CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-11-038474-108

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

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-

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

-and-

AT& T SERVICES INC., a legal person duly incorporated according to law having its place of business at One AT&T Way, Bedminister, New Jersey, U.S.A., 07921

Petitioner

MOTION TO STAY THE ASSIGNMENT OF A CONTRACT AND LIMITED CONTESTATION TO SALE APPROVAL AND VESTING ORDER
(s.11.3 *Companies' Creditors Arrangement Act*)

TO THE HONOURABLE ROBERT MONGEON, J.S.C., AT&T SERVICES INC. SUBMITS AS FOLLOWS:

I. BACKGROUND

1. On February 24th, 2010, this Honourable Court issued an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of the Debtors and the Mises en Cause (collectively, the "**WB Group**") and Ernst & Young Inc. was appointed as Monitor (the "**Monitor**").

2. On September 10, 2010, this Honourable Court granted the WB Group's "Motion to Approve a Stalking Horse Bidder…" and authorized the sale process more fully set forth therein (the "**Sale Process**").

3. AT&T Services Inc. ("**AT&T**") is a significant purchaser of paper from the WB Group pursuant to contractual arrangements between AT&T and one or more members of the WB Group (the "**AT&T Contract**").

4. There currently exist monetary defaults under the AT&T Contract (the "**AT&T Contract Monetary Default**").

5. On or about September 21, 2010, AT&T learned, through a newswire article, of an auction to be held on that day relating to the Sale Process.

6. Upon consultation of the Monitor's website by AT&T's counsel, AT&T first became aware of the Asset Sale Agreement and its subsequent amendments (collectively, the "**ASA**"), and the proposed form of the "Approval and Vesting Order" annexed to the ASA (the "**Draft Approval Order**").

7. Insofar as the Draft Approval Order purports to provide for the assignment of contracts, AT&T respectfully submits as follows:

   (a) the motion for the Draft Approval Order, in so far as it relates to the assignment of any contracts, does not comply with Section 11.3 CCAA;

   (b) the terms of the Draft Approval Order do not comply with Section 11.3 of the CCAA; and

   (c) the WB Group has not provided sufficient information to AT&T, as a counterparty to the AT&T Contract (i) regarding the proposed terms of the assignment of the AT&T Contract, or (ii) to satisfy AT&T, or this Honourable Court, regarding whether, how and when the AT&T Contract Monetary Default is to be remedied.

8. AT&T submits that the Draft Approval Order ought not to be approved by this Honourable Court, without AT&T having received reasonable notice and the opportunity to assess, quantify the monetary defaults under the AT&T contract and appropriately respond.

9. AT&T further submits that there is insufficient information before the Court to permit a fair and reasonable determination of the conditions imposed under section 11.3(4) of the CCAA in relation to the exercise of any discretion on the part of this Honourable Court in relation to the assignment of the AT&T Contract.

10. In any event, AT&T submits that Section 11.3 of the CCAA requires that both the benefits and the burdens of an agreement be assigned. As such, AT&T submits that to comply with the CCAA any order to assign the AT&T Contract should (a) assign both

the rights and obligations of the WB Group, and (b) expressly provide that the obligations under the contract are assumed by the assignee.

II. FAILURE TO PROVIDE TIMELY NOTICE

11. Under Sections 2.1.1 and 2.1.5 of the ASA, and as envisaged by paragraph 15 of the Draft Approval Order, "Designated Seller Contracts" are to be assigned by the WB Group to the Purchaser. The Designated Seller Contracts are contained in a Disclosure Statement that has not been made public. Pursuant to the ASA, the Purchaser is entitled, prior to Closing, to remove contracts from the list of Designated Seller Contracts such that even if the AT&T Contract is currently listed thereunder, it may be removed prior to Closing.

12. Section 11.3(1) CCAA permits the assignment of agreements "on notice to every party to an agreement". On September 22, 2010, AT&T received a package from the WB Group delivered by UPS that described the AT&T Contract as a Designated Seller Contract, while also indicating that the Purchaser may elect to remove such contract from the assigned list prior to closing. This was the first indication or notice that the AT&T Contract could form a part of the Designated Seller Contracts. AT&T must be provided with a reasonable opportunity to respond to this notice.

13. The above notice makes no reference to any Cure Costs payable to AT&T in relation to the AT&T Contract Monetary Default. AT&T asserts that a monetary default exists under the AT&T Contract in excess of US$900,000 and reserves all of its rights in this regard.

14. Notwithstanding its explicit reference to Section 11.3 CCAA, paragraph 15 of the Draft Approval Order provides for the assignment of contracts in the absence of any formal notification procedure and on less than 48 hours notice to AT&T.

15. Given the foregoing, and on this ground alone, AT&T respectfully submits that the provisions contained in the Draft Approval Order providing for the assignment of contracts cannot be authorized by this Honourable Court.

III. FAILURE TO ASSUME OBLIGATIONS

16. Section 11.3(1) CCAA permits a debtor to seek "an order assigning the rights *and obligations*" under agreements. (emphasis added)

17. Pursuant to Section 2.1.3(a)(ii) of the ASA, the Purchaser will assume liabilities under the assigned contracts "arising after the Closing and any Cure Costs payable pursuant to Section 2.1.6".

18. AT&T respectfully submits that Section 11.3(1) CCAA does not permit a Court to authorize the assignment of contracts in this manner. On the contrary, <u>all</u> obligations under the contract must be assumed by the Purchaser.

IV. FAILURE TO ADEQUATELY CURE MONETARY DEFAULTS

19. Section 11.3(4) CCAA provides as follows:

> "The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court."

20. Section 2.1.3(a)(ii) of the ASA provides for a cap in the amount of $27,000,000.00 for all Cure Costs payable by the Purchaser under the ASA (the "**Cure Cost Cap**").

21. AT&T respectfully submits that the amendments introduced into the CCAA to permit the a court to order the assignment of a rights and obligations under a contract without the consent of the counterparty to that contract require, at a minimum, for all monetary defaults under such contract to be remedied.

22. AT&T respectfully submits that the Cure Cost Cap is contrary to Section 11.3(4) CCAA and that this Honourable Court cannot authorize the assignment of agreements as set forth in the Draft Approval Order until a satisfactory mechanism is put in place in order to ensure that the AT&T Contract Monetary Default is fully remedied.

23. There is no evidence before this Honourable Court pursuant to which it can be determined that (a) the AT&T Contract Monetary Default will be remedied, (b) when it is proposed that the AT&T Monetary Default be remedied, or (c) that sufficient means exists to remedy in full the AT&T Contract Monetary Default.

24. It would be unfair, inequitable and contrary to the provisions of the CCAA for the AT&T Contract to be assigned in the current circumstances.

V. REMEDIES SOUGHT

25. Insofar as the Draft Approval Order seeks to approve of the APA, and the APA provides for the assignment of the AT&T Contract and for the approval of the Draft Approval Order, AT&T has no alternative but to object to the making of an Order approving of the APA.

26. Having regard to all of the foregoing, AT&T respectfully submits that it is premature for this Honourable Court to approve of an assignment of the AT&T Agreement.

Accordingly, AT&T submits that is entitled to obtain, and seeks an order from this Honourable Court, staying the assignment of the AT&T Contract until such time as:

(a) AT&T is given adequate notice that the AT&T Contract forms part of the Designated Seller Contracts, and a fair and reasonable opportunity to respond;

(b) the AT&T Contract Monetary Default is agreed to by the parties or determined by this Honourable Court; and

(c) the AT&T Contract Monetary Default is remedied.

27. AT&T reserves its rights to make further representations and seek additional orders as may be necessary or appropriate in the circumstances.

WHEREFORE, PETITIONER PRAYS FOR JUDGMENT OF THIS HONOURABLE COURT:

(a) **GRANTING** the present Motion;

(b) **DECLARING** that the service of the present Motion constitutes good and sufficient service on all persons;

(c) **SUSPENDING** the application of any assignment of the AT&T Contract under the ASA, the Draft Approval Order or any other order of this Honourable Court.

(d) **RESERVING** all of Petitioner's rights and recourses with respect to the AT&T Contract and the AT&T Contract Monetary Default.

THE WHOLE WITHOUT COSTS SAVE IN THE EVENT OF CONTESTATION.

MONTREAL, September 23, 2010

Kugler Kandestin L.L.P.

KUGLER KANDESTIN, L.L.P.
Attorneys for Petitioner

CANADA
PROVINCE OF QUEBEC

DISTRICT OF MONTREAL
NO.: 500-11—38474-108

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

IN THE MATTER OF THE NOTICE OF INTENTION TO FILE A PROPOSAL OF:

WHITE BIRCH PAPER HOLDING COMPANY ET AL.

Debtors

-and-

ERNST & YOUNG INC.

Monitor

-and-

STADACONA LIMITED PARTNERSHIP ET AL.

Mises en Cause

-and-

AT&T SERVICES INC.

Petitioner

ATTESTATION OF AUTHENTICITY
(Article 82.1 C.C.P.)

The undersigned, **GORDON LEVINE**, attorney of the Firm Kugler Kandestin, L.L.P., carrying on business at 1 Place Ville Marie, Suite 2101, in the City and District of Montreal, Province of Quebec, under my oath of office, declare that:

1. On September 23, 2010, Kugler Kandestin, L.L.P. received by e-mail the Solemn Declaration of Mr. James W. Grudus signed on September 23, 2010 and received by Kugler Kandestin, L.L.P. at 4:34 p.m. on the same date;

2. The copy of the Solemn Declaration attached hereto is a true copy and such Solemn Declaration was received by Kugler Kandestin, L.L.P. as set forth in paragraph 1 above.

AND I HAVE SIGNED

Gordon Levine

Solemnly declared before me at Montreal this 23rd day of September, 2010.

#163 242

Commissioner of Oaths for the District of Montreal

COMMISSAIRE À L'ASSERMENTATION COMMISSIONER FOR OATHS
LAUREN BRUNET
163 242
FOR THE JUDICIAL DISTRICT OF MONTREAL POUR LE DISTRICT JUDICIAIRE DE MONTRÉAL

CANADA PROVINCE OF QUEBEC **DISTRICT OF MONTREAL** **No.: 500-11-038474-108**	**SUPERIOR COURT** (Commercial Division) The *Companies' Creditors Arrangement Act* **IN THE MATTER OF THE PLAN OF ARRANGEMENT AND COMPROMISE OF:** **WHITE BIRCH PAPER HOLDING COMPANY ET AL.** Debtors -and- **ERNST & YOUNG INC.** Monitor -and- **STADACONA LIMITED PARTNERSHIP** Mises en Cause -and- **AT& T SERVICES INC.** Petitioner

SOLEMN DECLARATION

I, the undersigned, James W. Grudus, attorney, carrying on business at One AT&T Way, Room 3A218, in the City of Bedminister, State of New Jersey, U.S.A., hereby solemnly declare the following:

1. **THAT** I am the General Attorney for AT&T Services Inc., Petitioner in the present "*Motion to Stay the Assignment of a Contract and Limited Contestation to Sale Approval and Vesting Order*" (the "**Motion**") and have knowledge of all of the facts alleged in such Motion; and

2. **THAT** all of the facts alleged in the present Motion are, other than those of record herein, true and correct.

AND I HAVE SIGNED:

James Walter Grudus

JAMES W. GRUDUS

SOLEMNLY DECLARED before me at the City of Bedminster **, State of New Jersey, this** 23 **day of September, 2010.**

Michael J. Hickey

MICHAEL J. HICKEY
ID # 2208336
NOTARY PUBLIC OF NEW JERSEY
Commission Expires [illegible]

CANADA	**SUPERIOR COURT** (Commercial Division) The *Companies' Creditors Arrangement Act*
PROVINCE OF QUEBEC **DISTRICT OF MONTREAL** **No.: 500-11-038474-108**	**IN THE MATTER OF THE PLAN OF ARRANGEMENT AND COMPROMISE OF:** **WHITE BIRCH PAPER HOLDING COMPANY ET AL.** Debtors -and- **ERNST & YOUNG INC.** Monitor -and- **STADACONA LIMITED PARTNERSHIP ET AL.** Mises en Cause -and- **AT& T SERVICES INC.** Petitioner

NOTICE OF PRESENTATION

TO: **SERVICE LIST**

Take notice that the present Motion to Stay the Assignment of a Contract and Limited Contestation to Sale Approval and Vesting Order will be presented for adjudication before the Honourable Justice Robert Mongeon at **9:30 a.m.** in **Room 17.09** of the Montreal Court House, situated at 1 Notre Dame Street West, Montreal, Quebec on **September 24, 2010**, or so soon thereafter as counsel may be heard.

Do govern yourselves according.

MONTREAL, September 23, 2010

Kugler Kandestin, L.L.P.

KUGLER KANDESTIN, L.L.P.,
Attorneys for Petitioner

No. 500-11-038474-108

COUR SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTREAL

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

WHITE BIRCH PAPER HOLDING COMPANY ET AL.

Debtors

-and-

ERNST & YOUNG INC.

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STADACONA PARTNERSHIP ET AL.

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-and-

AT&T SERVICES INC. Petitioner

MOTION TO STAY THE ASSIGNMENT OF A CONTRACT AND LIMITED CONTESTATION TO SALE APPROVAL AND VESTING ORDER
(Section 11.3 *Companies' Creditors Arrangement Act)*

ORIGINAL

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