Facility, including without limitation any alleged subrogation rights of the U.S. Seller against the Canadian Sellers, (c) any alleged setoff rights of White Birch Paper Company whereby any subrogation claim could be setoff against all or a part of the Intercompany Claim, (d) the interpretation of the Purchase Agreement, including section 5.17 thereof, (e) whether the Intercompany Claim should be disallowed or recharacterized as equity, (f) allocation of fees, expenses, and expenditures, including but not limited to professional fees, expenses and expenditures, between the U.S. Seller and the Canadian Sellers (collectively, along with any other issues raised or to be raised by any Party which could affect Estate Allocation or distribution of proceeds, whether previously identified or not, the "**Estate Allocation Issues**");

WHEREAS, the sale contemplated pursuant to the Purchase Agreement is scheduled to close on September 13, 2012 (the "**Closing Date**");

WHEREAS, in order to close the sale on the Closing Date without impairing any party's rights with respect to the Estate Allocation Issues, the parties to this Escrow Agreement have agreed to establish this escrow fund to be funded by the U.S. Seller in an amount equal to $19,500,000.00 (the "**U.S. Estate Allocation Escrow Fund**" or the "**Escrowed U.S. Funds**") and the escrow fund in Canada pursuant to the *Canadian Estate Allocation Escrow Agreement* by and between the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor, dated as of September 13, 2012 to be funded by the Canadian Sellers in an amount equal to $25,000,000.00 (the "**Canadian Estate Allocation Escrow Fund**" and with the U.S. Estate Allocation Escrow Fund, the "**Escrow Funds**") to hold, collectively, $44,500,000.00 as security for anticipated litigation in connection with the Estate Allocation Issues;

WHEREAS, simultaneously with the Execution of this Escrow Agreement, the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor will execute the *Canadian Estate Allocation Escrow Agreement* establishing the Canadian Estate Allocation Escrow Fund; and

WHEREAS, should the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor fail to execute the *Canadian Estate Allocation Escrow Agreement* and to establish the Canadian Estate Allocation Escrow Fund within 10 days of the date hereof and the Escrow Agent is so advised in writing by the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor, this Escrow Agreement shall be terminated and any amounts funded to the Escrow Agent by the U.S. Seller shall be promptly returned less any applicable taxes and fees to be charged to the U.S. Seller and the Canadian Sellers in accordance with direction given pursuant to section 3.2 hereof.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

INTENTION AND PRESERVATION OF RIGHTS

Section 1.1 Intent of the U.S. Seller, the Canadian Sellers, and the Purchaser. It is the intent of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor in establishing the Escrow Funds to facilitate closure of the Sale pursuant to the Purchase Agreement and enable the U.S. Seller and the Canadian Sellers to emerge from Bankruptcy and the CCAA proceedings, respectively, without impairing any party's rights with respect to the Escrow Funds and the Estate Allocation Issues.

Section 1.2 Preservation of Rights. The U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor agree the Reservation of Rights Settlement Agreement, attached hereto as Exhibit A, reserves the rights of all parties to the Reservation of Rights Settlement Agreement as more fully set forth therein.

ARTICLE II

ESCROW

Section 2.1 Appointment of Escrow Agent. The U.S. Seller, Canadian Sellers, and Purchaser hereby appoint and designate The Bank of New York Mellon as Escrow Agent. The Escrow Agent hereby accepts such appointment and designation upon the terms, conditions and provisions provided in this Escrow Agreement.

Section 2.2 Establishment of the U.S. Estate Allocation Escrow Fund. The Escrow Agent has established the U.S. Estate Allocation Escrow Fund as an account segregated on its books and records that shall be maintained, and from which funds shall be disbursed, in accordance with the terms and conditions of this Escrow Agreement.

Section 2.3 Purpose of the U.S. Estate Allocation Escrow Fund. The U.S. Estate Allocation Escrow Fund has been established for the purpose of holding the Escrowed U.S. Funds, in contemplation of the consummation of the transactions contemplated by the Purchase Agreement in accordance with its terms. Except for the offset described in Section 5.4 hereof, the Escrowed U.S. Funds shall be maintained free and clear of all Liens (as defined in the Purchase Agreement) whatsoever.

Section 2.4 Funding of the U.S. Estate Allocation Escrow Fund. On the date of this Escrow Agreement, U.S. Seller shall deliver to the Escrow Agent $19,500,000.00 by wire transfer of immediately available funds, and the Escrow Agent shall deposit such amount into the U.S. Estate Allocation Escrow Fund.

Section 2.5 No Offset. The Escrowed U.S. Funds shall be held by the Escrow Agent in accordance with the terms of this Escrow Agreement and, except as set forth in Section 5.4 hereof, shall not be available to, and shall not be used by, the Escrow Agent to set-off any obligations owing to the Escrow Agent in any capacity.

ARTICLE III

DISBURSEMENT OF THE ESCROWED U.S. FUNDS

Section 3.1 Disbursement upon Court Orders. Upon the issuance of joint final non-appealable orders from the U.S. Bankruptcy Court and the Canadian Court resolving the Estate Allocation Issues (the "**Joint Court Orders**"), the U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor will provide the Escrow Agent with a joint written direction which shall direct the distribution of the U.S. Estate Allocation Escrow Fund and shall contain copies of the Joint Court Orders. Subject to Section 5.4, the Escrow Agent shall, within two business days, promptly disburse the U.S. Estate Allocation Escrow Fund in accordance with such joint written direction.

Section 3.2 Disbursement upon Joint Written Instructions. Upon joint written instructions by the U.S. Seller and the Canadian Sellers and the Purchaser and the Canadian Monitor (the "**Joint Written Disbursement Instructions**"), subject to Section 5.4, the Escrow Agent shall, within two business days, promptly disburse the U.S. Estate Allocation Escrow Fund in accordance with the Joint Written Disbursement Instructions.

Section 3.3 Termination. Subject to Section 5.4, upon (a) the disbursement of all of the Escrowed U.S. Funds by either Joint Court Orders or Joint Written Disbursement Instructions or (b) the receipt by the Escrow Agent of joint written instructions from the U.S. Seller and the Canadian Sellers and the Purchaser and the Canadian Monitor, this Escrow Agreement shall terminate and be of no further force and effect except that the provisions of Section 5.1(b), Section 5.3 and Section 5.4 hereof shall survive termination, the resignation or removal of the Escrow Agent and/or any conclusion of the U.S. Seller's Chapter 11 Case and CCAA Proceedings to which the Canadian Sellers are a party. In the event that this Escrow Agreement terminates prior to the distribution of all of the Escrowed U.S. Funds, the U.S. Seller, Canadian Sellers, the Purchaser, and the Canadian Monitor shall deliver joint written instructions to the Escrow Agent regarding the disposition of the Escrowed U.S. Funds.

Section 3.4 Reporting. Other than reporting Earnings in accordance with Section 4.2, the Escrow Agent shall have no tax reporting duties with respect to any disbursements made pursuant to this Article 3.

Section 3.5 Tax Withholding. Notwithstanding anything contained herein, the Escrow Agent shall have the right to deduct and withhold taxes from any payments to be made hereunder if such withholding is required by applicable law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Escrow Agreement as having been delivered and paid to the recipient of payments in respect of which such deduction and withholding was made.

ARTICLE IV

INVESTMENTS

Section 4.1 Investment of U.S. Estate Allocation Escrow Fund. The Escrow Agent is hereby authorized and directed to invest the Escrowed U.S. Funds in The Bank of New York Mellon Cash Reserve account. All Earnings shall become part of the Escrowed U.S. Funds and shall be disbursed in accordance with this Escrow Agreement. The Escrow Agent is authorized to liquidate promptly any portion of the U.S. Estate Allocation Escrow Fund consisting of investments to provide for payments required to be made under this Escrow Agreement. The Escrow Agent will not be liable for any loss incurred at such liquidation which is due to fluctuations in market rates, depreciation in the value of the investment or penalties incurred in connection with any such liquidation. The Escrow Agent will not be liable for any losses resulting from any investment made in accordance with the terms of this Section 4.1.

Section 4.2 Taxes. In the event of any Earnings on the U.S. Estate Allocation Escrow Fund, or any portion thereof, the U.S. Seller shall be treated as the owner of such Earnings, the Escrow Agent shall disburse to the U.S. Seller such Earnings, if any, at the end of each Calendar Quarter and, accordingly, the U.S. Seller will report all such income in such proportions, in the taxable year or years in which such income is properly includible and pay any taxes attributable thereto. The Escrow Agent shall provide any necessary information reporting forms as required under U.S. federal, state, and local laws, if any.

ARTICLE V

ESCROW AGENT

Section 5.1 Responsibilities and Duties of the Escrow Agent.

(a) The duties, responsibilities and obligations of the Escrow Agent shall be limited to those expressly set forth in this Escrow Agreement, and no duties, responsibilities or obligations shall be inferred or implied. The Escrow Agent shall not be subject to, nor required to comply with, any other agreement among the U.S. Seller or the Canadian Sellers or the Purchaser or the Canadian Monitor, even though reference thereto may be made herein, including, but not limited to the Reservation of Rights Settlement Agreement and the Purchase Agreement, or to comply with any direction or instruction (other than those contained herein or delivered in accordance with this Escrow Agreement) from the U.S. Seller or the Canadian Sellers or the Purchaser or the Canadian Monitor. The Escrow Agent shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. The Escrow Agent is authorized to rely in good faith upon any joint written instruction of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor believed by it to be genuine and to have been sent or given by the foregoing parties, and the Escrow Agent shall incur no liability in connection with acting in accordance with any such joint written instruction. The Escrow Agent shall have no responsibility to investigate or confirm whether any direction it receives hereunder is in compliance with the Joint Court Orders, any order of the Bankruptcy Court, or any order of the Canadian Court.

(b) The Escrow Agent shall not be liable for any action taken or omitted or for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder in the absence of bad faith, gross negligence or willful misconduct. In no event shall the Escrow Agent be liable (i) for any consequential, punitive or special damages or (ii) for the acts or omissions of its nominees, correspondents, designees, subagents or subcustodians appointed with due care by the Escrow Agent.

(c) The Escrow Agent may act through agents and attorneys and may consult with legal counsel (with the reasonable fees and disbursements of such counsel to be paid as provided in Section 5.4) as to any matter relating to this Escrow Agreement, and the Escrow Agent shall not incur any liability in acting in good faith in accordance with any advice from such counsel.

(d) The Escrow Agent shall provide to the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor monthly statements identifying transactions, transfers or holdings of the U.S. Estate Allocation Escrow Fund.

(e) The Escrow Agent shall not be responsible in any respect for the form, execution, validity, value or genuineness of documents or securities deposited hereunder, or for any description therein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document, security or endorsement.

(f) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Escrow Agent hereunder, the Escrow Agent may, in its sole discretion, refrain from taking any action other than retaining possession of the U.S. Estate Allocation Escrow Fund, unless the Escrow Agent receives joint written instructions, signed by the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor which eliminates such ambiguity or uncertainty.

(g) In the event of any dispute between or conflicting claims by or between the U.S. Seller, the Canadian Sellers, the Purchaser, and/or the Canadian Monitor with respect to the U.S. Estate Allocation Escrow Fund, the Escrow Agent shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to the U.S. Estate Allocation Escrow Fund so long as such dispute or conflict shall continue, and the Escrow Agent shall not be or become liable in any way for failure or refusal to comply with such conflicting claims, demands or instructions. The Escrow Agent shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction (a "**Court Order**"), which order, judgment or decree is not subject to appeal (as certified in writing by the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor), or settled by agreement between the conflicting parties as evidenced in a writing reasonably satisfactory to the Escrow Agent or (ii) the Escrow Agent shall have received security or an indemnity reasonably satisfactory to it sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Escrow Agent may, in addition, elect, in its sole discretion, to commence an interpleader action or seek other judicial relief or orders as it may deem, in its sole discretion, necessary.

(h) The Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Escrow Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

(i) If at any time Escrow Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the U.S. Estate Allocation Escrow Fund (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of the U.S. Estate Allocation Escrow Fund), Escrow Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if Escrow Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, Escrow Agent shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

Section 5.2 Removal; Resignation. The U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor may jointly remove the Escrow Agent at any time by giving the Escrow Agent at least thirty (30) calendar days' prior written notice. The Escrow Agent may resign as escrow agent at any time, by giving at least thirty (30) calendar days' prior written notice of such resignation to the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor. In either event, the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor will jointly and promptly select a successor escrow agent, and the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor will enter into an agreement with such successor escrow agent in substantially the form of this Escrow Agreement. The removal or resignation of the Escrow Agent shall relieve the Escrow Agent of any responsibility or duty thereafter arising hereunder, but shall not relieve the Escrow Agent of responsibility to account to the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor for funds received by the Escrow Agent prior to the effective date of such removal or resignation. If a substitute for the Escrow Agent hereunder shall not have been selected prior to the expiration of sixty (60) calendar days following the date of the notice of removal or resignation, the Escrow Agent shall be entitled to petition any court of competent jurisdiction with the fees and expenses of such petition being payable under section 5.4 hereof, for the appointment of a substitute for it hereunder or, in the alternative, it may (i) transfer and deliver the Escrowed U.S. Funds to or upon the order of such court or (ii) keep safely all Escrowed U.S. Funds until it receives joint notice from the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor of a substitute appointment. The Escrow Agent shall be discharged from all subsequently arising duties hereunder upon acceptance by the substitute escrow agent of the Escrow Agent's duties hereunder or upon transfer and delivery of the funds in the escrow account to or upon the order of any court.

Section 5.3 Indemnification of the Escrow Agent. The U.S. Seller and the Canadian Sellers each, jointly and severally, agree to hold the Escrow Agent harmless from and to indemnify the Escrow Agent against, any loss, liability, cost, damage, expense, claim or demand (collectively, "**Losses**") arising out of or in connection with the performance of its obligations in accordance with the provisions of this Escrow Agreement or in anyway arising from or in connection with this Escrow Agreement or its acting as Escrow Agent hereunder (including but not limited to Losses incurred by Escrow Agent in connection with its successful defense, in whole or in party, of any claim of gross negligence, willful misconduct or bad faith on its part), except to the extent such loss, liability, claim or demand arises from the bad faith, gross negligence or willful misconduct of the Escrow Agent.

Section 5.4 Fees and Expenses. The fees for the services rendered by the Escrow Agent pursuant to the provisions of this Escrow Agreement with respect to the U.S. Estate Allocation Escrow Fund, in accordance with the fee schedule attached hereto as Exhibit B, shall be paid by the U.S. Seller. The Escrow Agent shall be entitled to receive all reasonable, out-of-pocket expenses, disbursements and advances incurred or made by the Escrow Agent in connection with this Escrow Agreement. All such expenses, disbursements and advances shall be paid in cash to the Escrow Agent by the U.S. Seller. The Escrow Agent does not have and will not have any interest in the funds deposited hereunder but is serving only as escrow holder and having only possession thereof; provided, however, (i) if any fees, expenses or costs incurred by, or any obligations owed to (including any obligations owed pursuant to Section 5.3 hereof), the Escrow Agent hereunder are not paid within five Business Days of the date requested, the Escrow Agent may reimburse itself therefor from the Escrowed U.S. Funds and may sell, convey or otherwise dispose of any Escrowed U.S. Funds for such purpose and (ii) notwithstanding any disbursement pursuant to Article III hereof, the Escrow Agent shall retain $100,000.00 (the "**Holdback Amount**") of the Escrowed U.S. Funds for the payment of any such fees, expenses, costs or obligations until the later of (1) the termination of this Agreement pursuant to Section 3.3 hereof, (2) the conclusion of the U.S. Seller's bankruptcy proceedings pursuant to the United Stated Code and the conclusion of the Canadian Sellers' proceedings pursuant to the *Companies' Creditors Arrangement Act* or (3) the conclusion of any litigation that the Escrow Agent is a party to relating to this Agreement (the "**Holdback Termination Date**"). Upon the occurrence of the Holdback Termination Date, the Escrow Agent shall distribute the remainder of the Holdback Amount in accordance with the joint written direction of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor.

Section 5.5 Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notices, demands or other communication required to be sent or given hereunder by any of the parties shall in every case be in writing and shall be deemed properly served if (a) delivered personally to the recipient, (b) sent to the recipient by reputable express courier service (charges paid) or mailed to the recipient by registered or certified mail, return receipt requested and postage paid, or (c) sent to the recipient by facsimile or electronic mail. Date of service of such notice shall be the date such notice is actually received by the recipient. Such notices, demands and other communications shall be sent to the addresses indicated below or such other address or to the attention of such other person as the recipient has indicated by prior written notice to the sending party in accordance with this Section 6.1:

(a) If to the U.S. Seller:

Bear Island Paper Company L.L.C.
c/o White Birch Paper Company
80 Field Point Road
Greenwich, CT 06830
Attention: Ed Sherrick
Facsimile: (203) 661-3349
E-Mail: edsherrick@whitebirchpaper.com

with a copy to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York
10022-4611
Attention: Christopher J. Marcus
Facsimile: (212) 446-4900
E-Mail: cmarcus@kirkland.com

(b) If to Canadian Sellers:

White Birch Paper Company
80 Field Point Road
Greenwich, CT 06830
Attention: Ed Sherrick
Facsimile: (203) 661-3349
E-Mail: edsherrick@whitebirchpaper.com

with a copy to:

Stikeman Elliott LLP
1155 René-Lévesque Blvd. West
40th Floor
Montréal, Quebec
H3B 3V2
Attention: Kevin Kyte & Jean Fontaine
Facsimile: (514) 397-3222
E-Mail: kkye@stikeman.com
E-Mail: jfontaine@stikeman.com

(c) If to the Canadian Monitor:

Ernst & Young Inc.
800 René-Lévesque Blvd. West
Bureau 1900
Montréal, Quebec
H3B 1X9
Attention: Jean-Daniel Breton & Martin Rosenthal
Facsimile: (514) 395-4933
E-Mail: martin.rosenthal@ca.ey.com
E-Mail: jean-daniel.breton@ca.ey.com

Norton Rose OR S.E.N.C.R.L., s.r.l./LLP
1 Place Ville Marie
Bureau 2500
Montréal, Quebec
H3B 1R1
Attention: Sylvain Rigaud
Facsimile: (514) 286-5474
E-Mail: sylvain.rigaud@nortonrose.com

(d) If to Purchaser:

B.D. White Birch Investment LLC
c/o Black Diamond Capital Management, L.L.C.
100 Field Drive, Suite 300
Lake Forest, IL 60045
Attention: Les Meier
Facsimile: (847) 615-9064
E-Mail: les@bdcm.com

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive
Suite 2700
Chicago, Illinois 60606
Attention: Kimberly A. deBeers, Esq.
Facsimile: (312) 407-8576
E-Mail: kimberly.debeers@skadden.com

(e) If to the Escrow Agent:

The Bank of New York Mellon
Specialty Products - Escrow
Attn: Alicia Strope
525 William Penn Place, 38th Floor
New York, NY 10286
Facsimile: (212) 815-5875
E-Mail: alicia.c.strope@bnymellon.com

(f) If to Counsel to the Agents (as defined in the Reservation of Rights Settlement Agreement)

LATHAM & WATKINS LLP
885 Third Avenue
New York, NY 10022-4834
Attention: Keith Simon
Facsimile: (212) 751-4864
Email: keith.simon@lw.com

Section 6.2 Severability. Whenever possible, each provision of this Escrow Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Escrow Agreement is held to be prohibited by or invalid under applicable law or rule in any jurisdiction, in any respect, such invalidity shall not affect the validity, legality and enforceability of any other provision or any other jurisdiction and, the remaining terms and provisions of this Escrow Agreement shall not in any way be affected or impaired thereby, all of which shall remain in full force and effect, and the affected term or provision shall be modified to the minimum extent permitted by law so as to achieve most fully the intention of this Escrow Agreement.

Section 6.3 Amendment and Waiver. This Escrow Agreement may be amended, or any provision of this Escrow Agreement may be waived, provided that any such amendment must be signed by each party hereto. Any provision of this Escrow Agreement may be waived, provided such waiver will be binding on a party only if such amendment or waiver is set forth in a writing executed by such party. The waiver by any party hereto of a breach of any provision of this Escrow Agreement shall not operate or be construed as a waiver of any other breach.

Section 6.4 Counterparts. This Escrow Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other.

Section 6.5 Construction. This Escrow Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Escrow Agreement shall be governed by, the laws of the State of New York, without giving effect to provisions thereof regarding conflict of laws.

Section 6.6 Headings. The Section captions used hereunder are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

Section 6.7 Parties in Interest; Assignment. This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Other than pursuant to Section 5.5, neither this Escrow Agreement nor any of the rights interests or obligations hereunder shall be assigned by either of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party, such consent not to be unreasonably withheld.

Section 6.8 Entire Agreement. Subject to Section 5.1(a) hereof, this Escrow Agreement (including the documents and the instruments referred to herein) constitutes the entire agreement and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

Section 6.9 No Strict Construction. The language used in this Escrow Agreement will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party hereto.

Section 6.10 Jurisdiction. Each party hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York or the New York State Court located in Manhattan, New York, in respect of any claim relating to the interpretation and enforcement of the provisions of this Escrow Agreement, and hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding in which any such claim is made that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Escrow Agreement or any such document may not be enforced in or by such courts.

Section 6.11 Not Subjecting the Canadian Monitor to the jurisdiction of the U.S. Bankruptcy Court. All Parties acknowledge and agree that the entry into and the execution of this Escrow Agreement shall not be used to subject the Canadian Monitor to the jurisdiction of the U.S. Bankruptcy Court.

Section 6.12 Ernst & Young Inc.'s capacity as the Canadian Monitor. All Parties acknowledge and agree that Ernst & Young Inc. acts herein in its representative capacity as the Canadian Monitor appointed by the Canadian Court in the matter of the proceedings commenced by the Canadian Sellers in connection with the CCAA Proceedings, and shall assume no personal liability whatsoever under the terms of this Escrow Agreement.

Section 6.13 WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES (TO THE FULLEST EXTENT PERMITTED BY LAW) ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS ESCROW AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS ESCROW AGREEMENT. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS ESCROW AGREEMENT OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. IN THE EVENT OF LITIGATION, THIS ESCROW AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 6.14 Electronic Communications. The Escrow Agent shall have the right to accept and act upon instructions or directions pursuant to this Escrow Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the instructions or directions shall be signed by a person as may be designated and authorized to sign for the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor as applicable, by an authorized representative of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor, as applicable, who shall provide to the Escrow Agent an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor elect to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's understanding of such instructions shall be deemed controlling. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor, as applicable, agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 6.15 Representations. Each of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor hereby represents and warrants (a) that this Escrow Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation and (b) that the execution, delivery and performance of this Escrow Agreement by does not and will not violate any applicable law or regulation.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereunto have duly caused this Escrow Agreement to be executed as of the date first above written.

Accepted and Agreed to By:

BEAR ISLAND PAPER COMPANY L.L.C.

By: ______________________
Name: Edward Sherrick
Title: Chief Financial Officer

WHITE BIRCH PAPER COMPANY

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

STADACONA GENERAL PARTNER INC.

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

STADACONA L.P., by White Birch Paper Company, a General Partner

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

F.F. SOUCY GENERAL PARTNER INC.

By: ______________________
Name: Edward Sherrick
Title: Vice President

F.F. SOUCY, INC. & PARTNERS LIMITED PARTNERSHIP, by White Birch Paper Company, a General Partner

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief FINANCIAL OFFICER

F.F. SOUCY L.P., by White Birch Paper Company, a General Partner

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

ARRIMAGE DE GROS CACOUNA INC.

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

PAPIER MASSON LTÉE

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

BD WHITE BIRCH INVESTMENT LLC

By: ______________________________
Name: Tim Butler
Title: Treasurer

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity.

By: ______________________
Name: MARTIN P. ROSENTHAL
Monitor Appointed in the CCAA Cases

THE BANK OF NEW YORK MELLON, as
Escrow Agent

By: M. Joseph
Name: Maryann Joseph
Title: Vice President

Exhibit A

Reservation of Rights Settlement Agreement

<u>Exhibit B</u>

Escrow Agent Fee Schedule

BNY MELLON
CORPORATE TRUST

Bear Island Paper Company, L.L.C.
U.S. Estate Allocation Escrow Agreement

Escrow Agent Services
Fee Schedule
September 13, 2012

Presented By:

Charles Baker
Vice President

BNY Mellon

Phone: 312.827.8576

E-mail:
charles.baker@BNYMellon.com

Fee Schedule for the Services of:

- Escrow Agent

Fee Schedule

Upon appointment of The Bank of New York Mellon ("BNYM") as Escrow Agent, the Seller shall be responsible for the payment of the fees, expenses and charges as set forth in this Fee Schedule.

General Fees

Acceptance Fee	**Waived**

This one time charge is payable at the time of the closing and includes the review and execution of the agreement and all documents submitted in support thereof and establishment of accounts.

Annual Administration Fee	**$5,000**

An annual fee of $5,000 will cover the duties and responsibilities related to account administration and servicing, which may include maintenance of accounts on various systems, custody and securities servicing, reporting, etc. This fee is payable in advance for the year and shall not be prorated.

Disbursement Fee (Check or Wire)	**$ 25.00 per disbursement**

A fee of $25.00 will be assessed for each disbursement.

Investment Compensation	

With respect to investments in money market mutual funds for which BNYM provides shareholder services BNYM (or its affiliates) may also receive and retain additional fees from the mutual funds (or their affiliates) for shareholder services as set forth in the Authorization and Direction to BNYM to Invest Cash Balances in Money Market Mutual Funds.

BNYM will charge a $25.00 transaction fee for each purchase, sale, or redemption of securities other than the aforementioned Money Market Mutual Funds.

Counsel Fees	

If counsel is retained by BNYM, a fee covering the fees and expenses of Counsel for its services, including review of governing documents, communication with members of the closing party (including representatives of the purchaser, investment banker(s), attorney(s) and BNYM), attendance at meetings and the closing, and such other services as BNYM may deem necessary. The Counsel fee will be the actual amount of the fees and expenses charged by Counsel and is payable at closing. Should closing not occur, you would still be responsible for payment of Counsel fees and expenses.

Miscellaneous Fees	

The fees for performing extraordinary or other services not contemplated at the time of the execution of the transaction or not specifically covered elsewhere in this schedule will be commensurate with the service to be provided and will be charged in BNYM's sole discretion. These extraordinary services may include, but are not limited to: proxy dissemination/tabulation, customized reporting and/or procedures, electronic account access, etc. Counsel, accountants, special agents and others will be charged at the actual amount of fees and expenses billed.

Other Miscellaneous Fees	

FDIC or other governmental charges will be passed along to you as incurred.

Out-of-Pocket Expenses	

Additional out-of-pocket expenses may include, but are not limited to, telephone; facsimile; courier; copying; postage; supplies; expenses of foreign depositaries; and expenses of BNYM's representative(s) and Counsel for attending special meetings. Fees and expenses of BNYM's representatives and Counsel will be charged at the actual amount of fees and expenses charged and all other expenses will be charged at cost or in an amount equal to 0% of all expenses billed for the year, in BNYM's discretion, and BNYM may charge certain expenses at cost and others on a percentage basis.

Terms and Disclosures

TERMS OF PROPOSAL

Final acceptance of the appointment as escrow agent under the escrow agreement is subject to approval of authorized officers of BNYM and full review and execution of all documentation related hereto. Please note that if this transaction does not close, you will be responsible for paying any expenses incurred, including Counsel fees. We reserve the right to terminate this offer if we do not enter into final written documents within three months from the date this document is first transmitted to you. Fees may be subject to adjustment during the life of the engagement.

MISCELLANEOUS

The terms of this Fee Schedule shall govern the matters set forth herein and shall not be superseded or modified by the terms of the escrow agreement. This Fee Schedule shall be governed by the laws of the State of New York without reference to laws governing conflicts. BNYM and the undersigned agree to jurisdiction of the federal and state courts located in the City of New York, State of New York.

CUSTOMER NOTICE REQUIRED BY THE USA PATRIOT ACT

To help the US government fight the funding of terrorism and money laundering activities, US Federal law requires all financial institutions to obtain, verify, and record information that identifies each person (whether an individual or organization) for which a relationship is established.

What this means to you: When you establish a relationship with BNYM, we will ask you to provide certain information (and documents) that will help us to identify you. We will ask for your organization's name, physical address, tax identification or other government registration number and other information that will help us to identify you. We may also ask for a Certificate of Incorporation or similar document or other pertinent identifying documentation for your type of organization.

We thank you for your assistance.

	Accepted By:	For The Bank of New York Mellon:
Signature:		
Date:		
Name:		
Title:		

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Who's helping you succeed in the world's financial markets? Turn to BNY Mellon.

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity.

By: ______________________

Name: MARTIN P. ROSENTHAL

Monitor Appointed in the CCAA Cases

Appendix F – Motion to Recharacterize filed by the UCC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:	
BEAR ISLAND PAPER COMPANY, L.L.C.,	Case No. 10-31202-DOT
Debtor.	Chapter 11

NOTICE OF OBJECTION AND MOTION TO RECHARACTERIZE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE GENERAL UNSECURED CLAIM OF WHITE BIRCH PAPER COMPANY

PLEASE TAKE NOTICE THAT the Official Committee of Unsecured Creditors of Bear Island Paper Company, L.L.C. filed the *Objection and Motion to Recharacterize of the Official Committee of Unsecured Creditors to the General Unsecured Claim of White Birch Paper Company* (the "Objection"). A true and accurate copy of the Objection is attached to this notice.

PLEASE TAKE FURTHER NOTICE THAT your claim may be reduced, modified or eliminated. You should read these papers carefully and discuss them with your attorney, if you have one.

PLEASE TAKE FURTHER NOTICE THAT if you do not want the Court to eliminate or change your claim, **then on or before 5:00 p.m. Eastern Time on October 10, 2012, or such shorter time as the Court may hereafter order and of which you may receive subsequent notice (the "Objection Deadline")**, you must file with the Court, at the address shown below, a written response to the Objection. If you mail your response to the court for

Benjamin C. Ackerly (VSB No. 09120)
Tyler P. Brown (VSB No. 28072)
Jason W. Harbour (VSB No. 68220)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
Telephone: (804) 788-8200
Telecopier: (804) 788-8218

Counsel for the Official Committee of Unsecured Creditors

filing, you must mail it early enough so that the court will receive it on or before the Objection Deadline.

Clerk of the Court
United States Bankruptcy Court
701 East Broad Street, Suite 4000
Richmond, Virginia 23219

You must also mail a copy to:

HUNTON & WILLIAMS LLP
Attn: Jason W. Harbour, Esq.
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

PLEASE TAKE FURTHER NOTICE THAT a hearing on the Objection has been scheduled for **October 17, 2012, at 12:00 p.m. Eastern Time or such other time as the Court may hereafter order and of which you may receive subsequent notice** before the Honorable Chief Judge Douglas O. Tice, Jr., United States Bankruptcy Court for the Eastern District of Virginia, 701 East Broad Street, Room 5100, Richmond, VA 23219.

PLEASE TAKE FURTHER NOTICE THAT unless a written response is filed and served by the Objection Deadline, the Court may decide that you do not oppose the Objection to your claim, and enter an order granting the relief requested in the Objection without further notice or hearing.

Dated: Richmond, Virginia
September 17, 2012

HUNTON & WILLIAMS LLP

/s/ Jason W. Harbour
Benjamin C. Ackerly (VSB No. 09120)
Tyler P. Brown (VSB No. 28072)
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Counsel for the Official Committee of Unsecured Creditors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	)	
BEAR ISLAND PAPER COMPANY, L.L.C.,	)	Case No. 10-31202-DOT
Debtor.	)	Chapter 11

OBJECTION AND MOTION TO RECHARACTERIZE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE GENERAL UNSECURED CLAIM OF WHITE BIRCH PAPER COMPANY

The Official Committee of Unsecured Creditors (the "Committee") of Bear Island Paper Company, L.L.C. (the "Debtor") hereby objects to and moves for the recharacterization of (the "Objection"), pursuant to sections 105(a) and 502(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3007-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of Virginia (the "Local Rules"), the alleged general unsecured claim of White Birch Paper Company ("White Birch") in the amount of $135,854,779 (the "White Birch Claim"), listed on Schedule F of the Debtor's Schedules of Assets and Liabilities and Statements of Financial Affairs (the "Schedules and Statements"), and seeks entry of an order, substantially in the form attached hereto as Exhibit A (the "Proposed Order"), recharacterizing the White Birch Claim as an equity interest for all purposes. In support of the Objection, the Committee respectfully states as follows:

Benjamin C. Ackerly (VSB No. 09120)
Tyler P. Brown (VSB No. 28072)
Jason W. Harbour (VSB No. 68220)
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Counsel for the Official Committee of Unsecured Creditors

I. Preliminary Statement

1. The White Birch Claim should be recharacterized as an equity interest because the economic realities of the White Birch Claim indicate that it is an equity interest, not a valid claim.

2. According to Schedule F of the Debtor's Schedules and Statements, the White Birch Claim allegedly is based on an "Intercompany Payable" and is not disputed, contingent or unliquidated. Although described as an Intercompany Payable, as set forth in full below, the factors courts consider when determining whether to recharacterize a claim as equity reveal that the White Birch Claim is a capital contribution that should be treated as an equity interest in this bankruptcy case.

3. This Objection is critical for the Debtor's estate and creditors: if this Objection is not granted, White Birch will receive an allowed general unsecured claim of over $135 million, which would result in an inappropriate distribution from the Debtor's estate potentially totaling millions of dollars. The funds that comprise such a distribution should be paid to the Debtor's legitimate creditors, such funds should not be used to pay equity.

II. Jurisdiction and Venue

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157 (b)(2).

5. The predicates for the relief requested herein are sections 105(a) and 502(a) of the Bankruptcy Code, Bankruptcy Rule 3007, and Rule 3007-1 of the Local Rules.

III. Background

6. On February 24, 2010 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107 and 1108 of the

Bankruptcy Code, the Debtor is continuing to operate its business and manage its property as a debtor in possession. No trustee or examiner has been appointed.

7. On the Petition Date, (i) White Birch Paper Holding Company ("WB Holding"); (ii) White Birch; (iii) Stadacona General Partner Inc.; (iv) Black Spruce Paper Inc.; (v) F.F. Soucy General Partner Inc.; (vi) 3120772 Nova Scotia Company; (vii) Arrimage de Gros Cacouna Inc.; (viii) Papier Masson Ltée; (ix) Stadacona Limited Partnership; (x) F.F. Soucy Limited Partnership; and (xi) F.F. Soucy, Inc. & Partners, Limited Partnership (collectively, the "WB Canadian Group"), sought relief under the Companies' Creditors Arrangement Act in the Quebec Superior Court of Justice (the "Canadian Court") in Montreal, Quebec, Canada (the "CCAA Cases"). Also on the Petition Date, the Canadian Court entered the Initial Order in the CCAA Cases.

8. In addition, on the Petition Date, six (6) of the WB Canadian Group entities, including White Birch (collectively, the "Chapter 15 Entities"), sought relief under Chapter 15 of the Bankruptcy Code in this Court. On February 26, 2010, this Court entered the *Order Directing Joint Administration of the Debtors' Related Chapter 15 Cases* [Chapter 15 Case Doc. No. 23] in the Chapter 15 Entities' case (the "Chapter 15 Case").

9. On March 3, 2010, the Office of the United States Trustee for the Eastern District of Virginia, Richmond Division appointed the Committee to represent unsecured creditors of the Debtor pursuant to section 1102 of the Bankruptcy Code.

10. On March 26, 2010, the Court entered in the Chapter 15 Case the *Order of Recognition of a Foreign Main Proceeding and Chapter 15 Relief Pursuant to Sections 1504,*

1515, 1517 and 1520 of the Bankruptcy Code [Chapter 15 Case Doc. No. 55] (the "Recognition Order").[1]

11. On March 31, 2010, the Debtor filed its Schedules and Statements [Doc. No. 172]. On January 26, 2011, the Debtor filed certain amendments to the Schedules and Statements [Doc. No. 691].

IV. The White Birch Claim

12. On or about April 8, 2005, White Birch and WB Holding, as borrowers, entered into that certain First Lien Term Loan Credit Agreement (as amended and restated on January 27, 2006, and May 8, 2007, the "First Lien Loan"). The Debtor, among others, guaranteed the borrowers' obligations under the First Lien Loan. As of the Petition Date, approximately $428 million in principal and $9.8 million in interest remains outstanding under the First Lien Loan.

13. On or about April 8, 2005, White Birch and WB Holding, as borrowers, entered into that certain Second Lien Term Loan Credit Agreement (as amended and restated on January 27, 2006, and May 8 ,2007, the "Second Lien Loan"). The Debtor, among others, guaranteed the borrowers' obligations under the Second Lien Loan. As of the Petition Date, approximately $100 million in principal and $4 million in interest remains outstanding under the Second Lien Loan.

1 Substantially contemporaneously with filing the Objection, the Committee has filed a substantially identical version of the Objection in the Chapter 15 Cases, which version uses the caption of the Chapter 15 Cases and contains a footnote referencing the Objection filed in the Debtor's bankruptcy case. The Committee submits that the Committee does not need to seek relief from the Recognition Order or from the automatic stay to file the Objection or seek the relief requested herein from this Court, in the same way that a party normally need not seek relief from stay to pursue a claim against a debtor in the debtor's bankruptcy case. Nevertheless, to the extent relief from the Recognition Order or the automatic stay is required, the Committee respectfully requests relief from the Recognition Order and/or the automatic stay to file the Objection and to pursue the relief requested herein.

14. As of April 8, 2005, the Debtor owed approximately $143.5 million (the "Stand Alone Debt") based on a secured loan in the amount of approximately $106 million and a revolving loan in the amount of approximately $37.5 million.

15. On or about April 8, 2005, proceeds of the First Lien Loan and the Second Lien Loan were used to pay the Stand Alone Debt. The Debtor paid approximately $1.8 million in title insurance and legal fees on behalf of White Birch in connection with the First Lien Loan, the Second Lien Loan, and/or the payment of the Stand Alone Debt.

16. In connection with the Debtor's payment of approximately $1.8 million in title insurance and legal fees, and the payment of the approximately 143.5 million of Stand Alone Debt, White Birch booked an intercompany claim against the Debtor in the amount of $141,703,970. The White Birch Claim arises out of White Birch booking this amount as an intercompany claim.

17. The Debtor did not enter into any instruments or agreements concerning the White Birch Claim or otherwise evidencing the alleged indebtedness.

18. There was no fixed maturity date for the alleged White Birch Claim. There was no schedule of payments for the White Birch Claim.

19. From on or about May 31, 2005, until on or about October 31, 2009, the Debtor transferred approximately $75.5 million to White Birch. White Birch decreased the White Birch Claim based on such transfers.

20. The transfers to White Birch from the Debtor were based on the success of the Debtor's business. In months when the Debtor was not profitable enough to have sufficient cash to transfer funds to White Birch, the Debtor did not transfer funds to White Birch. In months when the Debtor was profitable enough to have sufficient cash to transfer funds to White Birch,

the Debtor would transfer funds to White Birch. In fact, the Debtor sometimes would go months without transferring any funds on account of the alleged White Birch Claim. No interest, penalties or other fees arose when the Debtor failed to transfer funds in a given month on account of the White Birch Claim.

21. There was no fixed rate of interest on the alleged White Birch Claim. There were no interest payments on the alleged White Birch Claim.

22. White Birch allocated interest under the First Lien Loan and the Second Lien Loan among the Debtor and members of the WB Canadian Group annually, allegedly based on a historical allocation percentage. From on or about December 31, 2005, until on or about December 31, 2009, White Birch increased the White Birch Claim based on such interest allocations by approximately $66.9 million.

23. White Birch also increased the White Birch Claim by approximately $4.3 million from on or about April 30, 2005, until the Petition Date based on charges for insurance and other costs allegedly paid on behalf of the Debtor.

24. White Birch did not receive a security interest in connection with the White Birch Claim.

25. No sinking fund or other reserves were established concerning the White Birch Claim.

26. The Debtor is a wholly-owned subsidiary of White Birch.

27. Schedule F of the Debtor's Schedules and Statements provides that as of the Petition Date the White Birch Claim totals $135,854,779, is based on an "Intercompany Payable", and is not disputed, contingent or unliquidated.

28. The Committee reserves the right to identify additional facts and to submit additional evidence at any hearing on this Objection. Such evidence may include evidence obtained from representatives of the Debtor and/or White Birch after the filing of this Objection.

V. Relief Requested

29. By this Objection, the Committee seeks the entry of the Proposed Order recharacterizing the White Birch Claim as an equity interest without prejudice to the rights of the Committee or any other party in interest to object to the White Birch Claim on any grounds whatsoever at a later date.

VI. Argument

30. Pursuant to section 502(a) of the Bankruptcy Code, a filed proof of claim is deemed allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Additionally, under section 1111(a) of the Bankruptcy Code, so long as a debtor's schedules indicate that the claim is not disputed, contingent or unliquidated, a court will treat the claim as if a proof of claim had been filed. See 11 U.S.C. § 1111(a) ("A proof of claim or interest is deemed filed under section 501 of this title for any claim or interest that appears in the schedules . . . except a claim or interest that is scheduled as disputed, contingent or unliquidated."); 7 Collier on Bankruptcy, ¶ 1111.02[1] (Alan N. Resnick & Henry J. Sommer eds., 16th Ed.).

31. Bankruptcy Rule 3007 provides that an objection to a claim must be in writing and that the claimant must be provided with not less than 30 days' notice of the hearing concerning the objection. Fed. R. Bankr. P. 3007.

A. The White Birch Claim should be Recharacterized as an Equity Interest

32. Despite the absence of any provision in the Bankruptcy Code authorizing the recharacterization of a debt claim as an equity interest, it is well established in the Fourth Circuit that "recharacterization is well within the broad powers afforded a bankruptcy court in § 105(a)

and facilitates the application of the priority scheme laid out in § 726." Drake v. Franklin Equip. Co. (In re Franklin Equip. Co.), 418 B.R. 176, 190 (Bankr. E.D. Va. 2009); see Braun v. Official Comm. of Unsecured Creditors (In re Dornier Aviation), 453 F.3d 225, 231 (4th Cir. 2006) ("In light of the broad language of § 105(a) and the larger purpose of the Bankruptcy Code, we believe that a bankruptcy court's power to recharacterize is essential to the proper and consistent application of the Code."). Section 105(a) of the Bankruptcy Code authorizes a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

33. To determine whether to recharacterize debt as equity, the Fourth Circuit, in Dornier, directed bankruptcy courts to consider the following eleven (11) factors:

i. the names given to the instruments, if any, evidencing the indebtedness;

ii. the presence or absence of a fixed maturity date and schedule of payments;

iii. the presence or absence of a fixed rate of interest and interest payments;

iv. the source of repayment;

v. the adequacy or inadequacy of capitalization;

vi. the identity of interests between the creditor and stockholders;

vii. the security, if any, for the advances;

viii. the corporation's ability to obtain financing from outside lending institutions;

ix. the extent to which the advances were subordinated to the claims of outside creditors;

x. the extent to which the advances were used to acquire capital assets; and

xi. the presence or absence of a sinking fund to provide repayment.

453 F.3d at 233 (citing Bayer Corp. v. Masco Tech, Inc. (In re AutoStyle Plastics, Inc.), 269 F.3d 726, 747-48 (6th Cir. 2001)); Wilson v. Moir (In re Wilson), 359 B.R. 123, 140 (Bankr. E.D. Va. 2006) (recognizing that the Fourth Circuit has endorsed the eleven (11) Dornier factors, and further stating "[w]hen a putative loan to a corporation is recharacterized, the courts effectively ignore the label attached to the transaction at issue and *instead recognize its true substance*.") (citation omitted).

34. Additionally, when determining whether to recharacterize debt as equity, the Fourth Circuit instructs that no one factor is controlling or decisive and a bankruptcy court should look to the particular circumstances of each case. Dornier, 453 F.3d at 234; see also In re SubMicron Sys. Corp., 432 F.3d 448, 456 (3d Cir. 2006) (holding "the characterization as debt or equity is a court's attempt to discern whether the parties called an instrument one thing when in fact they intended it as something else. That intent may be inferred from what the parties say in their contracts, from what they do through their actions, and from the economic reality of the surrounding circumstances. Answers lie in the facts that confer context case-by-case.").

35. The facts and circumstances concerning the White Birch Claim indicate that the parties treated the White Birch Claim as an equity interest and that the true substance of the White Birch Claim is an equity interest. Thus, many of Dornier factors weigh strongly in favor or recharacterizing the White Birch Claim as an equity interest.

(i) The Names Given to the Instruments, if Any, Evidencing the Indebtedness

36. "The absence of notes or other instruments of indebtedness is a strong indication that the advances were capital contributions and not loans." AutoStyle, 269 F.3d at 750 (citing Roth Steel Tube Co. v. Comm'r of Internal Revenue, 800 F.2d 625, 631 (6th Cir. 1986)). The

White Birch Claim is not documented by a note or any other written instrument. Thus, this factor weighs strongly in favor of recharacterizing the White Birch Claim as equity.

(ii) The Presence or Absence of a Fixed Maturity Date and Schedule of Payments

37. "The absence of a fixed maturity date and a fixed obligation to repay is an indication that the advances were capital contributions and not loans." Id. The Debtor did not have a fixed maturity date or a fixed obligation to repay the White Birch Claim. The Debtor also did not have a schedule of payments. As a result, the second factor weighs in favor of recharacterizing the White Birch Claim as an equity interest.

(iii) The Presence or Absence of a Fixed Rate of Interest and Interest Payments

38. "The absence of a fixed rate of interest and interest payments is a strong indication that the advances were capital contributions rather than loans." Id. Here, there was no fixed rate of interest or interest payments. Thus, the third factor weighs strongly in favor of recharacterizing the White Birch Claim as an equity interest.

39. Instead of having a fixed rate of interest or interest payments, White Birch increased the amount of the White Birch Claim based on allocating interest under the First Lien Loan and the Second Lien Loan against the Debtor. Such increases illustrate the inappropriate duplicative nature of the alleged White Birch Claim. The Debtor is a guarantor of the First Lien Loan and the Second Lien Loan and portions of the proceeds of such Loans were used to pay the Debtor's Stand Alone Debt. By characterizing the White Birch Claim as a claim instead of as an equity interest, the Debtor would be obligated for the funds used to pay the Stand Alone Debt twice, once based on the White Birch Claim, and once based on the First Lien Loan and the Second Lien Loan. Such duplicative claims would be inappropriate and provide an additional reason to recharacterize the White Birch Claim as equity.

(iv) The Source of Repayment

40. "If the expectation of repayment depends solely on the success of the borrower's business, the transaction has the appearance of a capital contribution." Id. at 751; see also Stinnett's Pontiac Service Inc. v. Comm'r of Internal Revenue Serv., 730 F.2d 634, 638 (11th Cir. 1984) ("[I]f repayment is possible only out of corporate earnings, the transaction has the appearance of a contribution of equity capital, but if repayment is not dependent upon earnings, the transaction reflects a loan to the corporation."). The Debtor only repaid the White Birch Claim when the Debtor's business was succeeding and the Debtor had available cash. When the Debtor's business did not generate sufficient funds, the Debtor did not make payments on account of the alleged White Birch Claim. In fact, the Debtor sometimes would go months without transferring any funds on account of the alleged White Birch Claim. No interest, penalties or other fees arose when the Debtor failed to transfer funds in a given month on account of the White Birch Claim.

41. This treatment of the White Birch Claim is consistent with the economic reality of an equity contribution. Receipt of payment only when a "debtor" has what the debtor deems to be sufficient funds is wholly inconsistent with the expectations in a debtor-creditor relationship. Thus, the source of repayment factor weighs strongly in favor of characterizing the White Birch Claim as an equity contribution.

(v) The Security for the Advances

42. "The absence of a security for an advance is a strong indication that the advances were capital contributions rather than loans." Id. at 752. White Birch received no security interest concerning the White Birch Claim. As a result, this factor is a strong indication that the White Birch Claim represents capital contributions rather than loans.

(vi) The Presence or Absence of a Sinking Fund to Provide Repayments

43. "The failure to establish a sinking fund for repayment is evidence that the advances were capital contributions rather than loans." Id. at 753. "A sinking fund is a fund 'consisting of regular deposits that are accumulated with interest to pay off a long-term corporate or public debt.'" In re Tiger Aircraft, LLC, 2010 Bankr. LEXIS 2353, at *13 (Bankr. N.D. W.Va. Aug. 6, 2010) (citation omitted). No sinking funds or other reserve accounts exist concerning the White Birch Claim. The absence of a sinking fund or other accounts to pay off the White Birch Claim further establishes that the White Birch Claim should be recharacterized as a capital contribution rather than a loan.

(vii) The Extent to which Advances Were Subordinated to Claims of Outside Creditors

44. "Subordination of advances to claims of all other creditors indicates that the advances were capital contributions and not loans." AutoStyle, at 753. Although there is no agreement expressly subordinating the White Birch Claim, this does not end the relevant inquiry. The Debtor failed to pay any amounts concerning the White Birch Claim when the Debtor did not have what the debtor deemed to be "sufficient" funds. Sometimes the Debtor failed to pay any amounts concerning the White Birch Claim for months at a time. Upon information and belief, during such time periods the Debtor did not treat third-party unsecured creditors in the same manner. Upon information and belief, during such time periods the Debtor made payments to many, if not most or all, third-party unsecured creditors. This is strongly indicative of an equity interest, and therefore this factor weighs in favor of recharacterizing the White Birch Claim as equity. Moreover, failing to recharacterize the White Birch Claim as equity would increase the priority of the White Birch Claim to *pari passu* with general unsecured creditors from the subordinate status of the White Birch Claim indicated by the parties' pre-petition

actions. Elevating the status of the White Birch Claim due to the Debtor's bankruptcy would be inequitable to the Debtor's valid creditors and antithetical to the equitable policies underlying the Bankruptcy Code.

45. Based on the facts and circumstances currently known to the Committee, the remaining Dornier factors do not appear to weigh very strongly in favor of or against recharacterizing the White Birch Claim. Moreover, given the economic reality of the White Birch Claim established by the foregoing Dornier factors, the remaining Dornier factors fail to rebut the conclusion that the White Birch Claim should be recharacterized as an equity interest.

46. Although the adequacy or inadequacy of capital factor may weigh slightly against recharacterization to the extent the Debtor was adequately capitalized on or about April 8, 2005, the Debtor's guaranty of the First Lien Loan and the Second Lien Loan may have led the Debtor to be inadequately capitalized shortly thereafter. Further, although White Birch and the Debtor are separate entities, White Birch is the sole equity owner of the Debtor and the identity of interest factor may weigh in favor of recharacterization. Similarly, the ability to obtain outside financing factor does not appear to be material to this analysis because despite the existence of the Stand Alone Debt, it is unclear whether the Debtor by itself could have obtained outside financing from a new third party lender on or about April 8, 2005. Finally, the use of advances to acquire capital assets factor weighs in favor of recharacterizing the White Birch Claim because although the funds were not used to purchase capital assets, the funds were used to pay the Stand Alone Debt and the funds were not used for daily operating needs.

VII. Conclusion

47. In sum, applying the Dornier factors to the instant facts reveals that the White Birch Claim is based on a capital contribution made by White Birch to the Debtor and, therefore, the White Birch Claim should be recharacterized as an equity interest. As a result, the

Committee respectfully requests that the Court enter the Proposed Order recharacterizing the White Birch Claim as an equity interest without prejudice to the rights of the Committee or any other party in interest to object to the White Birch Claim on any grounds whatsoever at a later date.

48. The Committee expressly reserves its rights to amend, modify, or supplement this Objection and to raise additional arguments and present additional evidence at any hearing concerning the Objection. Should one or more of the grounds of objection stated herein be dismissed or overruled, the Committee reserves its rights to object to the White Birch Claim on any other grounds that the Committee discovers or elects to pursue.

VIII. Waiver of Memorandum of Law

49. The Committee respectfully requests that this Court treat this Objection as a written memorandum of points and authorities or waive any requirement that this Objection be accompanied by a written memorandum of points and authorities as described in Local Rule 9013-1(G).

IX. Notice

50. Notice of this Objection has been provided to all necessary parties in accordance with the *Order Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 59]. The Committee submits that no other or further notice need be provided.

WHEREFORE, the Committee respectfully requests that the Court (a) enter the Proposed Order recharacterizing the White Birch Claim as an equity interest; and (b) grant to the Committee such other and further relief as the Court may deem proper.

Richmond, Virginia
Date: September 17, 2012

HUNTON & WILLIAMS LLP

<u>/s/ Jason W. Harbour</u>

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Counsel for the Official Committee of Unsecured Creditors

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	
BEAR ISLAND PAPER COMPANY, L.L.C.,	Case No. 10-31202-DOT
Debtor.	Chapter 11

ORDER GRANTING THE OBJECTION AND MOTION TO RECHARACTERIZE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE GENERAL UNSECURED CLAIM OF WHITE BIRCH PAPER COMPANY

Upon the objection and motion to recharacterize (the "Objection")[1] of the Official Committee of Unsecured Creditors (the "Committee") of Bear Island Paper Company, L.L.C. (the "Debtor"), pursuant to sections 105(a) and 502(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, Rule 3007 of the Federal Rules of Bankruptcy Procedure, and Rule 3007-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of Virginia, seeking entry of an order recharacterizing the general unsecured claim of White Birch Paper Company ("White Birch") in the amount of $135,854,779 (the "White Birch Claim"), listed on Schedule F of the Debtor's Schedules and Statements as an equity interest, the Court finds that: (a) it has jurisdiction over the matters raised in the Omnibus Objection pursuant to 28 U.S.C. §§ 157 and 1334(b); (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) the White Birch Claim is based on a capital contribution made by White Birch to the Debtor; (d) the relief requested in the Objection is in the best interest of the Debtor, its estate and creditors; (e) proper and adequate notice of the Objection and the hearing thereon has been given

1 Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Objection.

and no other or further notice is necessary; and (f) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore,

IT IS HEREBY ORDERED THAT:

(i) The Objection is GRANTED.

(ii) The White Birch Claim is recharacterized as an equity interest for all purposes.

(iii) The White Birch Claim shall not be treated as an unsecured claim for any purposes, including without limitation for purposes of receiving distributions.

(iv) The Committee and other parties in interest reserve their rights to object to the White Birch Claim on any grounds whatsoever.

(v) This Order is effective without further action of the Committee, Debtor or White Birch.

(vi) The Debtor and the Debtor's claims and noticing agent are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Objection.

(vii) The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

(viii) The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: Richmond, Virginia
__________________, 2012

____
United States Bankruptcy Judge

WE ASK FOR THIS:

HUNTON & WILLIAMS LLP

/s/ Jason W. Harbour

Benjamin C. Ackerly (VSB No. 09120)
Tyler P. Brown (VSB No. 28072)
Jason W. Harbour (VSB No. 68220)
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
Telephone: (804) 788-8200
Telecopier: (804) 788-8218

Counsel for the Official Committee of Unsecured Creditors

LOCAL RULE 9022-1 CERTIFICATION

I, Jason W. Harbour, hereby certify that the foregoing proposed order was served on all necessary parties.

/s/ Jason W. Harbour

Appendix G – Resolution of the Board of Directors of White Birch Paper Company

CERTIFIED COPY OF THE RESOLUTIONS OF THE DIRECTORS OF
WHITE BIRCH PAPER COMPANY (the "Company")

" SHARE TRANSFERS

Holding Transfer Agreement

BE IT RESOLVED that the directors hereby authorize and approve an agreement (the "**Holding Transfer Agreement**") between the Company and White Birch Partners L.P. pursuant to which the Company will acquire a "timberlands" receivable owed by Stadacona Inc. (now White Birch Paper Inc.), membership interests in Bear Island Paper Company, L.L.C., 417,660 common shares in the capital stock of F.F. Soucy, Inc. and 36,100,000 common shares in the capital of White Birch Paper Inc. in consideration for 20,425,440 of its authorized and unissued common shares, and that the officers and directors of the Company be, and each of them acting alone hereby is, authorized, in the name and on behalf of the Company, to execute and deliver the Holding Transfer Agreement substantially in the form presented to them, with such changes as the officer or director executing the same may approve, such approval to be evidenced by such execution and delivery thereof;

AND BE IT FURTHER RESOLVED that any director or officer of the Company is authorized for and on behalf of the Company to jointly elect with all the partners of White Birch Partners L.P. in the manner and form prescribed under subsection 85(2) of the Income Tax Act (Canada) and the equivalent provisions of applicable provincial income tax legislation in respect of the foregoing transfer as determined in accordance with the Holding Transfer Agreement;

Soucy Share Transfer Agreement

AND BE IT FURTHER RESOLVED that the directors hereby authorize and approve an agreement (the "**Soucy Share Transfer Agreement**") between the Company and F.F. Soucy, Inc. pursuant to which the Company will transfer 100 common shares in the capital stock of F.F. Soucy General Partner Inc. and 100 units of F.F. Soucy L.P. in consideration for the payment of an amount of US$650.00, and that the officers and directors of the Company be, and each of them acting alone hereby is, authorized, in the name and on behalf of the Company, to execute and deliver the Soucy Share Transfer Agreement substantially in the form presented to them, with such changes as the officer or director executing the same may approve, such approval to be evidenced by such execution and delivery thereof;

White Birch Share Transfer Agreement

AND BE IT FURTHER RESOLVED that the directors hereby authorize and approve an agreement (the "**White Birch Share Transfer Agreement**") between the Company and White Birch Paper Inc. pursuant to which the Company will transfer 100 common shares in the capital stock of Stadacona General Partner Inc. and 100 units of Stadacona L.P. in consideration for the payment of an amount of US$700.00, and that the officers and directors of the Company be, and each of them acting alone hereby is, authorized, in the name and on behalf of the Company, to execute and deliver the White Birch Share Transfer Agreement substantially in the form presented to them, with such changes as the officer or director executing the same may approve, such approval to be evidenced by such execution and delivery thereof;

DJ Share Transfer Agreement

AND BE IT FURTHER RESOLVED that the directors hereby authorize and approve an agreement (the "**DJ Share Transfer Agreement**") between the Company and White Birch Partners L.P. pursuant to which the Company will acquire all of the issued shares in the capital stock of 3098583 Nova Scotia Company in consideration for 6,298,171 of its authorized and unissued common shares, and that the officers and directors of the Company be, and each of them acting alone hereby is, authorized, in the name and on behalf of the Company, to execute and deliver the DJ Share Transfer Agreement substantially in the form presented to them, with such changes as the officer or director executing the same may approve, such approval to be evidenced by such execution and delivery thereof;

AND BE IT FURTHER RESOLVED that any director or officer of the Company is authorized for and on behalf of the Company to jointly elect with all the partners of White Birch Partners L.P. in the manner and form prescribed under subsection 85(2) of the Income Tax Act (Canada) and the equivalent provisions of applicable provincial income tax legislation in respect of the foregoing transfer as determined in accordance with the DJ Share Transfer Agreement;

ISSUANCE OF SHARES

AND BE IT FURTHER RESOLVED that the shares in the capital stock of the Company subscribed for by the Holding Transfer Agreement and the DJ Share Transfer Agreement be allotted to White Birch Partners L.P. and, upon transfer of the consideration for the shares as provided for in the Holding Transfer Agreement and the DJ Share Transfer Agreement, that 20,425,440 and 6,298,171 common shares in the capital stock of the Company be issued to White Birch Partners L.P., and such certificates be signed on behalf of the Company in accordance with its articles of association and be delivered to the shareholders;

REPAYMENT OF DEBTS

AND BE IT FURTHER RESOLVED that the directors hereby authorize and approve the subscription by the Company of US$143,545,115 of membership interests in Bear Island Paper Company, L.L.C.;

AND BE IT FURTHER RESOLVED that the directors hereby authorize and approve the repayment of the mezzanine debt owed to Peter Brant, RF White Birch, LP and White Birch Land Holdings;

AND BE IT FURTHER RESOLVED that the directors hereby authorize and approve the repayment of the portion of the debt of F.F. Soucy, Inc. assumed or to be assumed by the Company owed to the Toronto Dominion Bank;

MANAGEMENT SERVICE CONTRACTS

AND BE IT FURTHER RESOLVED that the directors hereby authorize and approve the execution and delivery of management service contracts with Brant Management (the "**Management Service Contracts**"), the whole substantially in accordance with and subject to the terms, conditions and exceptions set forth in the draft Management Service Contracts reported to the board of directors of the Company, which draft and all transactions contemplated thereby are hereby approved;

REXFOR AGREEMENT

AND BE IT FURTHER RESOLVED:

THAT the execution by Jay Epstein (VP Finance, Assistant Secretary and Assistant Treasurer of the Company) on behalf the Company of the Purchase Agreement (in English) and the *Convention d'achat* (in French) (collectively, the "**Rexfor Purchase Agreement**") dated March 21, 2005 with SGF Rexfor Inc. and Brant-Allen Industries, Inc. pursuant to which, among other matters, the Company agreed to purchase, and SGF Rexfor Inc. agreed to sell, a 10% partnership interest in F. F. Soucy, Inc. & Partners, Limited Partnership, be and is hereby ratified, confirmed, authorized and approved;

THAT any one director or officer of the Company be and is hereby further authorized and directed to execute any and all other agreements required to be delivered by the Company pursuant to the Rexfor Purchase Agreement and to make such additions, deletions or changes to the Rexfor Purchase Agreement as he or she, in his or her sole discretion, may deem necessary or desirable, his or her consent to such additions, deletions or changes to be conclusively evidenced by his or her signing of documents evidencing such matters; and

THAT any one director or officer be and is hereby further authorized to do and perform all such acts and things, and to execute and deliver in the name and on behalf of the Company all such documents and instruments as he or she may deem necessary or useful in order to complete the transactions contemplated by the Rexfor Purchase Agreement and to give full effect to the foregoing.

GENERAL AUTHORIZATION

AND BE IT FURTHER RESOLVED that the officers and directors of the Company be, and each of them acting alone hereby is, authorized, in the name and on behalf of the Company, to take any and all action (including, without limitation, the payment of fees and expenses), and to execute (by manual or facsimile signature) and deliver such other instruments, letters, agreements, documents, certificates and other writings (and any amendments or supplements thereto), under the Company's corporate seal or otherwise, as such officer or director may deem necessary or desirable in order to carry into effect the purposes and intent of each and all of the foregoing resolutions, the Holding Transfer Agreement, the Soucy Share Transfer Agreement, the White Birch Share Transfer Agreement, the DJ Share Transfer Agreement, the Management Service Contracts, the Rexfor Purchase Agreement, and the provisions of such instruments, letters, agreements, documents, certificates or other writings;

AND BE IT FURTHER RESOLVED that any and all action heretofore or hereafter taken by any officer or director of the Company in accordance with the preceding resolutions is hereby approved, ratified and confirmed as the act and deed of the Company;

AND BE IT FURTHER RESOLVED that whenever it is provided in these resolutions that any officer or director of the Company may execute any instrument or document, or take such other action as such officer or director may deem necessary or proper for the best interests of the Company, or as such officer or director may approve, the fact that such officer or director shall execute such instrument or document, or take such other action, shall be deemed to be conclusive evidence that such officer or director deems the execution of such instrument or document or the taking of such other action to be necessary or proper and for the best interests of the Company, and approves such action."

I, the undersigned, Jay Epstein, Secretary of the Company, hereby certify that the foregoing is a true copy of resolutions adopted at a meeting of the directors of the Company duly called and convened on the 5th day of April, 2005 and that these resolutions have not been amended and are still in full force and effect as at the date hereof.

[*Signature follows*]

Dated this 8th day of April, 2005.

Jay A Epstein

Jay Epstein
Secretary

Appendix H – Contestation by the Monitor of the Motion to Recharacterize

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:	)	
Estate BIPCO, LLC,	)	Case No. 10-31202-DOT
Debtor.	)	Chapter 11

RESPONSE AND REQUEST FOR JOINT HEARING OF THE MONITOR IN THE CANADIAN PROCEEDINGS TO THE CREDITORS' COMMITTEE OBJECTION AND MOTION TO RECHARACTERIZE THE GENERAL UNSECURED CLAIM OF WHITE BIRCH PAPER COMPANY

Ernst & Young Inc. (the "Monitor"), the Monitor of Estate WBPC Company (f.k.a. White Birch Paper Company) ("White Birch") and certain of its direct and indirect subsidiaries and affiliates (collectively, the "Canadian Debtors")[1], by its undersigned counsel, hereby files this Response and Request for a Joint Hearing (this "Response") to the *Objection and Motion to Recharacterize of the Official Committee of Unsecured Creditors to the General Unsecured Claim of White Birch Paper Company* dated September 17, 2012 (the "Motion") and filed by the Official Committee of Unsecured Creditors (the "Committee") in the above-captioned chapter 11 case (the "Chapter 11 Case") [Docket No. 1185]. In support of this Response, the Monitor respectfully represents as follows:

[1] The Canadian Debtors include (a) Estate WBPHC Company (f.k.a. White Birch Paper Holding Company), (b) White Birch, (c) Estate SGPA Inc. (f.k.a. Stadacona General Partner Inc.), (d) Estate BSPI Inc. (f.k.a. Black Spruce Paper Inc.), (e) Estate FFSGPI Inc. (f.k.a. F.F. Soucy General Partner Inc.), (f) 3120772 Nova Scotia Company, (g) Estate GCSI Inc. (f.k.a. Arrimage De Gros Cacouna Inc.), (h) Estate PML Inc.(f.k.a. Papier Masson Ltée.), (i) SSEC Limited Partnership (f.k.a. Stadacona Limited Partnership), (j) FFS Limited Partnership (f.k.a. F.F. Soucy Limited Partnership), and (k) FFSIA Limited Partnership (f.k.a. F.F. Soucy, Inc. & Partners, Limited Partnership).

BACKGROUND

1. The Canadian Debtors are subject to proceedings (the "CCAA Proceedings") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Superior Court for the Province of Quebec, Commercial Division, Judicial District of Montreal, Canada (the "Canadian Court" and with this Court, the "Courts"). The Monitor is an officer of the Canadian Court appointed pursuant to the initial order of the Canadian Court dated February 24, 2010.

2. On February 24, 2010, the above-captioned debtor (the "U.S. Debtor") filed the Chapter 11 Case. On that same day, the Canadian Debtors commenced the CCAA Proceedings in the Canadian Court and concurrently filed a case under chapter 15 of title 11 of the United States Code, as amended, seeking recognition and relief in aid of the CCAA Proceedings. The CCAA Proceedings were recognized as a "foreign main proceeding" on March 25, 2010.

3. On March 24, 2010, this Court entered an order approving the *Cross-Border Protocol for Bear Island Paper Company, L.L.C. and its Debtor Affiliates* (the "Cross-Border Protocol") [Docket No. 157]. The Canadian Court entered an order approving the Cross-Border Protocol on October 10, 2012. Accordingly, the Cross-Border Protocol is now in effect in the Chapter 11 Case and the CCAA Proceedings. Among other things, the Cross-Border Protocol provides that the Monitor has standing to appear and be heard in this Court and establishes administrative procedures and guidelines for the coordination of the Chapter 11 Case and the CCAA Proceedings.

4. On March 31, 2010, the U.S. Debtor filed its Schedules of Assets and Liabilities and Statements of Financial Affairs in the Chapter 11 Case (the "Bear Island

Schedules") [Docket No. 172 and as amended on January 26, 2011 at Docket No. 689]. Schedule F of the Bear Island Schedules lists an intercompany claim in the amount of $135,854,779 owed to White Birch by the U.S. Debtor (the "Intercompany Claim"). The Intercompany Claim is not listed as contingent, unliquidated or disputed.

5. On November 3, 2010, this Court entered an order approving the sale of substantially all of assets of the U.S. Debtor and the Canadian Debtors (the "Sale") to BD White Birch Investment LLC (the "Purchaser") pursuant to that certain Asset Sale Agreement dated as of August 10, 2010 [Docket No. 582]. The U.S. Debtor, the Purchaser, the Monitor and the Canadian Debtors have to date been unable to consensually resolve the manner by which the proceeds of the Sale are to be allocated between the U.S. and Canadian estates.

6. In order to allow for the closing of the Sale on September 13, 2012, the U.S. Debtor, White Birch, the Purchaser, and the Monitor, among others, entered into that certain Canadian Estate Allocation Escrow Agreement (the "Canadian Escrow Agreement") and that certain U.S. Estate Allocation Escrow Agreement (the "U.S. Escrow Agreement" and together with the Canadian Escrow Agreement, the "Escrow Agreements"), which together govern the escrow of proceeds of the Sale.

7. The preamble to each Escrow Agreement provides that:

> Whereas, the Parties have been unable to consensually resolve, among other items, (a) the allocation of the Cash Component (as defined in the Purchase Agreement) between the estate of the U.S. Seller (the "U.S. Estate") and the estate of the Canadian Sellers (the "Canadian Estates"), (b) the repayment obligations between the U.S. Seller and the Canadian Sellers under the DIP Credit Facility, including without limitation any alleged subrogation rights of the U.S. Seller against the Canadian Sellers, (c) any alleged setoff rights of White Birch Paper Company whereby any subrogation claim could be setoff against all or part of the Intercompany Claim, (d) the interpretation of the Purchase Agreement, including section 5.17 thereof, (e) whether the Intercompany Claim should be disallowed or recharacterized as equity, (f) allocation of fees, expenses, and expenditures, including but not limited to professional fees, expenses and expenditures, between the U.S. Seller and the Canadian Sellers (collectively, along with any other

issues raised or to be raised by any Party which could affect estate allocation or distribution of proceeds, whether previously identified or not the "Estate Allocation Issues").

8. The Committee filed the Motion on September 17, 2012, immediately following the closing of the Sale. Notices of Deposition of White Birch Paper Company [Docket No. 1201] and Bear Island Paper Company, L.L.C. [Docket No. 1202] (together, the "30(b)(6) notices") were filed by the Committee on September 26, 2012 and amended on each of October 2, 2012 and October 11, 2012. Requests for documents were also served on White Birch and the U.S. Debtor on October 1, 2012 [Docket No. 1213]. On October 17, 2012, the Monitor cross-noticed depositions for the same day as the Committee [Docket Nos. 1224 and 1225]. Depositions took place on Tuesday, October 23, 2012, with a hearing on the Motion scheduled for Thursday, November 1, 2012.

RESPONSE AND REQUEST FOR JOINT HEARING

A. Parties Agree that Recharacterization of Intercompany Claim, a Significant Asset of White Birch, is an "Estate Allocation Issue"

9. By its Motion, the Committee seeks to recharacterize the Intercompany Claim. The characterization of the Intercompany Claim, a significant asset of White Birch and therefore subject to the jurisdiction of the Canadian Court, is identified by the parties as an "Estate Allocation Issue" under the Escrow Agreements. Further, as an "Estate Allocation Issue," recharacterization of the Intercompany Claim is just one of myriad complex issues related to the allocation of Sale proceeds between the U.S. Estate and the Canadian Estates. Other Estate Allocation Issues include: alleged subrogation rights of the U.S. Debtor, alleged set-off rights of the Canadian Debtors, the allocation of certain expenses and benefits between the U.S. and the Canadian Debtors, and any other issues raised or to be raised by any party which could affect Estate Allocation or the distribution of proceeds. The Monitor submits that

embarking on separate and discrete litigations with respect to each Estate Allocation Issue, each with its own discovery path, risks creating an endless tangle of expensive and protracted litigation at the expense of creditors of both estates.

10. Moreover, the Escrow Agreements provide that, absent joint written instructions from the U.S. Debtor and the Canadian Debtors thereunder, funds will continue to be escrowed in the absence of "joint final non-appealable orders from the U.S. Bankruptcy Court and the Canadian Court resolving the Estate Allocation Issues." Accordingly, the Motion, as with other Estate Allocation Issues, should be the subject of a joint-hearing before both Courts, at least initially so the Courts can jointly direct the parties as to the most time and cost-effective way to resolve allocation.

B. The Cross-Border Protocol Contemplates Resolution of Inter-Estate Issues by way of a Joint-Hearing

11. Two of the principal goals of the Cross-Border Protocol are to "harmonize and coordinate activities in the Restructuring Proceedings before the Courts" and to "promote the orderly and efficient administration of the Restructuring Proceedings to, among other things, maximize the efficiency of the Restructuring Proceedings, reduce the costs associated therewith and avoid duplication of effort." See Cross-Border Protocol, ¶ 5.

12. In light of the above, the Monitor is of the view that the allegations made in the Motion, in so far as they affect a significant asset of the Canadian Estates, bear upon the other Estate Allocation Issues. The Motion is, therefore, appropriate for preliminary consideration, at the very least, through the use of the procedures available under the Cross-Border Protocol.

13. The Cross-Border Protocol provides, in relevant part, for the conduct of joint hearings "with respect to any matter relating to the conduct, administration, determination, or disposition of any aspect of the U.S. Case or the [CCAA Proceedings] if both Courts determine and agree that such Joint Hearings are necessary or advisable." See Cross-Border Protocol, ¶ 10(d). Sub-paragraphs 10(d)(v) and 10(d)(vi) of the Cross-Border Protocol provide for communication between the judicial officers presiding over any such joint hearing (with or without counsel being present) in advance of the hearing to "establish guidelines for the orderly submission of Pleadings and Evidentiary Materials" and "address any related procedural, administrative or preliminary matters", and during and after the joint-hearing for the purposes of "determining whether consistent rulings can be made by both Courts", "coordinating the terms of the Courts' respective rulings", and "addressing any other procedural or administrative matters."

14. Before the Committee, the U.S. Debtor, the Canadian Debtors, and the Monitor, embark on costly and discrete litigations in each Court, both Courts should confer with each other and determine whether a joint-hearing is appropriate to address the Estate Allocation Issues and give directions to the parties on how to proceed. Proceeding on this basis would ensure that the Estate Allocation Issues are resolved in an efficient and cost-effective manner and would avoid protracted litigation. Indeed, counsel to the U.S. Debtor referred to the need for a joint-hearing on Estate Allocation in a hearing before this Court on September 19, 2012 "so that the Courts can basically give us guidance on all of the issues." Recharacterization was listed in the litany of issues affecting Estate Allocation. See Transcript dated 09/19/12, pgs. 5 - 6 lines 24 - 10, pgs. 6 - 7 lines 24 – 2 [Docket No. 1204].

15. The Monitor respectively submits that it would be beneficial to both the U.S. Estate and the Canadian Estates if a common framework could be established to address all of the Estate Allocation Issues on the basis of cooperation and comity.

C. In the alternative, if the Court does not grant this request for a joint hearing, the hearing on the Motion should be adjourned

16. By its Motion,[2] the Committee seeks to recharacterize the Intercompany Claim, which has been scheduled as undisputed debt on the Bear Island Schedules for over two years and treated as debt in the *Plan of Liquidation under Chapter 11 of the Bankruptcy Code* filed by the U.S. Debtor on October 6, 2011 [Docket No. 957] (the "Plan"), which creditors voted to approve almost a year ago. Suddenly, the Committee has moved to recharacterize the Intercompany Claim on an expedited time-line based on a limited factual record that was developed in a single day of depositions and an incomplete document production. The Monitor respectfully submits that this matter can only be determined based on a substantial evidentiary record and no hearing on the merits should proceed until such a record has been established.

17. Indeed, the case law relied on by the Committee describes recharacterization as a "highly fact-dependent inquiry." Fairchild Dornier GmbH v. Official Comm. of Unsecured Creditors (In re Dornier Aviation (N. Am.), Inc.), 453 F.3d 225, 234 (4th Cir. 2006). The factual record in Dornier, where a nearly identical sum of money was at stake, illustrates the volume of evidence that will have to be produced in this matter before the Court is in position to evaluate the merits of the Motion. For example, in Dornier the bankruptcy court entered an order recharacterizing a creditor's debt only after a four day trial involving a

[2] The Monitor believes that Courts should confer with each other and direct the parties to a process that will resolve all of the Estate Allocation Issues in an expeditious manner. However, to the extent that the Motion proceeds in this Court in isolation, the Monitor respectfully requests that all of the procedural protections associated with adversary proceedings are incorporated in this contested matter.

considerable volume of evidence presented by both parties. Preparing for the trial required over a year of discovery. Seventeen witnesses, including three experts, testified at the trial and nearly 3500 pages of exhibits were introduced. See Official Comm. of Unsecured Creditors v. Fairchild Dornier GmbH (In re Dornier Aviation (N. Am), No. 02-8199, 2005 WL 4781236 at *13 (Bankr. E.D.Va. Feb. 8, 2005), aff'd, 453 F.3d 225 (4th Cir. 2006). See also Drake v. Franklin Equip. Co. (In re Franklin Equip. Co.), 416 B.R. 483, 512 (Bankr. E.D. Va. 2009) (noting that final hearing on motion, which included recharacterization, took three days due to the "voluminous evidence presented").

18. The Committee will likely argue that a substantial evidentiary record is unnecessary given the existence of a resolution of the board of the directors of White Birch dated April 8, 2005 (the "Board Resolution"), which approves the subscription by White Birch of approximately $143.5 million of membership interests in the U.S. Debtor. Indeed, the Board Resolution weighs in favor of characterizing part of the Intercompany Claim as equity. However, Ed Sherrick, the witness selected by both White Birch and the US Debtor as the individual with knowledge of the circumstances surrounding the Intercompany Claim, admitted at the deposition on October 23, 2012 (the "Deposition") that he was not aware of the existence of this Board Resolution until several weeks ago.

19. The Board Resolution is inconsistent with testimony at the Deposition confirming that the Intercompany Claim has consistently been considered a valid intercompany charge by White Birch and the U.S. Debtor since it was first recorded in 2005. Also, other intercompany charges were accounted for in the ledger in respect of the Intercompany Claim between April 2005 and the Petition Date. The U.S. Debtor stated, in paragraph 17 of its *Motion of Bear Island Paper Company, L.L.C. for Entry of an Order*

Authorizing, but not Directing, the Debtor to: (A) Continue Using its Existing Cash Management System, Bank Accounts and Business Forms; (B) Maintain Existing Investment Practices; and (C) Continue Performing Ordinary Course Intercompany Transactions filed with this Court on February 24, 2010 (Docket No. 8) that it "maintains records of all Intercompany Transactions and, therefore, is able to ascertain, trace and account for the Intercompany Transactions." The integrity of the U.S. Debtor's records and systems, a sworn verification confirming the validity of the Intercompany Claim and the classification and treatment of the Intercompany Claim in a Plan approved by the U.S. Debtor's board of directors and creditors should not be so lightly disregarded because a contrary document "surfaces" for the first time more than two years into the Chapter 11 Case and seven years after the event.

20. Furthermore, the Board Resolution could only possibly affect the classification of the original $143.5 million of membership interests referenced in the Board Resolution. There are several millions of dollars of intercompany charges listed in the transaction summary ledger of the Intercompany Claim that remain valid intercompany debt. These intercompany charges refer to expenditures made by White Birch on behalf of or attributable to the U.S. Debtor. Accordingly, any recharacterization of the original book entry for $143.5 million would still leave a sizeable intercompany debt owed to White Birch by the U.S. Debtor.

21. In preparation for the Deposition, the U.S. Debtor and White Birch did not consult Jay Epstein, the former officer of both White Birch and the U.S. Debtor responsible not only for signing the Board Resolution but also for the books and records of

both White Birch and the U.S. Debtor from 2005 until June 2011. Jay Epstein also verified the Bear Island Schedules.[3]

22. In light of the above, the Monitor submits that, at a minimum, a deposition of Jay Epstein is necessary in order to understand the treatment of the opening balance of the Intercompany Claim for accounting purposes in light of the Board Resolution, and also to better understand all the other subsequent charges forming part of the Intercompany Claim. In addition, the Monitor requires additional documents, the existence of which was revealed at the deposition, including correspondence between employees of White Birch and the U.S. Debtor in respect of the Intercompany Claim, non-consolidated financial statements of the U.S. Debtor and White Birch for the relevant period and the materials presented to the U.S. Debtor's board of directors in connection with the approval of the Plan.[4] Given the significance of the Intercompany Claim to the Canadian Estate, the Monitor has a duty to all stakeholders of the Canadian Estate to understand and explain how an accounting "mistake" of this magnitude could have occurred.

23. The Monitor submits that the Committee's time frame is inappropriate especially since it affects a significant asset of the Canadian Estate. Accordingly, the Monitor respectfully requests that this Court adjourn the hearing on the Motion until an adequate factual record has been established.

---

[3] Witnesses designated to testify on behalf of an organization "must testify about information known or reasonably available to the organization." Fed. R. Civ. P. 30(b)(6). Information from past employees may be "reasonably available" and therefore included in the witness's preparation. See Wilson v. Lakner, 228 F.R.D. 524, 528 (D. Md. 2005) ("The designee must be prepared to the extent that matters are reasonably available, whether from documents, present or past employees, or other sources.") (citation omitted); United States v. Taylor, 166 F.R.D. 356, 361 (M.D.N.C. 1996) ("[W]here a corporation indicates that it no longer employs individuals who have memory of a distant event . . . . [t]hese problems do not relieve a corporation from preparing its Rule 30(b)(6) designee to the extent matters are reasonably available, whether from documents, past employees, or other sources.") (citation omitted). There is no reason to believe that Mr. Epstein was not reasonably available to the U.S. Debtor in preparing Mr. Sherrick for the Deposition; Mr. Sherrick testified that he had spoken with Mr. Epstein just last month. (Oct. 23, 2012 Sherrick Depo. Tr. 83:8-13.)

[4] The Monitor requested these additional documents by letter to Kirkland & Ellis, counsel to the U.S. Debtor, dated October 24, 2012.

WAIVER OF MEMORANDUM OF LAW

24. The Monitor respectfully requests that this Court treat this Response as a written memorandum of points and authorities or waive any requirement that this Response be accompanied by a written memorandum of points and authorities as described in Local Rule 9013-I(G).

NOTICE

25. Notice of this Response has been provided to all necessary parties in accordance with the *Order Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 59]. The Monitor submits that no other or further notice need be provided.

WHEREFORE, for the reasons stated above, the Monitor respectfully requests that this Court agree to conduct a joint hearing with the Canadian Court with respect to the Committee Motion and the other Estate Allocation Issues or in the alternative, adjourn any hearing on the Motion until the parties have had enough time to develop an adequate factual record.

Dated: October 25, 2012

/s/ *Cullen D. Speckhart*
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Attorneys for Ernst & Young Inc., as Monitor of the Canadian Debtors

Appendix I – Transcript of a hearing in the U.S. Court

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

IN RE:	Case No. 10-31202(DOT)
BEAR ISLAND PAPER COMPANY, LLC,	
	701 East Broad Street Richmond, VA 23219
Debtor.	November 19, 2012 12:06 p.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE DOUGLAS O. TICE, JR.
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

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I N D E X

COURT DEPUTY: The U.S. Bankruptcy Court for the Eastern District of Virginia is now in session. Chief Judge Douglas O. Tice, Jr. presiding. Please be seated and come to order.

COURT CLERK: The matter of the Estate of BIPCO, LLC.

THE COURT: Good morning.

MR. HARBOUR: Good morning, Your Honor. May it please the --

THE COURT: Afternoon, I guess.

MR. HARBOUR: You're right. Good afternoon, Your Honor. May it please the Court, for the record, Jason Harbour of Hunton & Williams on behalf of the Committee.

Your Honor, the hearing today is scheduled on the Committee's motion to re-characterize an objection to the intercompany claim of White Birch.

As Your Honor has certainly seen -- well, I guess, before I do that -- thank you, Your Honor, for accommodating us today. We've had to continue this hearing at least two or three times, and thank you to your staff. We appreciate the Court's availability, so thank you very much.

THE COURT: All right.

MR. HARBOUR: To the substance, Your Honor. In light of the monitor's request for a joint hearing or a continuance, it seems appropriate to begin with that. And then if we do go forward on the substance, and the Committee certainly believes we should, then we can present evidence, anyone else can present evidence, and we can make closing arguments on the substance.

THE COURT: All right. Thank you.

MR. HARBOUR: And with respect to the monitor's request for a joint hearing and request for a continuance, I'll first address the joint hearing request and then the request for continuance.

The joint hearing request, Your Honor, appeared to be based on four general issues. One, a jurisdictional argument, or at least it was -- jurisdiction was noted. The second is agreements between the parties, the escrow agreements and the reservation of rights agreement. Third is the cross-border protocol. And then there was some mention of efficiency.

The first of those issues, jurisdiction, Your Honor, core jurisdiction, of course, is laid out in 28 U.S.C. 157. And 157(2)(b) discusses the allowance and disallowance of claims as being part of the bankruptcy court's core jurisdiction. And that's exactly what we have here, Your Honor, a pre-petition claim against the debtor. And we're asking you to determine whether it should be allowed or disallowed.

Your Honor, from our opinion and from our position, this is squarely and solely within your jurisdiction. This is the bread and butter work that you do every day and bankruptcy courts across this country do every day, determining whether claims against debtors are valid.

It's also an issue of first principles. Where's an objection to a claim against the debtor heard? Of course, it should be heard where the debtor filed bankruptcy, where the bankruptcy case is pending. We can also look to the Dornier case, Your Honor. There it was a German parent instead of a Canadian parent that had an alleged intercompany claim, but that parent was also in a liquidation proceeding in Germany. And the Court here decided it, in the Eastern District Court of Virginia, in Alexandria, I believe, not here. And then it went to the district court in the 4th circuit. And there was no need for any joint hearing. It was something squarely within the Court's jurisdiction, the Court handled it and it was resolved.

We could also analogize to two bankruptcy cases in the U.S. If White Birch, instead of being a Canadian proceeding, was in a proceeding in California, where should the case be heard? Well, it should be heard where the debtor is pending. If, for example, Bear Island had a case against White Birch that was a pre-petition claim, then it would go to where White Birch was, but that's not the case here. This is a pre-petition claim against Bear Island. And it's even stronger here, of course, because White Birch is in a Chapter 15 proceeding here. So they've squarely submitted themselves to your jurisdiction.

There’s also been no suggestion or citation to any law in Canada that would purport to authorize a Canadian court to address the issue. Simply put, this is an issue solely for Your Honor. And that’s what we believe should happen here. And this is vastly different and we’d like to distinguish it from the outset, Your Honor, from some of the other unresolved issues that remain in this case post sale. Those issues involve the interpretation of asset purchase agreement, allocating the sales proceeds, and interpreting the debtor-in-possession financing agreement, including the repayment of the DIP, whether there should be a subrogation claim. And, also, the third of those issues is allocating certain post-petition fees and expenses.

Now, these issues, Your Honor, you’ll note, all relate to not just post-petition matters, but really post-petition agreements. The APA that this Court and Canada approved. The DIP agreement that this Court and Canada approved. So we certainly may have some arguments in the coming weeks and months about who should have jurisdiction over which of those issues, but this issue, Your Honor, is very different from those. This is just a pre-petition claim. It has nothing to do with what the courts have done post-petition or what the parties have done post-petition. It’s strictly a pre-petition claim matter.

The second of the joint hearing issues is the escrow agreement that was cited to by the monitor. Now, to understand the escrow agreement, and importantly, the reservation of rights agreement, it’s important to go back a couple of months now until just before the sale finally closed. Of course, the sale was approved by this court and Canada almost two years ago now, and it finally closed in September. And all of the parties sitting around the room today, whether it was the monitor, the Committee, the first lien claimants and the purchaser, or the debtor, everyone was concerned to make sure, well, one, that it closed because it was in everybody’s interest for the deal to finally get done, including the employees in Canada who were at real risk if the deal didn’t get done. But in closing, no one wanted to waive or lose any rights. We wanted to make sure -- because we all knew that we didn’t have time to get in front of the courts to resolve everything in an appropriate manner before the sale closed. And everyone’s focus was on getting it closed, not on resolving these issues that could be addressed later.

So, among other things, you know, the parties talked about this and decided it’s important that we make sure everyone’s rights are reserved. That, you know, pre-closing, whatever our rights were to this, to the proceeds and to address any of our arguments, are going to be preserved. And, so, that’s exactly what the parties did when they entered into the reservation of rights agreement, and the Committee is a party to that agreement. And what it provides specifically is -- and it's been quoted to Your Honor in our reply and in Black Diamond surreply, is that all parties preserve and retain all of their rights and agree that neither the reservation of rights agreement, the escrow agreements, nor depositing the funds with the escrow agreements, where they're held, that any of those things are going to affect what ultimately happens with those proceeds that are currently being held. And that was important to the parties.

I mean, everyone was so worried about it, Your Honor, that there are two escrow agreements, one in Canada, one in the U.S. Some money is held in Canada, some is held in the U.S., because no one wanted to lose any rights, and that's what was important to the parties. And the reservation of rights agreement even indicates that you're not supposed to bring it up at another proceeding unless you're trying to enforce it.

But that's what we're doing here today because we want to make it clear that in connection with our entering into the reservation of rights agreement and other parties, because we're not parties to the escrow agreement, the Committee is not a party to that, but the monitor and the debtor entering into the escrow agreement certainly didn't waive our right, and certainly we didn't purport to waive this Court's jurisdiction to resolve the intercompany claim dispute. Instead, we lumped in all of the issues that we had identified to that point that were outstanding and identified them with a capitalized term estate allocation issues. That's all that is, Your Honor. We weren't waiving any rights and it doesn't seem quite appropriate to suggest that anyone was.

The third issue is the cross -- the third issue, Your Honor, is the cross-border protocol that this Court has approved and now recently the Canadian court has approved, as well. So the question comes up, what is it, really? And the cross-border protocol is a way for this court and the Canadian court potentially to work with each other, if they need to. And a way to make sure that the parties are able to work with both courts, as appropriate, because there are cases pending in Canada and here. What it doesn't do, and it's important to note this, is impact jurisdiction, or purport to impact jurisdiction.

What it's done, practically, Your Honor, is benefit both the Committee and the monitor. Because the protocol indicates that the monitor has standing to appear here and the monitor has participated in this process, and we certainly wouldn't object to that. We've participated in Canada before the protocol was approved, with a bit of an asterisk by it because the Canadian court hadn't ruled on whether we had standing. But now that the protocol has been approved, we certainly do have standing in Canada. So that's really what it’s done.

With respect to jurisdiction, I’ll paraphrase a little bit, but in Paragraph Seven Eight the cross-border protocol provides that the U.S. Court shall have sole and exclusive jurisdiction over the conduct of the U.S. case, and the hearing and determination of matters arising in the U.S. case. It goes on to provide that nothing contained therein shall be construed to increase, decrease, or otherwise modify the independent sovereignty or jurisdiction of the U.S. court or the Canadian court.

With respect to joint hearings, it certainly contemplates that it might be possible to have joint hearings, but it doesn’t indicate that any joint hearings are required or mandated by any stretch of the imagination. It's that it indicates that if both courts determine and agree that the joint hearings are necessary or advisable. And here, Your Honor, we'd respectfully submit that they’re neither necessary because this Court has sole and exclusive jurisdiction, are advisable because it would just waste time and expense and resources of the courts.

And that rolls right into the fourth joint hearing issue, which is efficiency, Your Honor. Looking around, there are a lot of people in dark suits here, Your Honor. We’re ready to go today to get this thing done so we can resolve this issue and then move on to the next and try to get a distribution to creditors as soon as possible and as efficiently possible. A joint hearing, we believe, would only confuse the issues, delay matters, increase expense, and cloud what otherwise, frankly, as far as re-characterization claims go, is one of the simplest you could imagine when you start to look at the evidence and the applicable factors.

So for all of these reasons, this Court's sole and exclusive jurisdiction, the reservation of rights agreement, the cross-border protocol and efficiency concerns, we'd ask that Your Honor deny the request for a joint hearing.

Moving on to the request for a continuance, Your Honor. It's appropriate, first, when any request for a continuance, it seems to think about the timing involved. The objection to the motion to re-characterize was filed on September 17th. That's a little over two months ago at this point. The original hearing was scheduled for October 17th and the Committee voluntarily agreed to continue it at the monitor's request to November 1st. And then due to multiple weather events and some scheduling conflicts -- more weather events than scheduling conflicts, though -- the hearing was continued until to November 8th and ultimately until today.

So, in particular, Your Honor, there's been plenty of time for anyone to conduct whatever discovery they believe is necessary, whether it's a deposition of someone or anything else. And to date there's been one deposition that we initially noticed up and the monitor also noticed up. The monitor attended, asked all the questions they had, and that's been it. And we believe, especially based on the results of that deposition, Your Honor, not -- in addition to the other documents that were seen and discussed at that deposition, that there's absolutely no need whatsoever for more time or more discovery because the facts are undisputed, and they weigh overwhelmingly in favor of re-characterization.

Just so you know, Your Honor, with respect to the document production that the monitor has requested from the debtor and White Birch, frankly, that company -- well, together they've produced over 6,000 pages of documents. So there has been a lot of production there.

But, Your Honor, when you look at the facts that have been divulged, and it makes sense right now to go into a little bit of what those facts are instead of just in a blanket statement telling you, trust me, the facts really weigh in our favor, to talk about them. We had a case where there was one 30(b)(6) deposition, Your Honor, Bear Island and White Birch were there by the same deponent, he works for -- he's an officer with both companies, and he was clearly testifying on behalf of both companies. And he testified that they view the intercompany claim as an equity interest. That's pretty powerful, Your Honor, without even getting to the Dornier factors.

So what we have here is a case where the debtor, Bear Island, the claimant, White Birch, the Committee, as an estate representative, and the largest unsecured creditor, Black Diamond, all think this should be re-characterized. And the monitor, representative from the Canadian proceeding, would like otherwise because it would benefit other Canadian creditors.

Moving on beyond that, Your Honor, with respect to the Dornier factors, if I might, and I'll try to be quick with these. There are 11 of them. But it makes sense to go through them because more time or discovery aren't going to change the facts, or the factors -- the factors weigh in favor of re-characterization.

So the first one is the names given to the instrument, if any, evidencing the indebtedness. Here it's undisputed. There is no instrument. Nothing at all. And time, discovery, they're not going to change that. And, you know, this is a factor the courts have said strongly supports re-characterization if it's met.

The second factor's the presence or absence of a fixed maturity date and schedule of payments. Here there is no schedule of payments. There was no maturity date, fixed or otherwise. In fact, the testimony is that there was no requirement for the debtor to pay the White Birch claim, the alleged White Birch claim. And discovery and time aren't going to change that, either, Your Honor.

The third factor is the presence or absence of a fixed rate of interest, or interest payments. There's no rate of interest, fixed or otherwise. There were no interest payments. Time and discovery aren't going to change this, either. And this is another factor the courts have held strongly weighs in favor of re-characterization when it's met.

The fourth factor, Your Honor, is the source of repayment. It's undisputed, Your Honor, that repayments were made only when the Bear Island business was successful. When Bear Island had enough money to make payments. And, frankly, when White Birch needed the money. And the debtor would sometimes go months without making payments concerning the claim, though, at the same time the debtor, Bear Island, would make payments to third parties. It's also undisputed that there are no penalties, or interest, or anything else that arose when payments weren't made, and time and discovery aren't going to change these.

The next is adequacy or inadequacy of capitalization. This is not quite as straight forward as the other factors. To understand it, you need to first understand how the debt arose, the first intercompany debt. It first arose, Your Honor, in April 2005. At that point there was a refinancing and a restructuring of White Birch and its related entities, including Bear Island. Before that, Bear Island was owned by another entity. At the conclusion of that restructuring and refinancing, Bear Island was owned by White Birch, as it is now. Before that, Bear Island had some standalone debt; about $140 million worth. After that, the standalone debt was paid in part -- well, it was paid with proceeds, some of the proceeds of the current first lien and second lien loan. And, so -- and in connection with that, of course, Bear Island became a guarantor on those loans.

Now, in the monitor's response, there was no dispute that if you were to count the White Birch claim as a true claim of White Birch instead of an equity interest, then Bear Island would be on the hook for the repayment of that standalone debt, twice. Once, under the first lien loan and the second lien loan, because it's a guarantor of those, and those assets were certainly used to pay off the standalone debt. And then, once again, based on Bear Island's claim for the same $140 million, and that certainly wouldn't be appropriate. And discovery and time, they're not going to change this.

The sixth one is a nice short one. The identity of interest between the creditors and the stockholders here. White Birch is the 100 percent owner of Bear Island, so this factor is met and time, and discovery is not going to change that. There's no dispute there.

The seventh factor is whether there were any security interests for the advances. There were none. It's undisputed.

Time is not going to change it. And this is another the courts have said strongly weighs in favor of re-characterization when this factor is met. And it is met here.

Number eight, Your Honor, is the corporation’s ability to obtain outside financing. And AutoStyle case, Your Honor, from the 6th Circuit when addressing this factor, the Court noted when there’s no evidence of other outside financing, the fact that no reasonable creditor would have acted in the same manner is strong evidence that the advances were capital contributions rather than loans. Based on the deposition testimony, and everything else, Your Honor, it’s undisputed that the debtor didn’t attempt to obtain any individual financing in April of 2005, and the group’s financing that had been obtained in April 2005, there was only one real offer on the table for it. And, so, this factor certainly supports re-characterization because no one else would have entered into a deal with the debtor such as what the White Birch claim would be, if it was a claim, which is that there’s no note, there’s no requirement to pay the indebtedness, there’s no rate of interest, there’s no penalty, there’s no security. That’s not an arm's length third party claim transaction, Your Honor. And discovery and time are not going to change that, either.

The ninth element -- or factor, rather, is the extent to which advances were subordinated to claims of outside creditors. Here the White Birch claim was effectively subordinated throughout. Payments were made to other outside creditors all the time. Payments were made on this claim only when there were funds there, and that's undisputed. It's undisputed that the debtor would go months at a time repeatedly without making any claims -- without making any payments, rather, and that's because they didn't have the money to pay. So -- and discovery and time is not going to change that.

We're almost through, Your Honor.

Number ten is the extent to which the advances were used to acquire capital assets. It's undisputed that the overwhelming majority of the alleged White Birch claim were not used to meet daily operating needs. Discovery won't change that.

And the final factor, Your Honor, is the presence or absence of a sinking fund to provide repayment. And it's undisputed that there is no sinking fund, and discovery is not going to change that.

So what we have here is a case where time and discovery just aren't going to change the undisputed facts or the law, and those facts indicate that the factors overwhelmingly support re-characterization, Your Honor, as does the sworn testimony of White Birch and Bear Island indicating that they even view this as an equity interest. So, Your Honor, we'd respectfully request that Your Honor deny the monitor's request for a joint hearing, or for a continuance, and allow us to go forward today so that we could submit our evidence, make our closing arguments and Your Honor can rule. Thank you.

THE COURT: Thank you.

MS. SPECKHART: Good morning, Your Honor. Cullen Speckhart appearing on behalf of the Canadian monitor. Your Honor, today I'd like to introduce to the Court Ken Coleman and Laura Hall from the New York office of Allen & Overy. They're seated in the courtroom behind me, and they'd like to present this afternoon's argument to Your Honor. The order authorizing their participation on a pro hac vice basis appears on the docket at Item Number 1259.

THE COURT: All right.

MR. COLEMAN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. COLEMAN: Ken Coleman of Allen & Overy on behalf of Ernst & Young, Inc., the monitor in the Canadian proceeding. I'd like to join Mr. Harbour in also thanking the Court for the accommodation and thanking the parties that are not in New York for understanding our weather-related issues. It was -- we would have rather had been here than sitting in the dark, frankly. I'll take up the joint hearing issue and then leak into the merits a little bit, too, but I think in keeping with Mr. Harbour's plan to leave that for later, if we get there.

I don’t know how familiar Your Honor is with the role of a monitor in a Canadian proceeding. The last time I was in this courthouse was in connection with the Circuit City case, which was not before Your Honor, but it was in this courthouse, and I know this Court is familiar with that role, based on that case. But the monitor is appointed at the inception of the CCAA proceeding. It’s a function that is very unique in solvency law. It’s not -- it’s not the debtor. It’s not like a trustee in bankruptcy; it’s not a creditor’s committee. It’s not like the U.S. Trustee. The monitor is an officer of the court responsible to the court, sometimes described as the eyes and ears of the court. It’s responsible, unlike a committee, to all of the creditors of the estate. It’s also responsible to the debtor.

This claim that we’re talking about, the so-called alleged White Birch claim, is a significant asset of the Canadian estate. Depending on various assumptions, some of which were contained in the disclosure statement for the plan in this case, it’s an asset that could be worth as much as $10 million to the Canadian creditors. So it’s a significant asset. It’s an asset that has been on the books and records of the company for about seven years. It was booked as an asset of White Birch based on an intercompany claim, which was generated when White Birch funded and paid the so-called standalone debt of Bear Island to the tune of approximately

$141 million back in 2005. It was reflected as an asset -- it was a liability, pardon me, of White Birch on the schedules that are verified at the inception of the case. It was discussed in the disclosure statement, it was reflected in the plan as a class five claim. And then very recently it was called into question, and I think if Your Honor has followed the pleadings, which there have been many, it is now the subject of this re-characterization motion.

This re-characterization issue is one of several issues standing between where the estates are now and the creditors' need for cash. The cash is locked up until these estate allocation issues are resolved. As Mr. Harbour explained, as closing was approaching and these estate allocation issues had not been resolved, it was agreed that the funds would be escrowed. There are a number of other difficult issues; subrogation rights; set-off rights, allocation of a variety of expenses, any one of which could be the subject of litigation in this court to the Canadian court.

Now, the escrow agreements and the reservation of rights agreement, which I'll speak to specifically in a couple minutes because there's been a few statements made about that. The escrow agreements, and there are two; there's the so-called U.S. escrow agreement and the Canadian escrow agreement. They provide that the funds do not flow from the escrow to the creditors, absent consent of the parties, or joint final non-appealable orders from the U.S. Bankruptcy Court, Your Honor, and the Canadian court, Justice Mongeon in Montreal resolving the estate allocation issues. Okay.

So this is -- they're short -- they're thankfully short documents. And this issue, the re-characterization issue is included plainly in the list of items that need to be resolved, and need to be resolved through joint, final, non-appealable orders of the two courts. As a matter of English language, it is absolutely plain. As a matter of lawyering, it is, perhaps, the most lawyered escrow agreement, and I'm sure the fee applications will reflect it, Your Honor, that I have ever seen in my life. So people were paying attention. The idea that this was a drafting convenience is just belied by the plain language.

So when we get to the bottom of the issue in terms of the joint hearing, basically what the committee and Black Diamond are asking Your Honor to do is to ignore the express language in the escrow agreement, both of them. That was the subject of a great deal of negotiation by very capable professionals.

The other interesting feature of this, of course, is that both of those documents contain specific choice of law clauses and jurisdiction clauses. The U.S. escrow agreement is governed by New York law and provides that the district court for the Southern District of New York has exclusive jurisdiction for, among other things, the interpretation of that document. The Canadian escrow agreement provides for Quebec choice of law and provides that the court in Montreal, or the courts in the City of Montreal -- I forget which, I can quote it exactly for Your Honor -- but, importantly, not this court, not any court in the United States, but a court in Canada has exclusive jurisdiction to, among other things, interpret that document. So even if the Committee and Black Diamond are right, that just ignore that, it doesn’t mean what it plainly says, unfortunately it’s not for Your Honor to decide that. The parties, through this intensive and expensive negotiation process agreed that those are issues for other courts to decide.

Now, there’s also this reservation of rights agreement, which I want to just speak to specifically. We did not raise the reservation of rights agreement in our papers. We wanted to because we expected that the Committee would say, well, we’re not a party, we’re not a party to the escrow agreement, so we’re not bound by that. And the reason we wanted to raise the reservation of rights agreement is because it says -- the Committee is a party to that -- and it says that the parties to the reservation of rights agreement have agreed to the escrow agreement. So there’s a direct link, which, of course, is a practical matter. Everybody here was involved in all of those documents. But there’s a direct linkage there for between the Committee and the escrow agreements. But, I think it's been pointed out in a footnote somewhere in the pleadings that have been filed on this issue, the reservation of rights agreement itself says that it cannot be referred to, mentioned, shown the light of day, or otherwise talked about for any reason whatsoever, except to enforce it. So we said, well, we can't raise it. We'll just have to let that one go.

Black Diamond, however, saw fit to raise it. And, moreover, to suggest that the monitor was somehow playing fast and loose here and wanted to mislead the Court. Now, I tried to get angry about that, but it's such a preposterous statement that I couldn't. We're not trying to mislead the Court. We're trying to explain to you now why we didn't raise it and it's because it says you can't.

THE COURT: I didn't take that from it, but.

MR. COLEMAN: But it's just ridiculous, Your Honor. It's just gratuitous smear campaign that, you know, we're just not going to lower ourselves to.

Now, the fact of the matter is that a joint hearing is a logical thing to have when you've got a cross-border case. Joint instructions is a very logical thing to have when you've got an escrow agreement. And neither of those things is inconsistent with the reservation of rights.

Now, I'd like to be very clear about what we are saying regarding a joint hearing. I am not saying that we need to utilize the TV sets that Your Honor seems to have here, and have yourself and Justice Mongeon holding a joint hearing on whether or not there's 11 factors, or 10 factors, or whatever it is, you know. We're not going to sit here, necessarily, unless Your Honors want to do that, and open the cook book and say, ah-ha, we've baked a re-characterization cake. That's not what I'm talking about.

What I'm talking about, what the monitor's position here is, given the fact that since the beginning of time until about a month or so ago, this was a big asset for Canada. And given the fact that this is a cross-border case where issues of international comity necessarily come into play. That the two courts ought to speak to each other and decide this ought to be mediated along with all the other issues. That Judge Tice ought to take this one, Justice Mongeon might say, and I'll follow that decision, or we ought to have a joint hearing on this and all the other issues. I don't know what the answer is, and neither do they. But what we're saying is that the two judges, as is usually the case, and often productively in these kinds of situations, ought to confer with each other and decide.

Now, the parties have agreed in the protocol that the judges of these two courts can have that conversation without the parties and can agree on how to proceed. And we think that that is a logical way to go here. You know, this one issue --

and remember there’s more than one issue at stake between -- you know, before the creditors can get the money. This one issue has produced at least five pleadings. Black Diamond’s filed two. So, you know, we’ve got I don’t know how many issues; five allocation issues, estate allocation issues. So if you do the math, you know, we could be here for, you know, I don’t know, a long time before we deal with each one of these and take discovery and have a hearing and then have appeals. Now, it might make sense for the two courts to confer. It might make sense for the two courts to say, you know, we are going to appoint a mediator to put these people in a room with, or not -- or not. Maybe Justice Mongeon will say, you know, I think that Judge Tice ought to deal with this issue as quickly as possible.

That’s my view. I’m not necessarily saying that this is -- that a joint hearing is how this one ought to go. And we’re perfectly happy to leave that to the two judges.

THE COURT: So you’re not saying how a joint hearing would work, you’re just --

MR. COLEMAN: Far be it for me to suggest that, Your Honor. I mean, if you ask me to express an opinion on how it would work, I could. But I am perfectly happy because I think when judges talk to each other, you know, we often get to a better result than when, you know, the parties try to force a certain methodology on the courts.

And, by the way, I don't know if Your Honor is aware of this. There was a bit of a letter writing campaign that was commenced in Canada. Canadian counsel to the monitor wrote to Justice Mongeon a week or so ago, about a week or so ago about this hearing and this motion before Your Honor. And Canadian counsel for the Committee responded and I think, in large part, reiterated the position of the Committee on these issues. I think, essentially, what Mr. Harbour just went through.

Justice Mongeon wrote back, copying all the parties, saying that he's available on November 26th for a conference, and actually asked for Your Honor's contact details. I have no idea what -- if anything transpired from that. So he's already engaged, in a sense, on the issue. So that's our view on this point. And I hope that it's a bit clearer than, perhaps, it appeared at first blush.

On this same subject -- excuse me for one minute. I just wanted to comment on, at this point, at least, on the surreply. I didn't check the docket to see if they filed anything else since then, but this was the last pleading that Black Diamond filed. And I just want to comment on this just for a minute or two.

They -- there's a lot of accusations in here, as I indicated, one of which is we're taking agreements out of context. We're taking excerpts of agreements out of context. Your Honor, I invite you to read the documents. As I said, they're very short. It's not out of context. It's one of the plainest things I've seen in a long time, and it's very clear that this item is listed in the list of estate allocation issues, the escrow breaks when there's a joint, non-appealable order from the two courts. Like it or not, that's what it says. If it becomes necessary, I'd like to take on their commentary about the Dornier case.

But you know it's particularly -- what was particularly interesting to me, at least, is they go on at some length about a hearing in Canada that happened I don't know if it was this year or last year, they go on for several pages in their surreply about what Justice Mongeon said in some other hearing, as if to say that we ought to listen to Black Diamond about what Justice Mongeon would say if we invited him into the process, which, of course, makes no sense. I mean, we should let Justice Mongeon speak for that court and not Black Diamond speak for Justice Mongeon. It just doesn't make any sense whatsoever. And there's a few other things that one might comment on, including the fact that it was a full month and a day, or a week, or whatever the timing was, that we waited to respond, but within the time allowed. It wasn't an untimely response.

Briefly on the issue of further discovery. The deponent at the 30(b)(6) deposition did the best job he could. We appreciated his time. He was not the guy that was in charge of the books and records. He was not responsible for giving the instruction back in 2005 as to how to enter this. He was not the guy who verified the schedules of assets and liabilities that showed this obligation to White Birch as a debt. And he was not the guy who signed the board resolution that appeared just a few weeks ago and that the deponent had never even seen until preparing for the deposition. That guy, his name is Jay Epstein, he left the company some time ago. But Jay Epstein's name came up in that deposition at least ten times as the person with direct knowledge of the claim, and direct knowledge of how it was supposed to be booked, and direct knowledge of whatever board meeting might have occurred where this resolution was passed.

So the question is whether we're -- after seven years of treating this thing as a debt, reflecting it in the schedules, talking about it in the disclosure statement, classifying it as a class five claim in the plan, having it voted on, whether or not we're now going to have, basically, a drive-by re-characterization on the basis of a witness who did testify, Mr. Harbour is right, he testified at the deposition, yeah, I guess it is a -- I guess it is an equity claim. But when you read the transcript, it becomes very clear that what he was doing was expressing an opinion on that day based on things that were just shown to him that day. He had absolutely no knowledge of anything to do with that re-characterization issue before preparing for the deposition and being asked all the leading questions you get to ask at a deposition. The guy with the direct knowledge, according to the witness, was Jay Epstein.

Now, we tried to reach out to Mr. Epstein after, you know, in between the phones not working. And Jay Epstein is the CFO, or some other -- I believe CFO, or another -- or a senior executive in another Chapter 11 debtor called NewPage. And NewPage is now moving towards confirmation, they may have even confirmed. But as this was all unfolding, what NewPage was trying to do is line up its exit financing from Chapter 11. Mr. Epstein made it very clear that, frankly, he had other things to do. Was not at all happy about being asked to participate in some process that he thought he left in his rearview mirror.

We also understand that there is a great deal of resistance to taking this one step further and deposing anybody else. And we would expect that any sort of deposition notice is going to be met with all sorts of, you know, objections and table pounding, not least from the witness, the proposed witness. But we think that the man whose name is on the very document that convinced the other witness on the day of the deposition that, yeah, I guess this is equity, he ought to be heard from, you know, he ought to be heard from before we have a drive-by re-characterization, which is really where this is headed.

Now, just a couple of words, if I might, Your Honor, on several merits here. Re-characterization is an equitable principle, okay. It is not a cook book recipe. The cases that are relied on here, the AutoStyle case, I think, in particular cautions courts to not apply factors in some rigid, formulated way. All right. This is an equitable principle. And the equities here are that this was -- the debt that was discharged, the so-called standalone debt has not been assailed, even by Black Diamond, as anything but legitimate third-party debt of Bear Island of 140 odd million dollars. It was paid by White Birch and then subsequently carried on the books as an asset and as a liability of Bear Island. So what the re-characterization does is create a windfall for the creditors of Bear Island, principally Black Diamond. So that's the equitable principle at work here.

Now, we can dive into the factors, all right. We can talk about the fact that there really is no evidence, for example, on capitalization. In fact, there seems to be in the record a reference to solvency certificates at the time the deal was done, suggesting that Bear Island was solvent. On the ability to obtain financing elsewhere, well, the witness testified that they didn't try. Not that it wasn't available, that they didn't try. And, in fact, there was financing made available, the first and second lien financing that these debtors, White Birch and Bear Island were obligors on. And the fact that, I think it's the AutoStyle case, which makes it clear that the fact that you need assistance from someone, in that case it was suppliers who agreed to guarantee, but that doesn't detract from the fact that there is financing available. So I don't know where we really go with that factor.

But, Your Honor, I think the point is that, you know, we can go through these things and reach an "ah-ha" moment on each one of the 11, or whatever the number is, factors, but the fact of the matter is that this was treated by everyone as a debt. And it comes as a great surprise, I might -- we wouldn't be surprised to hear -- it comes as a great surprise to the Canadian creditors that all of a sudden it's not an asset.

So our point here, Your Honor, is that the two courts ought to confer before we just evaporate this. And then if we are to go forward, we really ought to hear from the man who was responsible for it. And I'm going to just close with one final point; and that is, even if -- even if Your Honor says, you know, this is for me to decide and I'm going to decide and I'm going to do it today, what you can decide, based on that testimony, is with respect to the so-called standalone debt. That's the 141. Now, the -- and that's what he testified to after he was bludgeoned into the position, that's what he testified to as equity. That's what that resolution speaks about is the 141

standalone debt. There's other obligations in there. The 141 is by far and away the largest component, but there are ordinary course of business charges for things like insurance and other things that you'd expect a parent company, especially a financing arm type company, to pay for and to charge its subsidiaries. There are interest allocations in there. There's other things in there.

Now, there's a footnote or two in one of the myriad pleadings filed on this that said, oh, that was just paid for. Well, I mean, that's -- it's almost a physical impossibility because the charges hadn't even -- some of those charges hadn't even accrued yet. And even if you -- even if you go through that schedule and you apply every dollar that comes into the so-called -- well, what I would call, you know, true intercompany debt, if you apply it first to that, there's still, you know, millions of dollars of claim left.

So, you know, we still have to solve for what that number is, even if you were to decide today that the standalone debt is equity. So there's no easy exit from this. And we think, Your Honor, again, given the nature of this case as a cross-border case, we really ought to see what Justice Mongeon has to say.

THE COURT: And if the Court allows additional discovery, would that -- you're just talking about one witness?

MR. COLEMAN: I mean, based on what we heard from Mr. Sherrick at the deposition, he seems like the person. Yes, Your Honor. He seems like the person who was knowledgeable about this. His name is on that board resolution, so I would think so.

THE COURT: All right. Thank you.

MR. COLEMAN: Thank you, very much.

THE COURT: Mr. Harbour, would you like to respond --

MR. HARBOUR: I would.

THE COURT: -- anyone?

MR. HARBOUR: I would. Is there anyone else that wants to respond?

MR. MARCUS: Your Honor, this is Chris Marcus from Kirkland & Ellis. I'm on the phone. May be I heard for just a moment, Your Honor?

THE COURT: You may.

MR. MARCUS: Thank you, Your Honor, for allowing us to appear -- some of us to appear telephonically. My partner Jeff Landis is in the courtroom today with Ed Sherrick, Your Honor, who was the CFO of the company throughout the case.

Your Honor, I just wanted to let you know that we're here if Your Honor has any questions for us the way we've sort of set this up and framed this. Since the beginning was, you know, largely an intercreditor dispute. Obviously, this is an intercompany claim between debtor entities. We've certainly done our best to try to be as helpful as possible to get information -- all of the information both sides wanted and do this in as efficient manner as possible. But we have -- we're sort of left belaboring, or as far as advocacy to the creditor's committee and Black Diamond on the one hand and the monitor on the other. But again, Your Honor, if there are any questions for the company, we're here and prepared to help Your Honor in any way.

THE COURT: All right. Thank you. I just assumed you were stepping aside to let them do the work.

MR. MARCUS: Exactly. Thank you, Your Honor.

THE COURT: Thank you.

MR. GRAY: Good afternoon, Your Honor, William Gray with Sands Anderson on behalf of the Black Diamond entities that have been referred to here. With me is my co-counsel from Skadden Arps, Ron Meisler and Jessica Kumar. Your Honor, you've granted their admission pro hac in this already. If I would, I could turn over the podium to Ms. Kumar?

THE COURT: Thank you.

MS. KUMAR: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. KUMAR: Jessica Kumar. I'm here on behalf of certain Black Diamond entities. Black Diamond, through various of its subsidiaries, is a lender under the first lien term loan credit agreement and account of its deficiency claim is one of the largest unsecured creditors in this case, if not the largest.

As Your Honor's aware, we filed a joinder and response in support of the Committee's recharacterization motion and we've also filed a surreply in response to the monitor's response and a request for a joint hearing.

We agree with everything Mr. Harbour has previously said today, so I'll try not to repeat too much of that. I just wanted to make a couple points in response to Mr. Coleman. As an initial point Mr. Coleman emphasized that this is a significant asset of the Canadian debtors. I imagine in many claims objections the claim at issue is a significant asset of the party asserting the alleged claims, so that in and of itself does not divest this Court of any jurisdiction.

I'll also point out, he emphasized a couple times that this has been on the books and records of White Birch for seven years. We have testimony from Mr. Sherrick on behalf of White Birch that that -- that the booking of an intercompany claim in that instance was in fact just an accounting error, a lapse of communication between Mr. Epstein and Mr. Gobal (phonetic), the attorney -- or the employee who books those claims. And furthermore, that the company simply didn't deem it significant because that claim would be eliminated in consolidation in all of the company's financial records. And he also reiterated several times that they had no expectation of repayment on that claim, and so its existence on the books is not particularly significant.

In addition, I want to return to Mr. Coleman's points regarding the escrow agreements of the reservation of rights agreements. As has been described, the entire purpose behind the escrow agreements and the reservation of rights agreements was to create a mechanism whereby closing could proceed but all parties' rights would be reserved, such that essentially the situation would be the same as if closing had not occurred.

So the escrow agreement set out the mechanism for holding the funds and for ultimately dispersing the funds. However, those agreements incorporated the reservation of rights agreements, which really contained the heart of the settlement. And I -- any sort of -- some key language there is that the reservation of rights agreements provides that all parties acknowledge and agree that neither this agreement, the U.S. escrow agreement, the Canadian escrow agreement, the deposit of the escrow funds in accordance therewith, nor the holding of such escrow funds, will in any way affect or alter any party's rights or the rights of any party's successors and assigns with respect to the estate allocations and the escrow funds.

So it specifically says that nothing in the escrow agreement should be deemed to waive any party's rights. So it’s entirely counter to the settlement that the parties reached for -- to now assert something in those escrow agreements as a basis for waiving any rights or dictating how any of the estate allocation issues should be resolved.

So, in fact, even more than a draft inconvenience, the inclusion of the recharacterization issue as an estate allocation issue, even though its impact on estate allocation is somewhat tangential, but by including it the goal there was to in fact reserve and preserve all party’s rights as to that issue, rather than to dictate any such rights or how those issues should be resolved.

Also, as Your Honor’s aware, we did mention a certain Canadian order that was entered on October 7th of 2011 in response to our request from the monitor to direct the Canadian debtors to have a joint hearing on the estate allocation issues.

Our goal there was not to, you know, speak for -- put our words in for the words of the Canadian Court, or of course if Your Honor has spoken with Justice Mongeon on this issue then obviously his words would take precedence. The goal there was simply to provide some guidance since the Canadian Court has looked at this issue on how it views the need for a joint hearing.

And so I’ll note that while the monitor requested that the Court order that if there’s not a consensual resolution on estate allocation, then the Court ordered the Canadian debtors to request a joint hearing between this Court and the Canadian Court. Instead of granting that direction, the Canadian Court instead authorized any interested party to seek the adjudication of any dispute before the Court having jurisdiction upon same.

And there's some additional language, you know, simply recognizing that the Canadian Court does not have jurisdiction over Bear Island or over the U.S. case and that any -- each issue should be resolved by the party having jurisdiction over that issue. And so I think that that's just simply a helpful guide as to how the Canadian Court is likely to view its need to rule on this issue.

In addition I just wanted to also address the -- Mr. Coleman's statements regarding the need for a deposition of Mr. Epstein. While Mr. Epstein's name is on those resolutions, those resolutions are themselves very straightforward. They contain language specifically authorizing the -- authorizing White Birch to subscribe for equity in the exact amount of the standalone debt. And so there's really no need for outside evidence as to the plain and unambiguous language with respect to the board resolutions.

And this gets maybe a little more to the merits so I can expand on it later, but I do want to note that I believe Mr. Coleman's point that even if you -- he's conceded, essentially, as to the 141 or so million attributable to the standalone debt. However, he's asserted that the repayments that Bear Island has made on the remainder of the claim do not match the remaining amounts that comprise that claim.

My understanding from the deposition testimony and from the documents that we've seen is that there's approximately $4.3 million in so-called, you know, daily -- ordinary course expenses. There's about 66 million in amounts that have been allocated to Bear Island on account of interest under the first liens and second lien credit agreements and the revolver. And Bear Island has made about 77 million of repayments to White Birch.

So while I'm sure we'll get into this further down the road, there's every reason, all of the Dornier factors still suggest that the 4.3 and the 66 million are equity interests that should be recharacterized. Even if Your Honor disagreed, those amounts have been repaid by Bear Island.

So again, I think there's no need for a joint hearing in this case. The parties are here and ready to proceed. And also, finally, on efficiency. Resolving this issue will certainly help move the remaining estate allocation issues forward, and so it would be most efficient for Your Honor to address the merits on this -- at this hearing, and we respectfully request that you recharacterize the White Birch claim.

THE COURT: All right, thank you.

MS. KUMAR: Thanks.

MR. HARBOUR: For the record, Your Honor, again Jason Harbour on behalf of the Committee.

Your Honor, the first thing I'd like to mention is that nowhere in the pleadings or during Mr. Coleman's presentation was there any suggestion that you didn't have sole and exclusive jurisdiction over whether or not the intercompany claim is valid. That's yours to decide. Everything else is just noise. It's exclusive.

There also was no discussion of whether the cross-border protocol weighed in favor of a joint hearing. And with respect to efficiency, to echo Ms. Kumar, we're all here. We can do this today.

An emphasis at the beginning of Mr. Coleman's presentation was that this was a big claim, a big asset. But the problem is, the case law is very clear that it's not. The case law is very clear, in fact, that the difference between recharacterization and equitable subordination is that when a claim is recharacterized it's just an equity interest. It never existed. There is no asset there. That point of law is noted in many, many opinions, Your Honor, including, I believe, in Dornier.

Mr. Coleman also mentioned that it was on the books and records, in the schedules. Those things aren't factors.

They're not something a Court's going to consider. They're just not relevant. I've never seen an opinion that considered whether or not it had been on books and records as a claim or that it was identified in schedules as a claim, as something that was relevant in deciding a recharacterization issue.

He also stated that it was treated by everyone as a claim. No, it was on the books and records potentially as a claim, which there was testimony that was at stake. But how it was treated was just an equity interest because it was never paid unless there was enough money -- there was extra money lying around, then they sent some money up to White Birch when White Birch needed money. So, in fact, it was treated as an equity interest.

And with respect to just being told that this was an issue, that also is not the case. A year ago when we tried to initially have some discussions about the allocation of proceeds, how the DIP would happen, I, on a phone call, while sitting I think in the Newark Airport because flights had been cancelled from a planned in-person meeting, I made it very clear that the Committee had issues with the intercompany claim and may very well be objecting to it. So the monitor's known about it for a year.

Mr. Coleman also talked a little bit about the reservation of rights agreement and the escrow agreements. And, Your Honor, I want to read some of the relevant provisions because I think when you read them it becomes exactly clear what was going on in these agreements.

Ms. Kumar just quoted from Paragraph 2 of the reservation of rights agreement -- and again this is the agreement the Committee signed, the Committee didn't sign the escrow agreements -- and Paragraph 2 reads in its entirety, all parties acknowledge and agree that neither this agreement, the U.S. escrow agreement, the Canadian escrow agreement, the deposit of the escrow funds in accordance therewith, nor the holding of such escrow funds, will in any way affect or alter any party's rights or the rights of any party's successors and assigns with respect to the estate allocation issues -- that's the capitalized term you've seen -- that includes intercompany claims and the escrowed funds -- and the escrow funds.

So what Mr. Coleman would have Your Honor rule today is that that's meaningless, and that's the entire point of the whole reservation of rights agreement. That's what we were certainly worried about, that somehow by entering into these agreements our rights would be waived or affected in some way, at all. We didn't want anybody's rights to be waived. We wanted the sale to close and we could proceed as if it didn't. We could come to you for matters that are within your jurisdiction. We could go to the Canadian Court to the matters within the Canadian Court's jurisdiction, and we could address issues that might be within both of your jurisdictions to both of you, depending on how you ruled.

So that’s what the reservation of rights agreement is all about, Your Honor. It also provides in Paragraph 1 that all parties acknowledge and agree that this agreement and the escrow funds mechanism contemplated hereby are being used to facilitate the consumption of the -- the consummation, rather, of the purchase agreement. All parties reserve and retain all rights with respect to the estate allocation issues and the escrow funds.

No admission shall be construed against any party as a result of its execution of this agreement, including but not limited to the jurisdiction in which any of the escrow funds are located.

Again, the whole point was that entering into these agreements weren’t going to affect anyone’s rights. But if Your Honor were to decide based on the escrow agreements that somehow the Committee’s rights were affected, then this agreement would be null and void.

Let’s turn to the escrow agreements themselves.

THE COURT: I believe Mr. Coleman suggested early in his argument that this ruling you’re asking for would somehow impact the ultimate allocation of funds between the two entities. Could you comment on that?

MR. HARBOUR: Yes, Your Honor. It may. It’s a claim of one debtor against another. It’s not going to affect whether the asset purchase agreement is valid, how the asset purchase agreement should be interpreted, how the debtor-in-possession financing should be interpreted, how the funds should flow under any of those agreements.

The only way this affects it is in the way any claim is ever affected, because at the end of the day there's going to be so much money that Bear Island has and some of that money will need to go to White Birch if this is a valid claim. That's the only way it affects the other issues, Your Honor. This is a pre-petition claim. It couldn't affect anything else.

But turning to the escrow agreement itself, Your Honor -- and we're not a party, but we certainly did see it and it seemed to provide sufficient protections to make sure it didn't affect anybody's rights.

Specifically in 1.2, titled Preservation (sic) of Rights, it provides that the U.S. seller, the Canadian sellers, the purchaser, and the Canadian monitor agree that the Reservation of Rights Settlement Agreement attached hereto as Exhibit A reserves the rights of all parties to the Reservation of Rights Settlement Agreement is more fully set forth therein. So as Ms. Kumar noted, the escrow agreements are subject to the Reservation of Rights Agreement. That controls. That's just the way it is.

And then he talked about the disbursement of the escrowed funds provision in 3.1 and 3.2. And he suggested that because in 3.1 it provides that upon the issuance of joint -- appealable joint orders, that funds can be disbursed. It also provides in 3.2 that if there are joint written instructions by the U.S. seller, the Canadian sellers, and the purchaser, and the monitor, that funds can be released. So there are two ways funds can get out of the escrow accounts.

There's no suggestion here, Your Honor -- in here, Your Honor, that estate allocation issues have to be decided in a joint hearing. Joint orders are one way the funds can come out. They could be joint agreed orders. And that's particularly appropriate, Your Honor, because none of the parties that signed this, nor the Committee if we were to sign it, can tell Your Honor or Judge Mongeon they have to rule the same way or that they have to have a hearing together. We don't have that power, nor were we waiving our rights to argue that some things should be different. In fact, the parties -- frankly, I know I contemplated the possibility that Your Honor could rule one way on some issues. Justice Mongeon could rule other ways on some issues. And at that point hopefully, you know, once appeals were exhausted or the parties just came to their senses and could reach a mutually agreeable resolution, they cut a deal, and then that deal would go forward, because that's exactly what might happen.

We can't make Your Honor and Justice Mongeon agree to the same thing. And the suggestion that we could -- you know, we waived our rights and agreed to some joint hearings just is preposterous to me. It flies in the face of everything we did in those very busy days when there were late night phone calls and concerns that the employees in Canada were going to be without health insurance because the closing wasn't going to happen.

That, I think, explains why a joint hearing is not necessary, Your Honor. Going on to the request for a continuance. Some of the testimony from the deposition, I think, has been taken out of context or it's not what he said. He testified explicitly to questioning, Your Honor, from his counsel at the end that he spoke with everyone he believed he needed to speak with in order to answer the questions on the topics identified in the notices of deposition.

Those topics clearly related to whether the intercompany claim was valid. He talked to the people he needed to talk to. There's no requirement in 30(b)(6) or anywhere else in the federal rules of which I'm aware where a deponent, a 30(b)(6) deponent, has to be the person that had the most knowledge at the time. You can't have that because you have situations like this where Mr. Epstein left in June 2011 and he's been gone almost 18 months.

But what we do have is someone who worked there at the time. Worked there in 2005 -- actually held the job Mr.

Epstein held before he held it, and then Mr. Epstein had taken over a little bit -- who got up to speed and answered on behalf of the company. And his answers were clear. They're unequivocal, Your Honor. Not only does it indicate that the debtors in White Birch indicated it's an equity interest, but all the Dornier factors, and we can't pooh-pooh them, it's the Fourth Circuit. They said this is how you look at a recharacterization claim, that they all weigh in favor of recharacterization.

But deposing Mr. Epstein isn't going to change any of that. All it's going to do is cost more money, delay things, and it's something the monitor could have accomplished already. They could have subpoenaed him. They didn't. It may be tough to get in touch with them. I understand. But that's what we deal with all the time, and it didn't happen. Now it's -- it seems -- you know, it would be unnecessary delay, Your Honor, at a minimum.

There were also suggestions that it was just his thought on that day. Your Honor, he testified he prepared for the hearing. I'm sure that he had thought about whether it was an equity interest or not before that day. And he testified -- he didn't say I guess it is. He said it's an equity interest. That's the testimony. It's on Page 77 of the deposition transcript. It's been attached to a number of the pleadings. Your Honor has probably read it.

One other issue, Your Honor, that Mr. Coleman touched on briefly was whether that testimony and the other factors relate to the entire amount of the intercompany claim. The fact of the matter is, that testimony did relate to the entire amount of the claim as it stood right now. That's what we're talking about, not just the original 143, not the 60 some of interest allocations, or not the just a little over four million -- less than five million, at a minimum, of ordinary course expenses that piled up throughout the time.

So, you know, we have a total of $200 million. About a little less than five million were those types of charges. There were over $70 million of payments paying it down. But even if you thought, Your Honor, that that four million maybe it was valid, it only goes to one factor. The other factors all apply equally to that amount because those amounts weren't paid any sooner than anywhere else. It was accounted for on the books the same way. It was a spot in the ledger. It was the whole thing. It was slung together, and they didn't care about paying it because they didn't have to. They didn't treat it like a claim.

And it's also important to remember, Your Honor, that in the first lien and the second lien loan documents, if it was a loan -- if any of these amounts were real loans, they had to have a subordinated note. White Birch should agree that if it were to loan any money to Bear Island, that if it were to have a real indebtedness, that they would expressly subordinate them to the first and second lien debt, including in a bankruptcy case. They didn't do that. It would be the height of inequity, Your Honor, for them to have had that obligation, to just put it on their books, but now to have a valid claim. It would be a travesty.

So, Your Honor, we would request that Your Honor please let us go forward today so that we can get this taken care of and then we can move on with the other issues.

THE COURT: All right. Thank you. Anything else, Mr. Coleman?

MR. COLEMAN: Very, very briefly, Your Honor, not to wear out my welcome here. Instead of recharacterizing the witness' testimony, we're happy to have Your Honor read the transcript to see how he approached the issues, what he identified as the White Birch claim, and really what his conclusions and opinions were.

You know, to say that, oh, this was an accounting error, I think is a wild exaggeration of what the testimony was. You know, Mr. Epstein did swear to the schedules, and are we just going to ignore the meaning of that? I don't think we ought to.

The escrow agreements do talk about joint -- a joint order resolving the estate allocation issues, okay, and this is defined as one of those issues; resolving the estate allocation issues. Again, we invite Your Honor to read these very short documents.

We are also now, not only talking about an interpretation of the escrow agreements which the parties have also agreed are for other courts to do, we are talking about an interpretation of the Reservation of Rights Agreement, which by its terms is governed by Ontario law. So, Your Honor, I don’t know what parties are expecting Your Honor to do with these documents that a great deal of time and effort was spent in negotiating and drafting, and now we’re throwing them on your doorstep, when they’ve been left to other people to ferret out.

Finally, Your Honor, a joint hearing or a court-to-court communication that results in directions by the two courts does not alter the parties' rights. We are not asking this Court to alter anyone’s rights. Thank you.

THE COURT: Thank you. We’ll take a short recess.

COURTROOM DEPUTY: All rise. The Court is now in recess.

(Recess)

COURTROOM DEPUTY: The Court is now in session. Please be seated and come to order.

THE COURT: Well, I feel about this matter pretty much the way I did after reading all the papers before coming in. The question that gives me more pause is whether even to have -- whether this requires a joint hearing. I had read the Canadian judge’s order, a fairly lengthy order from about a year ago in which he talks about the different things that may or may not require a joint hearing. No help as far as the issue here goes, really, but kind of some incites into that Court’s thinking.

We’ve been hearing for a year, at least, that the parties cannot agree on allocation of the funds of the two -- as between the two estates. I guess in a perfect world it might be better to have a joint hearing, but I don’t think it’s required. I think I have jurisdiction to go ahead and make a ruling on this. I’m not going to continue it. So, Mr. Harbour, if you have an other presentation to make, you may.

MR. HARBOUR: Thank you, Your Honor. We have a number of exhibits, Exhibits 1 through 21 that were identified on our amended list of potential exhibits and witnesses. We have them in binders, per the Court’s local rules. Could I have a moment and distribute them, both a set of binders for you and then to other people?

THE COURT: You may.

MR. HARBOUR: Thank you, Your Honor. Your Honor, there are two binders. Both begin with the amended list on the beginning. If you look at 1, 1 is noted with the tab that says Number 1 and then tabs that say 30(b)(6) deposition exhibit and the numbers. So that binder is just the 30(b)(6) deposition, plus all of its exhibits.

The second binder, Your Honor, contains our other proposed exhibits. So the first binder is just Exhibit 1, which is the transcript. The other binder are our other exhibits. Most of them, frankly, are duplicates of the various deposition exhibits, but we thought it best -- it would help Your Honor if you go back and you look at any of these, if you're reading the transcript, so you don't have to switch from one binder to another, to have all the deposition transcript exhibits in one, and then just our exhibits in another. So it's a little cleaner that way, we thought.

THE COURT: I understand.

MR. HARBOUR: I'd like to submit them all into evidence, Your Honor.

THE COURT: Well --

MR. HARBOUR: We've identified them. There haven't been objections that I --

THE COURT: Is this something that --

MR. HARBOUR: Certainly.

THE COURT: This is what I would propose, Mr. Coleman. Given the length of the exhibits, I would propose to accept them all. I'm sure I'm going to be asking the Committee to submit something to support whatever ruling or you to support whatever ruling, and if you wish to object to any exhibits at that that time, you may do so.

MR. COLEMAN: That's fine, Your Honor. Thank you.

THE COURT: Thank you.

MR. HARBOUR: Thank you, Your Honor. And if I may, I'd just like to highlight a couple of things for the exhibits. It won't take long, and that will be our presentation for our case in chief, but we reserve the right to submit additional evidence on rebuttal, but we're not going to call a witness --

THE COURT: You may.

MR. HARBOUR: -- with these exhibits admitted. As I indicated, the first exhibit is the transcript. Frankly, most of the relevant portions have been identified either in our reply or in Black Diamond's response. Exhibits 2 through 5, Your Honor, are the second amended notices of deposition. There were four -- you know, Exhibits 2 through 5, there are four of them because we filed one for Bear Island and one for White Birch, both in the Chapter 11 and in the Chapter 15 case, because we'd filed the objection originally in both. The subsequent pleadings, all of the responses were only filed in the 11, so that's where we filed our reply, but that's why there are four there. They're identical, other than names and captions.

Exhibit 6 is the document that identifies the intercompany payable, the transaction detail. We received that from the company. It was produced in discovery, and it was identified by Mr. Sherrick as being correct.

Exhibits 7 through 10, we went ahead and broke down all of the transaction, Your Honor, so that you or anyone else could look and see for instance what are really the interest allocations and how much were they. So you have that in one space instead of having to go back to a document and doing the math yourself. We also broke down -- and Mr. Sherrick identified that these were correct -- the interest allocation amounts, as I said, the White Birch paper charges, and the payments that Bear Island made throughout the time.

Exhibits 11 through 14 are the first lien loan, the second lien loan, and Exhibits K to both of those. Exhibits K are the proposed subordinated notes, the forms that were to be entered into.

Exhibit 15 is a unanimous consent of the directors of Bear Island dated March 24th, 2005, and it has an Exhibit A that approves the first lien, and Exhibit B that approves the second lien, and Exhibit C that approves the revolving credit agreement, and then Exhibit D, among other things, approves their amended and restated operating agreement. The operating agreement, with those other exhibits, is attached.

And just a note, Your Honor -- I think this might be in one of our pleadings, it’s certainly in our depositions -- Section 3.3 of the operating agreement required any loan from White Birch, which is the member under the operating agreement, to be approved by the board. It needs to be pursuant to

Section 5.3(b) and that requires that any loan from the member be approved by the board and that there was no such loan -- no such approval, rather. I apologize.

Exhibit 16 is a journal entry prepared in April 2005 that identifies the various amounts that went into making up the initial claim amount of the intercompany claim in connection with the refinancing and the restructuring of the companies.

Exhibit 17, Your Honor, is a list of closing documents from the April 2005 transaction. On Page 25 of that is why it's being submitted. There's a caption and it's just an index, but HH says, consolidated holdings, which is identified as White Birch. It's a defined term. So, White Birch subscribed for membership interest in BIPCO, Bear Island, for U.S. $143,545,115, funds used to repay BIPCO debt closing. That's the quote there. And then right under it there's a Number 228 that identified a resolution of the board of directors of consolidated holdings, which again is White Birch subscribing for 100 -- U.S. $143,545,115 of membership interests in BIPCO. That's Exhibit 17 and that's Page 25, Your Honor.

Exhibit 18 is the board resolutions that are identified there. And again, these are board resolutions of White Birch. And the relevant information -- everything else was redacted at the request of the debtor, so they asked for it. We redacted the rest. We don't think it was relevant one way or another. We haven't heard an objection to it at this point. But under the section entitled, Repayment of Debts, there's language in the White Birch resolutions that state, and be it further resolved that the directors hereby authorize and approve the subscription by the company, of course White Birch, of U.S. $143,545,115 of membership interests in Bear Island Paper Company LLC. So that's why we're submitting that.

Exhibit 19 are minutes and that was Deposition Exhibit 18. But Exhibit 19, minutes of the meeting of the board of directors of White Birch dated as of April 5th, 2005. Of relevance there, in those resolutions, they approve an intercompany loan to FF Soucy, one of its affiliated entities. We submit that just to indicate that White Birch knew how to have an intercompany loan if they needed one. They knew how to have it resolved, how to have their meetings reflected accordingly.

Exhibit 20 is that subsequent note that was entered into by one of the other entities, because that actually was a true -- you know, there was a note there. It was different than what happened here.

And then Exhibit 21, for Your Honor, is the Reservation of Rights Settlement Agreement. And, Your Honor, I have no further evidence for our case in chief, as I indicated a moment ago. We reserve the right to submit additional evidence in rebuttal, but that's our evidence to you.

THE COURT: All right. Thank you. Mr. Coleman, do you wish to put on evidence or comment otherwise?

MR. COLEMAN: I'm sorry, Your Honor?

THE COURT: Would you like to put on evidence, or would you like to comment?

MR. COLEMAN: I'd like to just comment on -- briefly on --

THE COURT: You may.

MR. COLEMAN: -- on some of the evidence. And I think this goes specifically to the intercompany charges other than the initial 141 million. And I think that this was referenced earlier. I think the total of so-called ordinary course of business charges totaling approximately 4.3 million.

Your Honor, I think even in the Dornier case there was commentary about that where the subsidiary had performed certain services. The Court recognized that, you know, those are compensable on an intercompany account basis, and these charges for things like insurance and other ordinary course of business charges are not of the same nature as the 141. They are not anywhere near that board resolution from 2005 that talk about that. So I'd like Your Honor to be mindful of that point. So that's 4.3.

The other element here are -- the other elements -- are interest charges, and I think the total was also correct of approximately $67 million for that. And that was a -- essentially, a pass-through allocation by White Birch to its subsidiaries, including Bear Island. And there were three, possibly four, components of the interest allocation. And I think Your Honor will see from the record, the first lien and second lien interest was charged through to Bear Island. The revolver interest, which was not part of the standalone debt, and I think there's no -- I don't think there's anything in the record that suggests that Bear Island did not benefit from the revolver. And so we would submit that an interest allocation with respect to the revolver is an appropriate, under any measure, intercompany charge.

The other item that is, if you will, embedded within that intercompany account is an allocation based on a payment to a former shareholder, Joseph Allen, where the cost of that was likewise allocated to Bear Island.

Now, again, as I alluded to earlier, Your Honor, even if we segregate out those items that are not part of the standalone debt, they're not part of the 141, and there's an exhibit that the Committee has which is a bit of a time line about when these charges were put on the books when they were incurred, and then in that exhibit it shows payments from Bear Island to White Birch in reduction of the intercompany account, even if we -- and there's no allocation, if you will, of what the dollars are for there. So even if you were to say that the first dollars of payment from Bear Island to White Birch are attributable to these other items, these non-standalone debt items, even if you were to make that assumption, which is a big assumption, you are still left -- if you do the math -- you are still left with roughly 19 and a half million dollars of intercompany debt.

If you get a bit more complicated and you instead of doing a first dollar allocation, you do a proportionate allocation -- you know, what proportion did the 141 bear to the whole, and you use that approach throughout the whole payment history, I think you're left with quite a larger number for the non-standalone debt number.

So we ask that Your Honor bear that in mind, as I indicated earlier, that it's not quite as simple as attributing all of this to the standalone debt, which is the subject of that -- subject of that resolution.

THE COURT: Thank you. I understand that.

MR. COLEMAN: Thank you.

THE COURT: Well, we've -- I'll assume everybody's got everything -- said everything they want to say. I --

MR. MEISLER: Your Honor, if I could, I would just like to address the numbers very quickly?

THE COURT: You may.

MR. MEISLER: Ron Meisler on behalf of the Black Diamond entities.

Your Honor, as Mr. Harbour explained in one of his pleadings, if you're strong on the facts, you pound the facts, if you're strong on the law, you pound the law. If you're strong on neither, then you pound the table.

And so here we have a situation where we're talking about things that are fairly straightforward in effect on the intercompany payments and what happened historically, it's just math. And that's why the Creditor's Committee so nicely put in -- you could find it in Exhibits 8, 9 and 10.

The Creditor's Committee points out exactly what happened over time. And if you look at the math, it's very straightforward. $77 million in payments were made from Bear Island to White Birch from May 31st, 2005 until the filing. Looking at Exhibit 8, $66.9 million is attributable to interest, and that's interest on account of the first lien, the second lien, or revolver. And then if you move to Exhibit 10, it's very straightforward. It shows that $4.3 million is the amount of the various charges that were ordinary course, not associated with the secured debt.

Your Honor, once you do the math you see $4.3 million plus 66.9 -- let's even call it $67 million, you're up $71 million and $77 million of cash was paid. No matter how you cut that math, all those payments have been paid for. There is nothing left. And so when you think about whether you want to do first dollar out, last dollar out, none of it matters. It's all been paid for, and therefore there's nothing left, and there's this intercompany claim that at one point was $141 million and change. There's no documents to support it. There's no interest rate. There's no maturity. The list goes on and on.

The law and the facts overwhelmingly support recharacterization. And so, Your Honor, I ask this Court to look at the facts and look at the law and disregard the pounding of the table.

THE COURT: All right. Thank you.

MR. MEISLER: Thank you, Your Honor.

THE COURT: I'm not going to make a ruling today on the specific numbers. I recognize there may be some exceptions. What I am going to do is I'm going to tentatively rule in favor of the Committee's and Black Diamond's motion. I'm going to ask the Committee and Black Diamond to submit proposed findings of fact and conclusions of law. Since we're in the holiday season I'm going to suggest that they come in by January the 7th.

Mr. Coleman, the monitor will have 30 days to submit its own response. And both of you, of course, could have more time if it's necessary. I'm aware of the way -- the nature of this proceeding, and I just feel it's time that some kind of decision was made. Get this case off. And it's going to be appealed. I'd like to see this case come to a close. I would like to see -- I don't know if this ruling will have any impetus on the other aspects of the allocations, but I would -- I'd like to see that happen. But I think we can dispose of this issue. Any questions about the Court's request?

UNIDENTIFIED ATTORNEY: No, Your Honor.

UNIDENTIFIED ATTORNEY: No, Your Honor.

THE COURT: Thank you, all, for your excellent presentations. Very helpful. Thank you.

UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

COURTROOM DEPUTY: All rise. Court is now adjourned.

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C E R T I F I C A T I O N

We, KAREN DELUCIA and WENDY ANTOSIEWICZ, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Karen DeLucia

KAREN DELUCIA

/s/ Wendy Antosiewicz

WENDY ANTOSIEWICZ

J&J COURT TRANSCRIBERS, INC. DATE: November 21, 2012