CANADA

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

SUPERIOR COURT
(Commercial Division)
(Sitting as Court designated to the *Companies' Creditors Arrangement Act,* R.S.C. 1985 c. C-36)

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

ESTATE WBPHC COMPANY (formerly known as WHITE BIRCH PAPER HOLDING COMPANY)
-and-
ESTATE WBPC COMPANY (formerly known as WHITE BIRCH PAPER COMPANY)
-and-
ESTATE SGPI INC. (formerly known as STADACONA GENERAL PARTNER INC.)
-and-
ESTATE BSPI INC. (formerly known as BLACK SPRUCE PAPER INC.)
-and-
ESTATE FFSGPI INC. (formerly known as F.F. SOUCY GENERAL PARTNER INC.)
-and-
3120772 NOVA SCOTIA COMPANY
-and-
ESTATE GCSI INC. (formerly known as ARRIMAGE DE GROS CACOUNA INC.)
-and-
ESTATE PML INC. (formerly known as PAPIER MASSON LTÉE)

Petitioners

-and-

ERNST & YOUNG INC.

Monitor

-and-

SSEC LIMITED PARTNERSHIP (formerly known as STADACONA LIMITED PARTNERSHIP)
-and-
FFS LIMITED PARTNERSHIP (formerly known as F.F. SOUCY LIMITED PARTNERSHIP)
-and-
FFSIA LIMITED PARTNERSHIP (formerly known as F.F. SOUCY, INC. & PARTNERS, LIMITED PARTNERSHIP)

Mises en Cause

MOTION FOR DISCHARGE OF THE MONITOR
(Sections 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36)

TO THE HONOURABLE ROBERT MONGEON, J.S.C., SITTING IN COMMERCIAL DIVISION IN AND FOR THE DISTRICT OF MONTREAL, THE MONITOR RESPECTFULLY SUBMITS AS FOLLOWS:

I. PREAMBLE

1. The Monitor appointed by the Court Ernst & Young inc., a licensed trustee (the **Monitor**) hereby seeks an order, in the form and substance of the draft order communicated herewith as **Exhibit R-1** discharging the Monitor (the **Discharge Order**);

2. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Initial Order (as defined below) and/or in the Plan of Compromise (as defined below);

3. This Motion is also supported by the Monitor's report dated May 23rd, 2018, communicated herewith as **Exhibit R-2**, to which is appended as Appendix C a distribution schedule (the **Distribution Schedule**), showing the expected final distribution to be received by creditors;

II. BACKGROUND

A. The Canadian Proceedings

4. On February 24, 2010, the Honourable Robert Mongeon, j.s.c. issued an order (as subsequently amended and restated, the **Initial Order**) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the **CCAA**) in respect of Estate WBPC Company (formerly known as White Birch Paper Company) (**WB**), Estate WBPHC Company (formerly known as White Birch Paper Holding Company), Estate SGPI Inc. (formerly known as Stadacona General Partner Inc.), Estate BSPI Inc. (formerly known as Black Spruce Paper Inc.), Estate FFSGPI Inc. (formerly known as F.F. Soucy General Partner Inc.), 3120772 Nova Scotia Company, Estate GCSI Inc. (formerly known as Arrimage de Gros Cacouana Inc.) and Estate PML Inc. (formerly known as Papier Masson Ltée) (collectively, the **Petitioners**), as appears from the Court record;

5. The Initial Order extended the protection of the CCAA to the Petitioners as well as to various partnerships in which the Petitioners hold an interest, namely SSEC L.P. (formerly known as Stadacona Limited Partnership), FFS L.P. (formerly known as F.F. Soucy Limited Partnership) and FFSIA L.P. (formerly known as F.F. Soucy, Inc. & Partners, Limited Partnership) (the **Partnerships**, and together with the Petitioners, **WB Canada**);

6. Pursuant to the Initial Order, Ernst & Young inc. was appointed as monitor to WB Canada (the **Monitor**) and a stay of proceedings was ordered until March 26, 2010 and

subsequently extended by further orders until an effective date as defined in the *Plan of compromise* dated March 17, 2015 (the **Plan**), a copy of which is communicated herewith as **Exhibit R-3**. The effective date of the Plan was confirmed by the filing of a certificate by the Monitor on July 28, 2015 (the **Effective Date**);

B. The US Proceedings

7. On February 24, 2010, the date on which the Initial Order was rendered, a subsidiary of WB with activities in the United States, Estate Bipco LLC (formerly known as Bear Island Paper Company, LLC) (**Bipco**, and together with WB Canada, the **WB Group**), commenced a case under the provisions of Chapter 11 of the U.S. *Bankruptcy Code*, title 11, chapter 11 (**U.S. Code**);

8. On the same date, WB Canada also applied for relief under the provision of Chapter 15 of the U.S. Code;

9. On March 22, 2010 the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the **U.S. Court**) granted recognition of the Canadian proceedings under the CCAA as foreign main proceedings and recognized WB as the duly appointed foreign representative of WB Canada;

C. The Asset Sale Agreement

10. On April 29, 2010, WB Canada sought and obtained an order approving a joint going-concern sale and investor solicitation process (**SISP**) in respect of the WB Group's assets;

11. Further to the SISP, BD White Birch Investment LLC (**BDWBI**) was identified as the stalking horse bidder and an *Asset Sale Agreement* (**ASA**) was negotiated and signed between BDWBI and WB Group on August 10, 2010;

12. On September 10, 2010, this Court granted, subject to certain modifications, the *Motion to Approve a Stalking Horse Bidder, to Approve an Asset Sale Agreement, to Approve Bidding Procedures for the Sale of Substantially All the WB Group' s Assets and to Schedule an Auction and Sale Hearing* filed by WB Group (**Stalking Horse Order**);

13. On September 21, 2010, an auction was held to determine the highest and best price for the assets of the WB Group and BDWBI's offer was considered as representing the highest and best offer;

14. On September 28, 2010, the final ASA and BDWBI's offer were approved by this Court and on September 13, 2012, the sale finally closed;

15. Pursuant to the ASA, the Purchase Price (as defined in the ASA) included, among other things, (a) a Cash Component of US$90 million (as defined in the ASA) and (b) a Fixed Asset Cash Amount (as defined in the ASA);

16. On closing of the ASA, certain of the proceeds of the sale were used to repay in full the Debtor-in-Possession interim financing that had been approved by this Court and the U.S. Court;

17. However, shortly after the closing of the ASA, a disagreement arose between the estates of WB Canada and Bipco regarding the allocation of the remaining sale proceeds;

D. The Estate Allocation Compromise and Settlement Agreement

18. On February 24, 2015, after extensive negotiations between WB Canada, Bipco, BDWBI, the Monitor and certain groups of creditors, an *Estate Allocation Compromise and Settlement Agreement* (**EACSA**) was reached and executed;

19. The EACSA settled, among other matters, the allocation of all funds held in escrow by or on behalf of the Monitor and Bipco arising from the sale transaction, including the remaining proceeds of sale;

20. The EACSA was subject to the fulfillment of certain conditions including the filing of a plan of compromise by WB Canada which was to be sanctioned, as applicable, by this Court and by the U.S. Court;

E. The Plan

21. On March 13, 2015, WB Canada sought and obtained an order from this Court pursuant to which, among other things, a procedure was established for the holding of a meeting of WB Canada's creditors on April 22, 2015 (**Creditors' Meeting**) for the purpose of voting and, if though advisable, approve the Plan;

22. On March 17, 2015, WB Canada filed the Plan, which purpose was to provide for a timely distribution of the Distribution Amount (as defined in the Plan), the release of all claims, the approval of the EACSA and to provide certain releases provided therein;

23. The Plan, among other things, contemplated a distribution to WB Canada's unsecured creditors on a consolidated basis and provided for releases, in particular in favour of:

    a) WB Canada, their directors and officers, their financial and legal advisors, and the Monitor;

    b) WB Canada's shareholders; and

    c) The Released Lender Parties, which included, among others, the First Lien Agent, the First Lien Lenders, the Second Lien Agent, the Second Lien Lenders and BDWBI;

    (collectively, the **Releases**)

24. On April 22, 2015, the Plan was accepted by the creditors at the Creditor's Meeting. A very large majority of creditors who voted on the Plan, namely 111 creditors (or 97.368%

of the creditors voting, in number) with claims totalling $954,480,708 (or 99.989% of the claims of the creditors voting on the Plan, in value) voted in favor of the Plan;

25. On May 27, 2015, a hearing was held on the *Motion for the issuance of an order sanctioning the plan of compromise and for other relief* (**Motion to Sanction the Plan**). The Motion on the Plan was contested by the Regroupement des Employés Retraités de White Birch Stadacona (**RERWBS**), which did not object on the Plan *per se*, but was objecting to the Releases provided for within the Plan, inasmuch as these releases applied to the RERWBS;

26. On June 3, 2015, this Court rendered judgment on the Motion to Sanction the Plan and on the contestation filed by the RERWBS. The Court, among other things, sanctioned the Plan, approved the EACSA, extended the Stay Period until the Effective Date (as defined in the Plan, R-3), authorized and approved the Releases as provided for in the Plan (R-3) and approved the actions and conduct of the Monitor, a copy of which (the **Sanction Order**) is communicated herewith as **Exhibit R-4**;

27. By way of the Sanction Order (R-4), this Court also ordered the distribution of an amount of $745,055.00 offered by BDWBI, on a *pro rata* basis, to the members of the RERWBS and declared that the Court remains seized of any questions arising in the implementation of the payment by BDWBI to the members of the RERWBS;

28. The Sanction Order (R-4) provided *inter alia*:

> THE MONITOR
>
> [19] ORDERS that all actions and conduct of the Monitor in connection with the Claims, the CCAA Charges, the Plan and the CCAA Proceedings, including the actions and conduct of the Monitor disclosed in the Monitor's reports, are hereby approved, and that the Monitor has satisfied all of its obligations up to and including the date of this Order;
>
> [20] DECLARES that the protections afforded to Ernst & Young Inc., as Monitor and as officer of this Court, pursuant to the terms of the Initial Order and the other Orders made in the CCAA Proceedings shall not expire or terminate on the Effective Date and, subject to the terms hereof, shall remain effective and in full force and effect;
>
> [21] ORDERS that upon the completion by the Monitor of its remaining duties, including, without limitation, distributions made by or at the direction of the Monitor in accordance with the Plan, the Monitor shall file with the Court the Monitor's Plan Completion Certificate, substantially in the form that was served with the Motion, stating that all of the Monitor's remaining duties have been completed and that the Monitor is unaware of any claims with respect to its performance of such remaining duties, and upon the filing of the Monitor's Plan Completion Certificate, Ernst & Young Inc. shall be deemed to be discharged from its duties as Monitor of the Canadian Debtors in the CCAA Proceedings

and released from any and all claims relating to its activities as Monitor in the CCAA Proceedings, save for willful or gross negligence;

GENERAL

[22] DECLARES that the Monitor or the Canadian Debtors may, from time to time, apply to this Court for any advice, directions or determinations concerning the exercise of their respective powers, duties and rights hereunder or in respect of resolving any matter or dispute relating to, or to the subject matter of or rights and benefits under, the Plan or this Order, including, without limitation, regarding the distribution mechanics under the Plan;

III. ADMINISTRATION OF THE ESTATES

29. On July 28, 2015, the Monitor was informed that all conditions precedent for the implementation of the Plan were satisfied or waived. The Monitor therefore prepared and filed a certificate to document the fact that the Effective Date occurred on July 28, 2015;

30. In the week of August 24, 2015, the Monitor sent out an initial distribution to the creditors as contemplated in the Plan (the **Initial Distribution**). The total amount distributed represented $ 54,738,127, or 5.33% of the proven claims admitted for distribution purposes;

A. Additional and Final Distribution

31. In addition to the Initial Distribution, it was contemplated that additional distributions could take place for several reasons;

32. At the time of the Initial Distribution, some of the claims of the creditors were not fully determined. The more significant claims requiring adjustment were the claims filed by the Canada Revenue Agency and the Quebec Revenue Agency, for which some amounts were in dispute;

33. Also, in accordance with the Plan (R-3), if distributions are made to creditors but the creditors do not cash the dividend cheques, the undistributed funds may be redistributed to the remaining creditors. Following the Initial Distribution, cheques in the amount of $ 193,608.42 have been distributed and not cashed. Therefore, such amount shall be redistributed;

B. RERWBS

34. Following the judgement rendered on June 3, 2015 on the Motion to Sanction the Plan and on the contestation filed by the RERWBS, BDWBI had to distribute the amount of $ 745,055.00, on a *pro rata* basis, to the members of the RERWBS;

35. Prior to the distribution, RERWBS and BDWBI had to agree on the wording of the release and on the proposed payments to be made by BDWBI and received by the eligible members of RERWBS;

36. To this date, the Monitor is informed that all payments to the members of the RERWBS have been distributed in accordance with the Sanction Order (R-4);

IV. DISCHARGE OF THE MONITOR

37. In light of the foregoing, the Monitor presents this Motion in order to proceed with the Additional and Final Distribution, and to obtain the Discharge Order;

38. Considering that the Monitor has duly and properly discharged all of its duties, responsibilities and obligations, it is appropriate and in the interest of all parties involved before this Court to discharge the Monitor from any further obligations, liabilities, responsibilities and duties in its capacity as Monitor;

39. Considering the Petitioners' current status and the termination of the CCAA proceedings, there is no longer any role for the Monitor to fulfill and no purpose to be served by the continuation of the Monitor's appointment;

40. The Monitor intends to proceed with an Additional and Final Distribution of a residual amount of at least $ 5,284,860, subject to adjustments for unspent provision for residual fees and costs to be distributed to creditors, the whole in accordance with the Distribution Schedule (R-2, Appendix C);

41. The Monitors expects that it will be in a positon to proceed with the Additional and Final Distribution in accordance with the Distribution Schedule within ten (10) days of the Discharge Order, at which time it shall without further delay serve to the service list, post on its website, and file into the Court record a certificate in the form and substance attached hereto as **Exhibit R-5** (the **Final Monitor's Certificate**) giving full force and effect to the discharge of the Monitor and the releases contemplated therein;

42. The present Motion is well founded in fact and in law;

WHEREFORE MAY IT PLEASE THE COURT TO:

[1] **GRANT** the present Motion for Discharge of the Monitor (the **Motion**) presented on behalf of Ernst & Young inc. in its capacity as monitor in this matter (the **Monitor**);

[2] **DECLARE** that the time for service of the Motion is abridged to the time actually given and that service of the Motion and supporting material is good, valid and sufficient, and any further service thereof is hereby dispensed with;

[3] **APPROVE** the content of the Report of the Monitor dated May 23rd, 2018 filed in the Court record in support to this Motion (the **Final Report of the Monitor**);

[4] **ORDER** the Monitor to make the payments and remittances provided for in the Final Report of the Monitor and, upon completion, to forthwith serve to the service list, post on its website, and file in the Court record a duly executed certificate in form and substance in conformity with the certificate filed in the Court record in support of the Motion (the **Monitor's Final Certificate**);

[5] **DECLARE** that any and all actions of the Monitor from the date of its appointment, on February 24, 2010, to the time of its discharge under the Order to be rendered herein upon filing of the Final Monitor's Certificate, are hereby approved, ratified and sanctioned by this Court and the Monitor shall be deemed to be discharged from its duties as Monitor to WB Canada in the CCAA Proceedings and released from any and all claims relating to its activities as Monitor in the CCAA Proceedings, save for willful or gross negligence;

[6] **DECLARE** that if any cheque issued on account of the Additional and Final Distribution remains uncashed or remains returned as undeliverable (an "**Undelivered Distribution**"), on the date that is 6 months after the issuance of the Monitor's Final Certificate, the underlying claim shall be forever barred as against the Petitionners and Mise en cause without any compensation therefor, notwithstanding any applicable law to the contrary, at which time any cash held by the Monitor in relation to such Undelivered Distribution shall be remitted to the Receiver General. Nothing in the Order to be rendered by the Court shall require the Monitor, the Petitioners or Mises en cause to attempt to locate any creditor whose distribution is returned as undeliverable;

[7] **ORDER** and **AUTHORIZE** the Monitor to carry out such functions and duties as may incidental to supplement its administration, where appropriate;

[8] **ORDER** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor of the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel, the whole as provided by the Initial Order;

[9] **ORDER** the provisional execution of the Order to be rendered pursuant to the Motion, notwithstanding any appeal and without the necessity of furnishing any security;

[10] **THE WHOLE WITHOUT COSTS**, save in case of contestation.

Montreal, May 24th, 2018

Norton Rose Fulbright Canada LLP

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NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present Motion for Discharge of the Monitor will be presented for adjudication before the Honourable Robert Mongeon, J.S.C., at **9:00 A.M. at a date and in a room to be determined**, at the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6, in a room to be specified prior to the hearing.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, May 24th, 2018

Norton Rose Fulbright Canada LLP

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AFFIDAVIT

I, the undersigned, **MARTIN ROSENTHAL**, Senior Vice President, Transaction Advisory Services of Ernst & Young Inc., doing business at 800 René-Lévesque Boulevard West, suite 1900, in the City and District of Montreal, Province of Quebec, H3B 1X9, do solemnly declare as follows:

1. I am a duly authorized representative of the Monitor;

2. All the facts alleged in the present Motion for Discharge of the Monitor are true.

AND I HAVE SIGNED:

MARTIN ROSENTHAL

SOLEMNLY DECLARED before me on this 24th day of May, 2018

COMMISSAIRE À L'ASSERMENTATION POUR LE QUÉBEC
Jean-Daniel Breton
85278

Commissioner for Oaths for the Province of Quebec