CANADA PROVINCE OF QUÉBEC DISTRICT OF MONTRÉAL	SUPERIOR COURT (Commercial Division)
No.: 500-11-038474-108	*IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. (1985), c. C-36, (HEREINAFTER THE "CCAA"), WITH RESPECT TO:

WHITE BIRCH PAPER HOLDING COMPANY et AL.,

Debtors

-and-

ERNST & YOUNG INC.,

Monitor

-and-

STADACONA LIMITED PARTNERSHIP

F.F. SOUCY LIMITED PARTNERSHIP

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

Mis en cause

-and-

UNIFOR and its local sections 11, 137, 200, 250, 299, 625, 627, 905 et 1104 (previously designated SCEP)

-and-

REGROUPEMENT DES EMPLOYÉS RETRAITÉS DE LA WHITE BIRCH - STADACONA

-and-

COMITÉ DE RETRAITE DU RÉGIME DE RETRAITE DES EMPLOYÉS NON SYNDIQUÉS DE PML

COMITÉ DE RETRAITE DU RÉGIME COMPLÉMENTAIRE DE RETRAITE DU PERSONNEL NON SYNDIQUÉ DE F.F. SOUCY

COMITÉ DE RETRAITE DU RÉGIME DE RETRAITE DES EMPLOYÉS NON SYNDIQUÉS DE STADACONA,

Mis en cause

-and-

BD WHITE BIRCH INVESTMENT LLC
STADACONA WB LIMITED PARTNERSHIP
F.F. SOUCY WB LIMITED PARTNERSHIP
PAPIER MASSON WB LIMITED PARTNERSHIP,

Petitioners

AFFIDAVIT

I, the undersigned, LES MEIER, having my professional domicile at One Conway Park, 100 Field Drive, S170, in the City of Lake Forest, State of Illinois, do solemnly affirm:

1. I am a principal of Black Diamond Capital Management LLC and from July 30, 2010 to January 18, 2013 was a manager of BD White Birch Investment LLC ("BDWBI"). I have been authorized by the President of the Petitioner BDWBI to make this Affidavit in support of the Petitioners' *Motion for directions and for declaratory judgment* (hereafter the "**Motion**");

2. All the capitalized terms used in this Affidavit have the same meaning as the ones in the Motion unless otherwise defined herein;

<u>Negotiations made in good faith reliance on the Initial Order and April 2012 Judgment</u>

3. As a result of the Initial Order and the April 2012 Judgment, it was my understanding that it was well settled for all of the interested parties in this matter that the special payments were unsecured claims ranking *pari passu* with all of the other unsecured claims against the Debtors;

4. As set forth more fully below, the purchaser BDWBI and the other Petitioners predicated their determination to proceed with the sale transaction on the foregoing principle that the special payments were unsecured claims ranking *pari passu* with all of the other unsecured claims against the Debtors;

5. At the time of the execution of the LOUs by the Debtors on July 13, 2012, **Exhibits R-3, R-4, R-5 and R-6**, the motion for leave to appeal which had been filed by the Regroupement was still before the Court of Appeal. Accordingly, it was a condition precedent in the LOUs that the motion for leave to appeal be withdrawn or dismissed and the Union agreed to not file any motions in these CCAA proceedings or before any other courts or tribunals seeking the same or similar relief. Thus, the purchaser BDWBI and the other Petitioners would only proceed if the April 2012 Judgment was final and continued to apply. The Regroupement withdrew its motion for leave to appeal on or about August 23, 2012;

<u>Closing of the sale transaction made in good faith reliance on the Initial Order and April 2012 Judgment</u>

6. With the express condition precedent in the LOUs satisfied and the April 2012 Judgment now a final judgment, the purchaser BDWBI and the other Petitioners proceeded to close the sale transaction for substantially all of the assets of the Debtors on September 13, 2012 in good faith reliance upon each of the Initial Order, the Approval and Vesting Order and the April 2012 Judgment;

7. The decision of the purchaser BDWBI and the other Petitioners to close the sale transaction was made upon their good faith reliance on the previous Orders issued by the Court, including the Initial Order and the April 2012 Judgment as well as the satisfaction of the condition precedent in the LOUs that the Regroupement's leave to appeal be withdrawn so that the April 2012 Judgment would become final;

8. If a deemed trust ranking ahead of other creditors could have applied to the special payments, the purchaser BDWBI and the other Petitioners would not have been required to close the sale transaction pursuant to the terms of the ASA, because certain closing conditions in the ASA (for example, the condition relating to the maximum purchaser cash outlay of $132 million) would not have been satisfied. As well, it is my understanding that BDWBI and the other Petitioners could not have credit bid if a deemed trust outranked the First Lien security, which would have been contrary to the structure of the transaction in the ASA, which was approved pursuant to the Approval and Vesting Order, and which would have prevented BDWBI and the other Petitioners from closing the transaction;

9. If at any time the purchaser BDWBI and the other Petitioners had believed that, despite the April 2012 Judgment, a deemed trust ranking ahead of other creditors could apply to the special payments, they would not have invested new money and would not have closed the sale transaction;

10. Had the sale transaction not closed, it is my belief that the Debtors would have been liquidated, and there would have been no ongoing employment for the employees and no new pension plans;

<u>Negotiations on Estate Allocation issues in good faith reliance on the Initial Order and April 2012 Judgment</u>

11. As for the negotiations on the allocation of the purchase price between the Canadian and US estates, should the principles set out in the Timminco Judgment be deemed applicable in the present matter, the possibility that all of the proceeds to be allocated to the Canadian estate could become subject to a deemed trust and be paid towards the special payments claims, would so fundamentally alter the purchasers' and secured lenders' view of the current settlement terms that all progress to date would be lost. This would create uncertainty for all of the stakeholders involved in those negotiations, and whether it results in the failure of such negotiations, it will ensure lengthy and costly litigation;

12. It is my understanding that the Debtors have already expended approximately $4,000,000 in professional fees since the closing of the sale transaction and that the $3,600,000 contributed by the purchasers under the ASA to fund the wind-down of the estates has been nearly exhausted. As I understand it, this means that any additional amounts necessary to complete these proceedings will unfortunately continue to deplete the amounts available for stakeholders;

<u>Negotiations on new pension plans in good faith reliance on the Initial Order and April 2012 Judgment</u>

13. Although I was a manager of the purchaser BDWBI only until January 1, 2013, given my involvement and interest in the progress of BDWBI and the other Petitioners, I have been kept apprised of developments concerning the new pension plans by the senior management of BDWBI and provide the below based on such information;

14. Subsequent to the closing of the sale transaction in September 2012, and in good faith reliance upon each of the Initial Order and April 2012 Judgment, the relevant Petitioners commenced negotiations with the Union and discussions with the relevant departments of the Quebec government with a view to creating the new pension plans as set forth in the LOUs for each of the three mills in the Province of Quebec;

15. In late January 2014, an agreement in principle on the remaining outstanding issues was reached between the Petitioner FF Soucy WB Limited Partnership and the Union regarding the pension plan for the Soucy mill;

16. As appears from a letter sent by counsel for the purchaser BDWBI and the other Petitioners to Mr. Justice Mongeon dated February 7, 2014, **Exhibit R-7**, following this agreement in principle, and subject to final actuarial calculations of pension rates and plan schedules to be agreed to, the relevant Petitioners were prepared to make the commitment to submit to the Union, the final plan texts for all three mills of Soucy, Masson and Stadacona before the end of February 2014;

17. However, at paragraph 10 of its letter of February 7, 2014, counsel for the purchaser BDWBI and the other Petitioners wrote:

> "As appears from the above, BDWBI has been working with the goal of completing all three plan texts for the end of February and intending to have all three plans submitted for registration at the same time. These new pension plans were built relying in good faith on the judicial landscape, and the resulting financial implications, applicable at all relevant times, and with reference to the financial circumstances of each particular mill. To the extent that the decision rendered on January 24, 2014 in the *Timminco* matter may alter the judicial landscape as it relates to this matter, it would have an undeniable effect on all the plan texts and, if not resolved, this would have a significant impact on the finalization of the pensions plans."

Potential Impact of the Timminco Judgment

18. In finding that the terms and conditions of the LOUs were to its satisfaction, the purchaser BDWBI and the other Petitioners relied in good faith on the principle and understanding that the claims in the estate relating to the special payments were unsecured claims and the sale transaction closed on this basis. The Petitioners, as well as the Union, have since expended significant time, effort and money, including on lawyers and actuaries, to assist the government in drafting regulations and in the negotiation and drafting of plan text and in the analysis of various aspects of the new pension plans;

19. Because of the potential application of the Timminco Judgment, which was never contemplated and would so fundamentally prejudice the Petitioners and so comprehensively alter the construct of the already consummated transaction, the current draft of the pension plan text for Soucy is not to the satisfaction of the Petitioner FF Soucy WB Limited Partnership;

20. In consequence, given the certainty of complex litigation regarding the estate allocation of sale proceeds as well as the timing and variability of the potential allocation outcomes, the potential application of the Timminco Judgment would have an undeniable effect on the plan texts resulting in a significant impact on the establishment of the new pension plans;

21. All of the facts alleged in the present Affidavit are true.

AND I HAVE SIGNED:

LES MEIER

Solemnly affirmed before me,
in Lake Forest, Illinois, February 21, 2014

NOTARY PUBLIC

Official Seal
Jennifer Hembd
Notary Public State of Illinois
My Commission Expires 01/17/2016