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-
(...)

ADMINISTRATEUR PROVISOIRE NORMANDIN BEAUDRY, ACTUAIRES CONSEILS INC., Administrateur provisoire des régimes de retraite suivants :
RÉGIME DE RETRAITE DES EMPLOYÉS SYNDIQUÉS DE STADACONA
RÉGIME COMPLÉMENTAIRE DE RETRAITE DES EMPLOYÉS SYNDIQUÉS DE BUREAU DE F.F. SOUCY
RÉGIME COMPLÉMENTAIRE DE RETRAITE DES EMPLOYÉS SYNDIQUÉS D'USINE DE F.F. SOUCY
RÉGIME DE RETRAITE DES EMPLOYÉS SYNDIQUÉS DE PML
RÉGIME DE RETRAITE DES EMPLOYÉS NON SYNDIQUÉS DE STADACONA
RÉGIME DE RETRAITE DES EMPLOYÉS NON SYNDIQUÉS DE F.F. SOUCY
RÉGIME DE RETRAITE DES EMPLOYÉS NON SYNDIQUÉS DE PML
(HEREINAFTER THE "WOUND UP PENSION PLANS"),

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

PETITIONERS' REPLY TO CONTESTATION AND CONTESTATION OF CROSS-DEMAND OF NORMANDIN BEAUDRY
(related to #241 of Plumitif)

IN REPLY TO THE "*CONTESTATION ET DEMANDE RECONVENTIONNELLE DU MIS EN CAUSE ADMINISTRATEUR PROVISOIRE NORMANDIN BEAUDRY, ACTUAIRES CONSEIL INC.*", THE PETITIONERS RESPECTFULLY SUBMIT:

1. They deny the allegations contained in paragraphs 1, 2 and 3 of the "*Contestation et Demande Reconventionnelle du Mis en Cause Administrateur Provisoire Normandin Beaudry, Actuaires Conseil inc.*" dated March 26, 2014 (hereinafter the « **NB Contestation** »);

2. They pray act of the admission contained in paragraph 4 of the NB Contestation;

3. They join issue with paragraphs 5, 6, 7, 8, 9, 10, 16, 17, 20, 28 and 31 of the NB Contestation;

4. They deny paragraphs 11, 12, 13, 14, 15, 18, 19, 21, 22, 23, 24, 25, 26, 27, 29, 30, 32, 33 and 34 of the NB Contestation, and add that the ability of NB to take various positions in the NB Contestation and the finality of such positions raise serious questions and concerns;

AND FOR FURTHER REPLY AND FOR CONTESTATION OF THE CROSS-DEMAND, PETITIONERS ADD:

5. The Petitioners reiterate the allegations contained in their *Motion for Directions and for Declaratory Judgment* dated February 13, 2014;

6. The Petitioners submit that the Initial Order and the April 2012 Judgment are *res judicata* in the present case against all parties and interests involved or represented;

7. NB and the Regroupement cannot, four years after the Initial Order, and two years after the April 2012 Judgment, ask this Court to revise and vary such decisions when all of the stakeholders have since acted in good faith reliance on said Initial Order and April 2012 Judgment;

8. NB and the Regroupement have failed to provide to this Court any explanation that would justify their last minute attempt at revisiting issues which have been definitively adjudicated amongst all of the stakeholders for over two years;

9. The event of a Court decision in another unrelated matter is not a valid justification to re-open issues which have already been fully debated before this Court, and finally adjudicated in the Initial Order and the April 2012 Judgment;

10. The purchaser BDWBI and the other Petitioners have made major decisions relying in good faith at all times and continue to rely in good faith on the Initial Order and the April 2012 Judgment and the principle set out therein that the claims for unpaid special payments do not benefit from a deemed trust and are unsecured claims, including:

    (a) in their determination in July 2012 that the terms of the LOUs (R-3 to R-6) were acceptable;

    (b) in their decision in September 2012 to close the transaction for the purchase of substantially all of the assets of the Debtors and to invest new money in the business of the Debtors and save hundreds of jobs;

    (c) in their negotiations with the Union on the new pension plans subsequent to closing of the transaction;

11. The attempt of NB and of the Regroupement to obtain the application of a deemed trust to the claims for unpaid special payments will undoubtedly have an adverse impact on the negotiations of the Estate Allocation issues. A potential application of a deemed trust to the special payments may mean that all of the proceeds from the sale transaction that would be allocated to the Canadian Estate would exclusively be paid to the Wound up pension plans of the Debtors, with zero recovery for the unsecured creditors. This would mean that those unsecured creditors would have very little incentive to pursue the settlement discussions which have been ongoing since the closing of the transaction in September 2012 and agree to an estate allocation which would only benefit the Wound up pension plans of the Debtors. Instead, the purchaser BDWBI and the other Petitioners fear that this would lead to protracted litigation that would significantly delay any kind of distribution to creditors, including the Wound up pension plans of the Debtors. This would result in substantial further delays in the finalization and registration of the new pension plans. All of this creates considerable unnecessary additional costs, saps company resources which will be tied up in litigation and most importantly creates significant additional uncertainty for the business due to employee, customer and supplier concerns. This additional uncertainty puts the business at greater financial risk. As a result, if the Estate Allocation issues cannot be resolved, this will cause serious prejudice to the Petitioners;

12. In reliance upon the Initial Order and the April 2012 Judgment, the purchaser invested new money to close the asset acquisition. As a result of the closing of the transaction, the paper mills did not have to liquidate. Over 750 jobs were preserved in the Province of Quebec. Since the closing of the transaction in September 2012, in excess of $300M was infused into the local economies as a result of BDWBI and the other

Petitioners spending on employee wages and benefits, capital expenditures, electricity, fiber, chemicals and other supplies. None of this would have occurred if the Initial Order and the April 2012 Judgment had not provided that special payments are not subject to a deemed trust;

13. The purchaser BDWBI and the other Petitioners would not have closed the sale transaction and the economic benefits associated with the continued operations of the mills by the new owners would not have occurred if they would have known that claims for special payments would benefit from a deemed trust;

14. The Court cannot now "change the rules of the game" after the fact and start revisiting issues which were fully argued before it and finally adjudicated;

15. The conclusions sought by NB and the Regroupement amount to an appeal in disguise of the Initial Order and the April 2012 Judgment;

16. These conclusions amount to a request that the Court reverse its Initial Order and April 2012 Judgment, and declare that <u>all</u> claims for unpaid special payments benefit from a deemed trust, not just the claims for the Non-Unionized Retirees ("*Retraités non-syndiqués*") as there is no justification at law to distinguish the claims for unpaid special payments as they relate to union or non-union employees and retirees. The issue before the Court is not purely academic and clearly poses a real difficulty;

17. Should the claims for special payments benefit from a deemed trust, the moneys that would be distributed would be disbursed to the relevant pension fund, not directly to the retirees, and then be allocated to those entitled. Accordingly, the claims of NB are inaccurate in that they cannot solely benefit the Non-unionized Retirees, even if at law it was possible to find a deemed trust applying to only a subset of the Wound up pension plans of the Debtors, which the Petitioners submit that it is not;

18. In view of the conclusions sought by NB and the Regroupement, this Court should reaffirm the conclusions of the Initial Order and April 2012 Judgment and declare that no deemed trust applies to any claims of anyone for unpaid special payments to the Wound up pension plans of the Debtors, and that such claims are unsecured claims against the Debtors;

WHEREFORE, MAY IT PLEASE THE COURT TO:

DISMISS the "*Contestation et Demande Reconventionnelle du Mis en Cause Administrateur Provisoire Normandin Beaudry, Actuaires Conseil inc.*";

DECLARE that no deemed trust applies to any claims of anyone for unpaid special payments to the Wound up pension plans of the Debtors, and **DECLARE** that such claims for unpaid special payments are unsecured claims against the Debtors;

THE WHOLE with costs against contesting parties.

Montreal, April 7th, 2014

(S) LAVERY, DE BILLY

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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

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Lavery de Billy

LAVERY, DE BILLY
LIMITED LIABILITY PARTNERSHIP

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(Related to #241 of the *Plumitif*)

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