CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No.: 500-11-038474-108

S U P E R I O R   C O U R T
(Commercial Division)
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

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

WHITE BIRCH PAPER HOLDING COMPANY

- and -

WHITE BIRCH PAPER COMPANY

- and -

STADACONA GENERAL PARTNER INC.

- and -

BLACK SPRUCE PAPER INC.

- and -

F.F. SOUCY GENERAL PARTNER INC.

- and -

3120772 NOVA SCOTIA COMPANY

- and -

ARRIMAGE DE GROS CACOUNA INC.

- and -

PAPIER MASSON LTEE

Debtors

AND

STADACONA LIMITED PARTNERSHIP

-and-

F.F.SOUCY LIMITED PARTNERSHIP

-and-

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

Mis en Cause

AND

ERNST & YOUNG INC.

Monitor

AND

SYNDICAT CANADIEN DES COMMUNICATIONS, DE L'ENERGIE ET DU PAPIER (SCEP – QUEBEC) AND ITS LOCAL SECTIONS 11, 137, 200, 250, 299, 625, 627, 905 AND 1104

Intervenor -Petitioner

AND

CREDIT SUISSE AG, TORONTO BRANCH

Intervenor

CONTESTATION TO THE MOTION BY SYNDICAT CANADIEN DES COMMUNICATIONS, DE L'ENERGIE ET DU PAPIER (SCEP – QUEBEC) AND ITS LOCAL SECTIONS 11, 137, 200, 250, 299, 625, 627, 905 AND 1104 FOR AN ORDER DECLARING THAT THE TEMPORARY STADACONA SHUTDOWN IS INVALID AND LIFTING THE STAY TO ALLOW THE UNION TO STRIKE

IN CONTESTATION TO THE MOTION OF SYNDICAT CANADIEN DES COMMUNICATIONS, DE L'ENERGIE ET DU PAPIER (SCEP – QUEBEC) AND ITS LOCAL SECTIONS 11, 137, 200, 250, 299, 625, 627, 905 AND 1104 FOR AN ORDER DECLARING THAT THE TEMPORARY STADACONA SHUTDOWN IS INVALID AND LIFTING THE STAY SO THAT THE UNION MAY STRIKE, CREDIT SUISSE AG, TORONTO BRANCH, AS ADMINISTRATIVE AGENT TO THE DIP LENDERS, SUBMITS THE FOLLOWING:

I. <u>OVERVIEW</u>

1. Syndicat Canadien des Communications, De L'Energie et du Papier (SCEP-Quebec) and its local sections 11, 137, 200, 250, 299, 625, 627, 905 and 1104 (the "**Union**") purports to represent the unionized and non-unionized retirees of the Stadacona Mill and the active employees of the Debtors' other two mills in Quebec. For the purposes of this Contestation, the Union seeks, among other things, an Order lifting the stay of proceedings (the "**Stay**") granted in the Initial Order (as defined below) so that the Union and the workers that it represents may strike. The Union is also seeking an order that would force the Debtors to reverse their business decision to temporarily cease production at the Stadacona Mill. The portions of the Union's motion in respect of special payments to the Debtors' pension plans and the priority of such pension payments will be addressed in a subsequent contestation.

2. The lifting of the Stay and the occurrence of a strike or work stoppage against or affecting any of the Debtors would trigger Events of Default under the DIP Term Loan (as defined below). Upon the occurrence of an Event of Default, the DIP Lenders (as defined below) would be in a position to terminate and declare all amounts due and owing under the DIP Term Loan in accordance with paragraph 35 of the Initial Order. The Debtors would also incur additional default interest as a result of the occurrence of one or more Events of Default under the DIP Term Loan.

3. The termination and acceleration of the DIP Term Loan would materially undermine the chances of the Debtors' successful restructuring.

II. <u>THE RESPONDENT: CREDIT SUISSE AG, TORONTO BRANCH</u>

4. This Contestation is filed by Credit Suisse AG, Toronto Branch, which is the administrative agent (the "**Administrative Agent**") for a syndicate of lenders (the "**DIP**

Lenders") that has provided interim financing to the Debtors under a senior secured, super-priority debtor-in-possession, term loan credit agreement dated as of March 1, 2010 (as amended, the "**DIP Term Loan**").

III. COURT APPROVAL OF TERMS OF DIP TERM LOAN AND OTHER TERMS OF INITIAL ORDER

5. On February 24, 2010, on a motion made by White Birch Paper Holding Company ("**White Birch**") and certain of its affiliates (collectively, the "**Applicants**"), the Superior Court of the Province of Quebec for the District of Montreal (the "**Court**"), issued an order (the "**Initial Order**") declaring that the Applicants are debtor companies to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**") applies, appointing Ernst & Young Inc. as monitor and granting certain relief to the Applicants and various partnerships in which the Applicants have an interest. The Applicants and the partnerships are collectively referred to as the "**Debtors**".

6. Also on February 24, 2010, Bear Island Paper Company, L.L.C., a subsidiary of White Birch with activities in the United States, commenced a case under Chapter 11 of Title 11 of the *United States Code* in the United States Bankruptcy Court for the Eastern District of Virginia.

7. As part of their initial petition for relief under the CCAA (the "**Petition**"), the Debtors sought approval of the DIP Term Loan. In the Petition, the Debtors advised that they would require significant additional liquidity in order to continue to fund operations. The Debtors further stated that the requested interim financing was crucial to the survival of the Debtors and would enhance the prospects of a successful restructuring.

8. On the basis of the evidence proffered by the Debtors, the Court approved the DIP Term Loan to be secured by a super-priority charge on all of the assets and undertaking of the Debtors and subordinate in priority to only the Administration Charge and the D&O Charge.

9. Pursuant to the Initial Order, among other things:

    (a) the Debtors were authorized to borrow from the DIP Lenders up to a maximum principal amount of US$140 million on the terms and conditions set out in the DIP Term Loan;

    (b) the DIP Term Loan was approved;

    (c) the Debtors were directed to:

        (i) pay to the DIP Lenders when due all amounts owing (including principal, interest, fees and expenses) under the DIP Term Loan and related documents; and

        (ii) perform all of their other obligations to the DIP Lenders pursuant to the DIP Term Loan and related documents and the Initial Order; and

(d) all of the property of the Debtors was charged by a hypothec, mortage, lien and security interest (the "**DIP Lenders' Charge**") in favour of the Administrative Agent, Credit Suisse AG ("**CS**") and Credit Suisse, Toronto Branch (as "**Collateral Agents**"), Black Diamond Commercial Finance, L.L.C. ("**Black Diamond**" as "**Syndication Agent**"), CS and Black Diamond (as "**Lead Arrangers**") and the DIP Lenders to the extent of the aggregate amount of CDN$200 million as security for all indebtedness under or in connection with the DIP Term Loan and related documents, which DIP Lenders' Charge would rank behind only the Administration Charge and the D&O Charge.

10. The Court expressly noted in its Reasons for Judgment on Debtors' Motion for the Issuance of an Initial Order dated March 4, 2010 that, among other things:

(a) the interim financing was crucial to the survival of the Debtors over the said restructuring period; and

(b) the interim financing would enhance the prospects of a successful restructuring.

11. The Initial Order also granted a broad Stay that provides that no right, remedy, enforcement process or proceeding may be exercised, commenced or continued by anyone against or in respect of the Debtors or any of their present or future property, assets, rights or undertaking.

12. The Stay prevents the Union and the employees that it represents from exercising any purported legal right to strike. The Stay operates to, among other things, protect and maximize the Debtors' assets while they undergo a restructuring, ultimately with the intention of maximizing the benefit to all creditors. In turn, the Stay advances the DIP Lenders' interests by ensuring that the DIP Lenders' security for borrowings under the DIP Term Loan is protected.

13. The Stay has been extended multiple times by the Court and is currently scheduled to expire on February 17, 2012.

IV. TERMS OF THE DIP TERM LOAN

14. On March 1, 2010, White Birch Paper Holding Company, as guarantor, White Birch Paper Company, Stadacona L.P., F.F. Soucy L.P., Papier Masson Ltee and Bear Island Paper Company, L.L.C. (collectively, the "**Borrowers**"), the lender parties, the Administrative Agent, the Collateral Agents, the Syndication Agent, the Lead Arrangers and Credit Suisse AG (as "**US Collateral Agent**") executed the DIP Term Loan and related guarantees, security and pledge agreements.

15. The DIP Term Loan provides for a delayed draw term loan facility totalling US$140 million. Amounts drawn on the DIP Term Loan are subject to the interest rates set out therein. An additional 2% interest rate applies upon default. Interest on borrowings is paid monthly, when due.

16. The DIP Term Loan was originally scheduled to mature on December 1, 2010. The DIP Term Loan was subsequently extended six times and is currently scheduled to mature on

November 30, 2011 pursuant to the Tenth Amendment to the Senior Secured, Super-Priority Debtor-in-Possession Term Loan Credit Agreement dated as of October 27, 2011.

17. The DIP Term Loan is secured by the DIP Lenders' Charge, which ranks in priority to existing security (subject only to specific prior exceptions, the Administration Charge and the D&O Charge).

18. The DIP Term Loan requires the Borrowers to use the proceeds of loans made thereunder in accordance with a budget (the "**Approved Budget**") specifically approved by the DIP Lenders. The Borrowers must submit weekly variance reports to demonstrate adherence to the Approved Budget.

19. The DIP Term Loan requires the Borrowers to make specific representations and warranties and abide by certain affirmative and negative covenants. Among other things, the Borrowers are required to:

(a) submit weekly rolling 13-week cash flow forecasts, which in each case must be acceptable to the the DIP Lenders having loans representing a majority of the aggregate principal amount of the total loans then outstanding (the "**Majority Lenders**");

(b) meet specifically prescribed plan of reorganization and sale milestones; and

(c) use the proceeds of the DIP Term Loan and any cash maintained by the Borrowers solely in a manner consistent with the Approved Budget.

20. The DIP Lenders extended the DIP Term Loan on the basis that the Debtors would meet pre-established plan of reorganization and sale milestones. The Debtors have entered into an agreement to sell their assets to BD White Birch Investments and certain of its subsidiaries ("**BDWBI**"). The DIP Term Loan currently requires that the BDWBI sale transaction (the "**BDWBI Sale Transaction**") be consummated on or before November 30, 2011.

21. The DIP Term Loan contains extensive provisions relating to events of default. Pursuant to section 7, the occurrence of any one or more of the following events is an "Event of Default":

(a) any failure to pay principal and interest when due in accordance with the terms of the DIP Term Loan [7(a)(i)];

(b) any default in the observance or performance of any agreement contained in, among other sections, section 5.19 (relating to plan of reorganization and sale milestones) [7(c)];

(c) the amendment, supplementation, stay, reversal, vacation or other modification of the Initial Order [7(l)(iv)]; or

(d) the occurrence of a strike or work stoppage against or affecting any company group member [7(n)].

22. Upon the occurrence of an Event of Default, the Adminstrative Agent, with the consent of the Majority Lenders and in accordance with the terms of the Initial Order may, without any application, motion or notice to, hearing before or order from the Court, declare all commitments to be terminated and declare the loans and all other amounts owing under the DIP Term Loan to be due and payable.

23. After the execution of the DIP Term Loan and on the basis of the relief granted in the Initial Order, including the provisions relating to the Stay and the DIP Lenders' Charge, the DIP Lenders were prepared to make and have made interim financing advances to the Debtors.

24. On or around March 1, 2010, the Debtors received their first draw of US$86.5 million against the delayed draw term loan. An additional draw of US$6.5 million was made on March 8, 2010. In the aggregate, the Debtors have drawn more than US$121 million under the DIP Term Loan, US$33 million of which has been repaid. As noted by the Debtors and the Court in connection with the initial Petition, this financing was crucial to the survival of the Debtors and central to a successful restructuring.

V. THE GRANTING OF THE REQUESTED RELIEF WILL TRIGGER NUMEROUS EVENTS OF DEFAULT UNDER THE DIP TERM LOAN

25. The granting of the relief requested in the Union's motion will likely trigger numerous Events of Default under the DIP Term Loan.

26. In particular, the issuance by this Court of an order lifting the stay to permit the Union and its employees to strike is an Event of Default under provisions of the DIP Term Loan relating to the issuance and entry of an order amending, supplementing, vacating or otherwise modifying the Initial Order [7(l)(iv)].

27. If the requested relief is granted, a strike by the Union and its represented employees will be an Event of Default under section 7(n) of the DIP Term Loan.

28. There is also a serious risk that the lifting of the stay and the commencement of a strike at the three Quebec mills would threaten the timely closing of the BDWBI Sale Transaction in violation of section 7(c) of the DIP Term Loan.

29. With respect to the decision to temporarily cease production at the Stadacona Mill, the Debtors announced in a press release dated November 16, 2011 that they were reviewing the viability of the plant in view of cost disadvantages at the plant and generally deteriorating economic prospects in the industry. The Debtors are entitled to conduct their business operations as they see fit. Pursuant to paragraph 26 of the Initial Order, the Debtors were granted the right, subject to the DIP Term Loan and the approval of the Monitor or further order of the Court, to permanently or temporarily cease, downsize or shutdown any of their operations, plants or mills. Court interference with such business decisions could threaten the business and lead to an erosion of the DIP Lenders' collateral. In addition, there is a serious risk that an operational decision in contravention of the Debtors' best business interests could cause an Event of Default in respect of the timely repayment of interest and principal under the DIP Term Loan [7(a)(i)].

30. Upon the occurrence of any of the above-referenced Events of Default, the DIP Lenders will be in a position to terminate the DIP Term Loan and declare all amounts owing thereunder due and payable. The Administrative Agent would terminate the DIP Term Loan in accordance with the terms of the Initial Order if such instructions were given by the Majority Lenders.

VI. THE LIFTING OF THE STAY AND THE FORCED RE-OPENING OF THE STADACONA MILL WILL HAVE NEGATIVE CONSEQUENCES ON THE DIP LENDERS

31. The lifting of the Stay to permit the Union and its represented employees to strike will also have directly adverse consequences on the DIP Lenders. The stay of proceedings is the primary protection granted by a Court that permits a debtor the necessary breathing space to negotiate a compromise with its creditors and avoid bankruptcy. A stay of proceedings is broad and liberally applied to achieve the central objectives of the CCAA. Subject to very few exceptions, a stay permits a debtor to maximize its assets, ultimately for the greatest benefit to its creditors.

32. The Stay also provides protection to the DIP Lenders and other parties granted priming charges on the Debtors' assets. The Stay both protects the assets of the Debtors from enforcement action by creditors and shields the management of the Debtors from the distractions of litigation and the assertion of other legal rights by creditors. If the Stay is lifted to permit a strike, the operations of the Debtors will be disrupted. The Debtors are currently experiencing net losses from operations; a costly strike at the three Quebec mills is highly likely to further aggravate the Debtors' financial position. A strike could both erode the value of the DIP Lenders' security and lead to defaults of payments of interest and principal under the DIP Term Loan.

33. Similarly, a Court order forcing the re-opening of the Stadacona Mill will force the Debtors to incur operating losses and additional cash drain that they have deemed unnecessary in view of specific conditions at the plant and economic circumstances generally. In turn, this would threaten to erode the Debtors' assets to the harm of all creditors and, in particular, the DIP Lenders.

34. In addition, the lifting of the Stay and the occurrence of strike will distract management from their focus on the critically important task of closing the BDWBI Sale Transaction. In turn, this could put the entire BDWBI Sale Transaction at risk and could result in the bankruptcy and complete liquidation of the entire Canadian operations.

35. The lifting of the stay and a strike by the Union and its employees would also undermine the objectives of the restructuring and the purpose of the DIP Term Loan. The Union has suggested that its employees may strike at any or all of the Debtors' facilities in Quebec. As indicated in the recitals to the DIP Term Loan, the purpose of the DIP Term Loan is principally to fund the working capital requirements of the Debtors. The DIP Term Loan cannot serve its purpose and the Debtors cannot achieve their restructuring objectives if their employees strike and their operations ground to a halt.

36. The DIP Lenders agreed to extend interim financing to the Debtors on the express understanding that certain protections, including the Stay and the DIP Lenders' Charge,

would be granted by the Court and preserved throughout the pendency of the CCAA proceeding. The DIP Lenders would not have been prepared to finance this CCAA proceeding on any other basis.

37. The present contestation is well-founded in fact and in law.

WHEREFORE, THE ADMINISTRATIVE AGENT PRAYS THIS HONOURABLE COURT TO:

1. **DISMISS** the Union's Motion for an order declaring that the temporary shutdown of the Stadacona Mill is invalid and lifting the Stay to permit the Union and its employees to strike; and

2. **GRANT** the Administrative Agent's contestation.

THE WHOLE WITH COSTS.

MONTREAL, November 27, 2011

(SGD) *Osler, Hoskin & Harcourt LLP*

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