CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-038474-108

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. (1985), c. C-36, (HEREINAFTER THE "CCAA"), WITH RESEPCT 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

MOTION FOR DIRECTIONS AND FOR DECLARATORY JUDGMENT
(Art. 11 of the *Companies' Creditors Arrangement Act* and Art. 453 C.C.P.)

TO THE HONOURABLE JUDGE ROBERT MONGEON OF THE SUPERIOR COURT, COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONERS RESPECTFULLY SUBMIT:

Introduction

1. This motion is brought by the Petitioners for the issuance of a declaratory judgment, confirming that, notwithstanding the judgment rendered on January 24, 2014 in the matter of *Timminco Limited* (SCM: 500-11-043844-121):

   (a) the April 2012 Judgment (as herein defined) and the provisions of the Initial Order (as herein defined), in particular paragraphs 20 and 21 thereof, remain in full force and effect and the question of the deemed trust applying to the special payments in the present proceedings is res judicata; and

   (b) accordingly, the unpaid special payments of the Debtors for the period commencing on February 24, 2010, date of the Initial Order, and ending on the date of termination of the Debtors' old pension plans on September 12, 2012, are not subject to a deemed trust and are unsecured claims against the respective Debtors.

Factual background

2. On February 24, 2010, this Honourable Court issued an Initial Order pursuant to the provisions of the *Companies' Creditors Arrangement Act* ("**CCAA**") with respect to the Debtor companies herein (the "**Initial Order**"), as appears from the Court record and a copy of said Initial Order filed in support hereof as **Exhibit R-1**:

3. Paragraphs 20 and 21 of the Initial Order provided the following:

   > "[20] **ORDERS** that notwithstanding any other provision of this Order, the Petitioners and the Partnerships shall not during the Stay Period make any past service contributions (now due or to become due) or special payments to funded pension plans maintained by the Petitioners or the Partnerships (the "**Pension Plans**").

> [21] **ORDERS** that none of the Petitioners, the Partnerships, or the Directors shall have or incur any obligation, whether statutory, fiduciary, common law or otherwise, or for breach of trust, nor shall any trust be recognized, whether express, implied, constructive, resulting, deemed or otherwise, as a result of the failure of any Person to make any contributions (now due or to become due) or payments, other than current service cost contribution obligations ("**Current Contributions**"), that they had or might otherwise have become required to make to any Pension Plans maintained by a Petitioner or by a Partnership."

4. On September 28, 2010, by way of an Approval and Vesting Order, this Honourable Court authorized the sale of substantially all of the assets of the Debtors to BD White Birch Investment LLC ("**BDWBI**") pursuant to the terms of an asset sale agreement whereby substantially all of the assets of the Debtors would be sold for an estimated total consideration of $236,1 million, as more fully appears from the Court record;

5. The Asset Sale Agreement between the Debtors and BDWBI dated as of August 10, 2010, as amended (the "**ASA**"), provided the terms and conditions under which substantially all of the assets of the Debtors (both in Canada and in the United States) would be sold to BDWBI or its designees;

6. The ASA provided that the transaction contemplated would close if and when certain conditions would be met;

7. One of these conditions was that the Debtors were to negotiate and enter into new collective agreements with the unions representing the employees of White Birch, and that such collective agreements were to be satisfactory to the purchaser BDWBI;

8. Other conditions to the closing of the transaction were, *inter alia*, that the Approval and Vesting Order would be a Final Order, as defined in the ASA, and that the maximum purchaser cash outlay of $132 million would not be exceeded;

The April 2012 Judgment

9. On or about November 22, 2011, the mis en cause Communications, Energy and Paperworkers Union of Canada - (CEP - Québec) and its locals 11, 137, 200, 250, 299, 625, 627, 705 and 1104 (now Unifor) (the "**Union**"), le Regroupement des employés retraités de la White Birch - Stadacona (« **Regroupement** ») and the Comités de retraite des employés non-syndiqués for the Soucy, Masson and Stadacona mills (the "**Comités de Retraite**"), each filed a motion in the following respective order:

   1) Requête de l'intervenante, en modification de l'ordonnance visant la prolongation de l'ordonnance initiale rendue le 18 novembre 2011 (2011-11-22);

   2) Requête pour jugement déclaratoire et modification de l'ordonnance initiale ayant été prolongée le 18 novembre 2011 (2011-11-22); and

3) Requête amendée pour jugement déclaratoire et modification de l'ordonnance initiale ayant été prolongée le 18 novembre 2011 (2012-01-09),

seeking a declaratory judgment from this Court that the special payments otherwise payable by the Debtors in respect of pension deficits are unaffected claims under the Initial Order, and are claims which rank in priority to the charge granted to the DIP lender and to the other charges provided under the Initial Order, as more fully appears from the Court record;

10. On April 20, 2012, the Honourable Robert Mongeon, j.s.c., dismissed all of the aforementioned motions, and a copy of the judgment (the "**April 2012 Judgment**") is filed in support hereof as **Exhibit R-2**;

11. In the April 2012 Judgment, Mr. Justice Mongeon ruled inter alia as follows:

(a) the principles set out by the Supreme Court of Canada in the *Century Services* matter strongly support the proposition that the CCAA does not recognize any legislative deemed trust other than those specifically mentioned at section 37 CCAA (paragraph 127);

(b) section 49 of the Quebec SPPA does not create a true trust under Quebec law (paragraphs 193 and 209);

(c) the deemed trust provided at section 49 SPPA is ineffective once the Court grants CCAA protection to a debtor company (paragraph 158);

(d) the special payments are not secured claims and there is no reason to treat them differently than the other pre-filing claims (paragraph 246);

12. At paragraph 218 of the April 2012 Judgment, Mr. Justice Mongeon writes:

> "[218] Les conclusions du Tribunal rejetant, d'une part, l'application des principes de l'arrêt *Indalex* au Québec et rejetant, d'autre part, l'existence d'une quelconque fiducie opposable à la Débitrice et à ses créanciers découlant de l'article 49 *LRCR* font en sorte que les cotisations d'équilibre dues par la Débitrice mais dont le paiement est suspendu par l'effet de l'ordonnance initiale, ne sont que des créances ordinaires ne bénéficiant d'aucune priorité particulière tant à l'égard des super-priorités émanant de la *LACC* que des autres créances garanties prenant rang après lesdites super-priorités."

13. Those findings by Mr. Justice Mongeon are a final judgment and render those issues *res judicata* in this proceeding;

14. One of the arguments which had been raised in contestation of the motions for declaratory judgment referred to in paragraph 9 above was an argument based on "*res judicata*";

15. Mr. Justice Mongeon considered this argument and wrote the following:

"[220] Les Intimés allèguent que les jugements antérieurs de cette Cour dans le présent dossier ont force de chose jugée et, pour ce seul motif, ne doivent ni être changés ni altérés en ce qui a trait à l'obligation de la Débitrice de reprendre le paiement des cotisations d'équilibre à compter du 1er novembre 2011.

[221] Il est vrai que l'ordonnance initiale comporte une "clause de retour" ou "comeback clause" qui permet au Tribunal de rajuster le tir si cette même ordonnance cause problème à une partie intéressée qui n'aurait pas été entendue lors de l'audition originale.

[222] On ne doit cependant pas perdre de vue que les ordonnances rendues en cours d'instance sont aussi des jugements sur la base desquels d'importantes décisions sont prises et, une fois rendues et tant qu'elles ne sont pas modifiées, ces ordonnances jouissent, sinon d'une autorité de la chose jugée totale et complète (étant révisables par le Tribunal qui les a rendues), à tout le moins de l'autorité de la chose décidée.

[223] Une des distinctions à faire entre l'autorité de la chose jugée et celle de la chose décidée semble être que l'une s'applique dans le cas où un jugement d'un tribunal n'est révisable que par une Cour d'appel tandis que l'autre peut être révisable par le même tribunal qui l'a prononcé. C'est le cas des jugements interlocutoires, des ordonnances de sauvegarde rendues en cours d'instance, des ordonnances de garde, accès et pension alimentaire en droit familial, des ordonnances de gestion, etc. Une ordonnance initiale peut donc être revue, corrigée ou adaptée aux circonstances, selon les intérêts des parties qui en demandent la révision, la correction ou l'adaptation, mais sans pour autant "changer la donne" ou les droits et obligations des autres parties qui ont pris des décisions majeures et importantes sur la base d'une ordonnance initiale antérieure.

[224] L'exemple parfait est celui où une Débitrice obtient une ordonnance initiale assortie d'un financement intérimaire qui est mis en place en fonction des termes et conditions de l'ordonnance. Il est évident que les conditions d'une telle ordonnance ne peuvent pas être modifiées à la légère et si elles le sont, les modifications doivent prendre en compte les décisions déjà prises et sanctionnées par le Tribunal.

(...)

[230] La jurisprudence semble assez constante lorsqu'il s'agit de prendre en compte les droits des parties intéressées qui ont pris de décisions en fonction des ordonnances déjà rendues par un tribunal sous l'empire de la LACC.

[231] En l'instance, le prêteur DIP n'aurait tout simplement pas accepté de financer les opérations de la Débitrice, n'eût été de l'octroi d'une super-priorité lui permettant de voir son prêt remboursé prioritairement à toute autre dette de l'entreprise.

(...)

[236] Le second principe qui s'infère de Muscletech fait en sorte qu'une éventuelle modification de l'ordonnance ne peut porter préjudice aux parties qui se sont fiées de bonne foi aux termes de l'ordonnance. Cela inclut le prêteur DIP. Ses ressources ont été bien accueillies par la Débitrice au bénéfice de tous, mais à certaines conditions. Il appartient donc aux Requérants de démontrer que l'on doive ré-ouvrir des prises de décision qui sont en place depuis plus de deux ans.

[237] Lorsqu'il s'agit de changer une décision en se basant sur un jugement subséquent qui vient en quelque sorte se démarquer substantiellement de l'état du droit antérieur, comme c'est le cas en l'espèce, il faut faire preuve d'une certaine déférence et le juge chargé d'intervenir doit exercer sa discrétion de manière à tenir compte des faits et du droit qui prévalaient au moment de la prise de décision et non au moment où on en demande la révision. Voir Re: Taylor 1998 CanLII 3851 (BC SC), [1998] 4 C.B.R. (4th) 139:

> **[10] I am unable to find any breach of equitable principles or any abuse of process in the making of my order. Nor does the need to do justice between the parties require that it be set aside. A change in the law subsequent to my decision does not establish that my decision was wrong at the time it was made. The judgment cannot be said to have caused injustice at that time and no circumstances existed which would have changed my decision had I been informed of them. The failure to advise the court of the fact that an appeal had been taken is not such a circumstance nor can fault be attributed to one party or the other. Both parties had an opportunity to advise the court of the Giffen appeal and, for whatever reason, chose not to disclose that fact. Whether or not I was told of the appeal, I was obliged to rely on the decision of the Court of Appeal. It expressed the legal principles binding on me at that time.**
>
> **[11] The law is constantly changing. If orders are set aside by the court which make them because of a change in the law, there would be no finality to litigation. Litigants could never be certain that matters before the court would be brought to a close. I decline to exercise the limited inherent jurisdiction of this court to set aside the order."**

16. The petitioners submit that these principles are sound and should apply to the present situation;

17. The Union and the Comités de Retraite did not appeal the April 2012 Judgment. The Regroupement did file a *Motion for Leave to Appeal,* which was subsequently abandoned with the result that the April 2012 Judgment is a final judgment rendered in these proceedings;

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

18. As a result of the Initial Order and the April 2012 Judgment, 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;

19. On the premises set out in the Initial Order and in the April 2012 Judgment, negotiations between the Debtors and the Union on new collective agreements, and in particular on pension plan issues, continued because the entering into of new agreements, which agreements were required to be to the satisfaction of the purchaser BDWBI was a condition precedent to the closing of the sale transaction of substantially all of the assets of the Debtors;

20. On July 13, 2012, the Debtors entered into four (4) Letters of Understanding ("**LOUs**") with the Union with respect to the pension plans, copies of which are filed as **Exhibits R-3, R-4, R-5** and **R-6**;

21. These LOUs provided, *inter alia*, for the termination of the then existing pension plans at the Soucy, Masson and Stadacona mills by the Debtors, and the establishment of new pension plans by the purchaser BDWBI;

22. Each of the LOUs contained a provision that the motions by the Union and others seeking the payment of the special payments and a declaration that the special payments were prior ranking charges (including any proceedings in appeal) were to be finally adjudicated or settled to the satisfaction of the purchaser BDWBI;

23. At the time of the execution of the LOUs, the motion for leave to appeal which had been filed by the Regroupement was still before the Court of Appeal. Accordingly, it was made a condition precedent in the LOUs that the motion for leave to appeal be withdrawn. It was clear that the purchaser BDWBI was only willing to proceed if it was clear that the April 2012 Judgment continued to apply. The Regroupement withdrew its motion for leave to appeal on or about August 23, 2012;

24. With the April 2012 Judgment now a final judgment, on the basis of the undertakings made and conditions provided in the LOUs and on account of BDWBI's good faith reliance upon each of the Initial Order and the April 2012 Judgment, the purchaser BDWBI proceeded to close the sale transaction for substantially all of the assets of the Debtors on September 13, 2012;

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

25. As the terms and conditions of the LOUs were satisfactory to the purchaser BDWBI, and as the conditions of closing were either met or waived by the requisite party, the purchaser BDWBI proceeded to close the sale transaction for substantially all of the assets of the Debtors on September 13, 2012;

26. The decision of the purchaser BDWBI to close the sale transaction was made upon its good faith reliance on previous Orders issued by the Court, including the Initial Order and the April 2012 Judgment;

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

28. At the time, had the purchaser BDWBI suspected that a deemed trust ranking ahead of other creditors could apply to the special payments, the purchaser BDWBI would not have invested new money and would not have closed the sale transaction;

29. Had the sale transaction not closed, the Debtors would most certainly have been liquidated, and all would have been lost for the employees and pension beneficiaries;

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

30. The sale transaction involved assets located in Canada and in the United States;

31. Since there were assets in Canada and in the United States, how the purchase price is to be allocated for the Canadian and US assets remains an unresolved issue;

32. The Monitor has often reported to this Court on the status of negotiations concerning the allocation of the purchase price paid by the purchaser BDWBI for the acquisition of substantially all of the assets of the Debtors, both in Canada and in the United States;

33. The Monitor has reported to this Court that there are significantly differing views on this, and that substantial efforts have been and are being made by the stakeholders concerned to achieve a negotiated business settlement of the estate allocation issues in order to avoid litigation which will be protracted, complex and very costly;

34. In particular, in his Report of the Monitor dated November 28, 2012, the Monitor wrote:

> "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."

35. Again, in his Report of the Monitor dated September 23, 2013, the Monitor wrote:

> "19. In view of the on-going discussions towards a settlement of the estate allocation issues, outlined in paragraph 18 above, the hearings that were scheduled to be held in connection with the motion to recharacterize the claim of WB Canada against Bipco have been postponed and the issue is left pending, as there is a possibility that this issue could become moot if a settlement is reached concerning the allocation of proceeds between the estates of Bipco and WB Canada."

36. And recently, in his Report of the Monitor dated January 10, 2014, the Monitor wrote:

> "21. While the discussions are not progressing as quickly as the Monitor had hoped, the discussions are continuing and the Monitor is still hopeful that a settlement can be reached. Considering that the failure to reach an agreement would result in protracted litigation, including the possibility of complex disputes between the various Canadian estates (if such estates are not consolidated) and considering that these disputes or litigation would necessarily have to be resolved prior to the allocation between the Canadian and US estates being decided, the Monitor continues to believe that ongoing negotiations are preferable to the alternative."

37. Should the principles set out in the Timminco Judgment (as herein defined) 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 analysis underpinning the current settlement terms that all progress to date would be lost, which would create uncertainty for all of the stakeholders involved in those negotiations, and may result in the failure of such negotiations and ensure lengthy and costly litigation;

38. This would be an unfortunate result where, according to the Monitor (as per his various reports to this Court), the parties remained confident to reach a negotiated business settlement up until the issue of the Timminco Judgment arose and have already invested 18 months in resolving these issues;

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

39. 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 purchaser BDWBI

commenced negotiations with the Union 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;

40. Those negotiations are well documented in the Court record;

41. In late January 2014, an agreement in principle on the remaining outstanding issues was reached between the purchaser BDWBI and the Union regarding the pension plan for the Soucy mill;

42. Following this agreement in principle, and subject to final actuarial calculations of pension rates and plan schedules to be agreed to, the purchaser BDWBI was 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;

43. This willingness on the part of the purchaser BDWBI to commit to submit the final plan texts to the Union was reiterated in a letter from counsel for the purchaser BDWBI to Mr. Justice Mongeon dated February 7, 2014, **Exhibit R-7**;

44. However, at paragraph 10 of its letter of February 7, 2014, the purchaser 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."

<u>Timminco Judgment</u>

45. On January 24, 2014, a judgment was rendered by Mr. Justice Mongeon in the matter of Timminco Limited (the "**Timminco Judgment**"), a wholly separate matter where none of the parties involved are parties to this present matter. Copy of the Timminco Judgment is filed as **Exhibit R-8**;

46. In the Timminco Judgment, with a very different set of facts, Mr. Justice Mongeon essentially decided that:

    (a) contrary to what he had decided in the present matter in the April 2012 Judgment, section 49 SPPA does provide that all of the unpaid special payments are subject to a valid deemed trust (paragraph 132 (b) and 162 (1));

    (b) those special payments are exempt from seizure and cannot be assigned (paragraph 162(2)); and

(c) those special payments are not subject to the first ranking hypothec of Investissement Québec, even though those special payments became due after the hypothec was set up (paragraph 162 (3));

Potential Impact of the Timminco Judgment

47. The purchaser BDWBI submits that, as regards the unpaid special payments of the Debtors between the date of the Initial Order of February 24, 2010 and the date of the termination of the pension plans on September 12, 2012, these special payments are not the subject of a deemed trust and are unsecured claims against the estate of the Debtors, as was decided in this matter by the Initial Order and by the April 2012 Judgment, which is a final judgment binding on all stakeholders of the Debtors and was relied upon in good faith by, among others, the purchaser BDWBI;

48. In finding that the terms and conditions of the LOUs were to its satisfaction, the purchaser BDWBI relied in good faith on the principle that the claims in the estate relating to the pension plans were unsecured claims. Financial assumptions and calculations were made on this basis, which is the foundation upon which these new pension plans were negotiated, engineered and built. The purchaser BDWBI, as well as the Union, has 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. The purchaser BDWBI has relied significantly, and at great cost, on the finality of the prior orders of this Court in these proceedings;

49. The LOUs (R-3 to R-6) provide that, as a condition precedent to the payment of benefits under the new pension plans, the plan texts must be to the satisfaction of BDWBI and registered with the Régie des rentes;

50. Because of the potential application of the Timminco Judgment, which was not contemplated in any way during the prior negotiations of either the LOUs by the Debtors or the pension plans and would so fundamentally prejudice the purchaser BDWBI (among others) 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 BDWBI;

51. In consequence, the potential application of the Timminco Judgment will result in further delays for the registration of the new pension plans, which delays could be significant;

52. This potential result poses a genuine problem for all of the parties involved herein;

53. In view of the foregoing, and consistent with the *res judicata* principles outlined above, the best possible outcome for all of the parties involved is that this Court confirm the validity and enforceability of its prior orders and the principles already set out in each of the Initial Order and April 2012 Judgment and declare that the Timminco Judgment does not apply in these proceedings;

Relief Sought

54. In view of the foregoing, the purchaser BDWBI submits that there is a genuine problem posed by the Timminco Judgment, and that it would be in the best interests of all of the parties in the present matter, as well as in the best interest of justice and of maintaining the integrity of the CCAA process and of the judicial system, that this Court confirm that, notwithstanding the Timminco Judgment:

(a) the April 2012 Judgment and the provisions of the Initial Order, in particular paragraphs 20 and 21 thereof, remain in full force and effect and the question of the deemed trust applying to the special payments in the present proceedings is res judicata; and

(b) accordingly, the unpaid special payments of the Debtors for the period commencing on February 24, 2010, date of the Initial Order, and ending on the date of termination of the pension plans on September 12, 2012, are not subject to a deemed trust and are unsecured claims against the respective Debtors.

WHEREFORE, MAY IT PLEASE THE COURT TO:

GRANT the present motion;

CONFIRM AND DECLARE that, notwithstanding the judgment rendered by this Court on January 24, 2014 in the matter of Timminco Limited (SCM 500-11-043844-121) or a subsequent ruling in appeal thereof:

(a) the April 2012 Judgment and the provisions of the Initial Order, in particular paragraphs 20 and 21 thereof, remain in full force and effect and the question of the deemed trust applying to the special payments in the present proceedings is res judicata; and

(b) accordingly, the unpaid special payments of the Debtors for the period commencing on February 24, 2010, date of the Initial Order, and ending on the date of termination of the pension plans on September 12, 2012, are not subject to a deemed trust and are unsecured claims against the respective Debtors.

RENDER any other order which this Court may find necessary or appropriate in the circumstances;

THE WHOLE without costs, save in the event of contestation.

Montreal, February 13, 2014

Lavery de Billy

LAVERY, DE BILLY
LIMITED LIABILITY PARTNERSHIP
Attorneys for Petitioners
BD WHITE BIRCH INVESTMENT LLC
STADACONA WB LIMITED PARTNERSHIP
F.F. SOUCY WB LIMITED PARTNERSHIP
PAPIER MASSON WB LIMITED PARTNERSHIP

NOTICE OF PRESENTATION

TO : SERVICE LIST

TAKE NOTICE that the present *Motion for directions and for declaratory judgment* will be presented *pro forma* before the Honourable Robert Mongeon, J.S.C., on **February 14, 2014**, at **9:00a.m.** in **room 16.12** of the Montreal Courthouse located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, February 13, 2014

Lavery de Billy

LAVERY, DE BILLY
LIMITED LIABILITY PARTNERSHIP
Attorneys for Petitioners
BD WHITE BIRCH INVESTMENT LLC
STADACONA WB LIMITED PARTNERSHIP
F.F. SOUCY WB LIMITED PARTNERSHIP
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NO.: 500-11-038474-108

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ORIGINAL

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Jean-Yves Simard / 004532-00343

LAVERY, DE BILLY, L.L.P.
LIMITED LIABILITY PARTNERSHIP
SUITE 4000, 1, PLACE VILLE MARIE, MONTREAL, QUEBEC H3B 4M4
TELEPHONE: 514 871-1522 FAX NUMBER: 514 871-8977

lavery.ca