CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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-
F.F. SOUCY GENERAL PARTNER INC.
-and-
3120772 NOVA SCOTIA COMPANY
-and-
ARRIMAGE DE GROS CACOUNA INC.
-and-
PAPIER MASSON LTÉE

Petitioners

-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

MOTION FOR THE ISSUANCE OF AN ORDER SANCTIONING A PLAN OF COMPROMISE AND FOR OTHER RELIEF
(*Sections 6, 9 and 10 of the Companies' Creditors Arrangement Act, R.C.S. 1985 c. C-36*)

TO THE HONOURABLE ROBERT MONGEON, J.S.C., THE PETITIONERS SUBMIT AS FOLLOWS:

I. ORDER SOUGHT

1. The Petitioners hereby seek an order, in the form and substance of the draft order communicated herewith as **Exhibit R-1** (the "**Sanction Order**"), sanctioning the *Plan of Compromise* (the "**Plan**") of the Canadian Debtors (as defined below), communicated herewith as **Exhibit R-2**, and extending the Stay Period until the Effective Date (as defined in the Plan).

2. Unless otherwise indicated, all capitalized terms herein shall have the meaning attributed to them in the Initial Order and/or in the Plan.

II. BACKGROUND

(A) The Canadian Proceedings

3. On February 24, 2010, this Honourable Court issued an order (the "**Initial Order**") extending the protection of the *Companies' Creditors Arrangement Act* (the "**CCAA**") to White Birch Paper Company and to various of its affiliates (together the "**Petitioners**"), and to various partnerships in which the Petitioners hold an interest (the "**Mises-en-cause**", and together with the Petitioners, the "**Canadian Debtors**").[1]

4. Pursuant to the Initial Order, Ernst & Young Inc. was appointed as Monitor (the "**Monitor**"), and a stay of proceedings (the "**Stay of Proceedings**") was granted in favour of the Canadian Debtors until March 26, 2010 (the "**Stay Period**").

5. The Stay Period, which was subsequently extended on various occasions, is currently scheduled to expire on May 14, 2015 pursuant to an Order of this Court dated May 1, 2015.

(B) The US Proceedings

6. On February 24, 2010, the date on which the Initial Order was rendered, Estate Bipco LLC (formerly known as Bear Island Paper Company, LLC, and hereinafter referred to as the "**U.S. Debtor**", together with the Canadian Debtors, the "**Debtors**"), a subsidiary of WB with activities in the U.S., commenced proceedings under Chapter 11 of the U.S. *Bankruptcy Code* (the "**Code**").

7. On the same date, the Canadian Debtors also applied for relief under the provisions of Chapter 15 of the Code.

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[1] While the names of certain entities which form part of the group of Petitioners and Mises-en-cause have changed since the issuance of the Initial Order, the original style of cause of the present proceedings is preserved for purposes of court filing and convenience.

8. On March 22, 2010, the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "**U.S. Court**") rendered an order recognizing the Canadian proceedings under the CCAA as foreign main proceedings and recognized White Birch Paper Company as the duly appointed foreign representative of the Canadian Debtors.

(C) The Asset Sale Agreement

9. At the outset, the Debtors' restructuring plan contemplated a rapid and aggressive process whereby it would either negotiate a compromise with its secured and major unsecured creditors or, in the absence of an agreement with such stakeholders, they would initiate a sale and solicitation process with a view of soliciting parties potentially interested in either investing in their businesses or purchasing its assets.

10. Given the Debtors' inability to reach an agreement with their secured and major unsecured creditors, the Canadian Debtors sought and obtained, on April 29, 2010, an order approving a joint going-concern sale and investor solicitation process (the "**SISP**") in respect of the Debtors' assets.

11. On September 21, 2010, an auction was held to determine the highest and best price for the assets of the Debtors.

12. On August 10, 2010, the Debtors entered into an *Asset Sale Agreement* (the "**ASA**") with BD White Birch Investment LLC (the "**Purchaser**") which contemplated, among other things, the sale of their assets to the Purchaser. The sale was approved by this Court on September 28, 2010 and closed on September 13, 2012.

13. 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).

14. On closing of the sale, 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.

15. Shortly after the closing of the ASA, however, a disagreement arose regarding the manner in which the remaining proceeds from the sale should be allocated between the estates of the Canadian Debtors and of the U.S. Debtor.

(D) The Estate Allocation Compromise and Settlement Agreement

16. On February 24, 2015, after extensive negotiations between the Canadian Debtors, the U.S. Debtor, the Purchaser, the Monitor and certain groups of creditors, an *Estate Allocation Compromise and Settlement Agreement* (the "**EACSA**") was reached. An executed copy of EACSA is attached to the Plan (Exhibit R-2)

17. The EACSA settles, among other matters, the allocation of all funds held in escrow by or on behalf of the Monitor and the U.S. Debtor arising from the sale transaction, including the remaining proceeds of sale.

18. The EACSA was and remains conditional upon, among other things, the filing of a plan of compromise (the "**Plan**") by the Canadian Debtors which is to be sanctioned or confirmed, as applicable, by this Court and by the U.S. Court by no later than May 31, 2015.

(E) The Creditors' Meeting Order

19. On March 13, 2015, the Canadian Debtors sought and obtained an order from this Court (the "**Creditors' Meeting Order**") pursuant to which, *inter alia*, a procedure was established for the holding of a meeting of the Canadian Debtors' creditors (the "**Creditors' Meeting**") for the purpose of voting and, if thought advisable, approve the Plan.

20. The Creditors' Meeting Order ordered, *inter alia*, to the Monitor:

   a) to call, hold and conduct the Creditors' Meeting on April 22nd, 2015 in Montreal;

   b) to send by no later than March 20th, 2015 to each Unsecured Creditor having a Voting Claim, the Notice of Meeting, the Plan (including the EACSA) and a copy of the proxy form and voting form;

   c) to publish a notice of the Creditors' Meeting in *La Presse*, *Le Soleil* and the *National Post* no later than April 1st, 2015.

III. THE PLAN

21. On March 17, 2015, shortly after the issuance of the Creditors' Meeting Order, the Canadian Debtors filed its Plan (R-2), which purpose is to provide for a timely distribution of the Distribution Amount, the release of all claims, the approval of the EACSA and the release of the Released Parties.

22. In essence, the Plan provides for a *pro rata* and *pari passu* distribution among all of the Canadian Debtors' unsecured creditors of approximately Cdn$52,000,000[2], including an amount of Cdn$200,000 to be contributed by the shareholders of the Canadian Debtors (the "**Shareholders' Contribution**").

23. The Plan contemplates a distribution to the Canadian Debtors' unsecured creditors on a consolidated basis, as opposed to a distribution for the estate of each individual Canadian Debtor.

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[2] Subject to (i) the applicable exchange rate once the funds allocated to the Canadian Debtors pursuant to the EACSA and denominated in US currency are converted into Canadian currency, and (ii) the costs of administration of the Plan, and professional fees incurred in connection therewith. See paragraphs 19 and 20 of the April 14, 2015 Monitor's Report in this regard.

24. The Plan provides for releases, in particular in favour of:

a) The Canadian Debtors, their directors and officers, their financial and legal advisors, and the Monitor;

b) The Canadian Debtors' shareholders; and

c) The Released Lender Parties, which include, *inter alia*, the First Lien Agent, the First Lien Lenders, the Second Lien Agent, the Second Lien Lenders and the Purchaser.

25. With respect to the release in favour of the Canadian Debtors' shareholders, as discussed in the Plan, such release is provided, namely, in consideration of the Shareholders' Contribution. The issue of the Shareholders' Contribution and the related release in favour of the Canadian Debtors' shareholders has been the object of discussions and negotiations with some of the significant creditors of the Canadian Debtors since early 2014.

26. With respect to the release in favour of the Released Lender Parties, such release is provided, namely, in consideration of the Released Lender Parties' consent of the substantive consolidation of the Canadian Debtors' assets in the context of the Plan which is significantly advantageous for most of the Canadian Debtors' creditors both in terms of amount to be received and in term of timing.

27. Finally, the Plan provides for an initial distribution to be made no later than thirty (30) days following the Effective Date.

IV. THE PLAN APPROVAL PROCESS

28. As mentioned above, on March 13, 2015, this Court issued the Creditors' Meeting Order in which it approved, *inter alia*, the applicable solicitation and voting procedures for the approval of the Plan.

29. In accordance with the Creditors' Meeting Order, the Monitor proceeded with the distribution of the Meeting Materials (as defined in the Creditors' Meeting Order) as well as the publication of a notice of the creditors' meeting on March 25, 2015 in the newspaper editions of *La Presse*, *Le Soleil* and the *National Post*.

30. In excess of 750 packages of the Meeting Materials have been distributed to creditors of the Canadian Debtors.

31. On March 20, 2015, the Monitor notified the Service list that the Plan and meeting materials were available on the Monitor's website.

The Creditors' Meeting

32. On April 22, 2015, the Creditors' Meeting was convened, held and conducted in at 9:30 a.m., at the Sheraton Center Hotel, located at 1201 René-Lévesque Blvd. West, in Montreal, Québec, in accordance with the Creditors' Meeting Order.

33. Pursuant to the Plan, the Unsecured Creditors were, for the purpose of voting on and receiving distributions, grouped into a single class.

34. The resolution approving the CCAA Plan was approved by 97.37% of the Unsecured Creditors having voted (111 creditors out of 114), representing 99.989% in value of the Unsecured Creditors having voted ($954,480,708 out of $954,582,119).

35. Prior to the hearing on this Motion, the Monitor will be filing a report which will summarize the results of the vote and contain the Monitor's recommendation regarding the sanctioning of the Plan.

V. GROUNDS FOR PLAN APPROVAL

36. The Canadian Debtors respectfully submit that the Plan should be sanctioned by this Court as it is submitted that:

    a) the Canadian Debtors are and have been in strict compliance with all statutory requirements;

    b) all material filed and procedures carried out by the Canadian Debtors were authorized under the CCAA; and

    c) the Plan is fair and reasonable.

37. Since the issuance of the Initial Order, the Canadian Debtors have acted, and continue to act, in good faith and with due diligence. As such, the Canadian Debtors have complied with all statutory requirements and strictly adhered to orders of this Court.

38. Throughout these proceedings, the Monitor has filed reports to the Court concerning these proceedings and the efforts of the Canadian Debtors. The latter have cooperated with the Monitor, when needed, in order to provide the Monitor with access to the information and internal resources required to carry out its duties.

39. Since the issuance of the Initial Order, the Canadian Debtors have also worked cooperatively with their creditors and other stakeholders.

40. Nothing has been done and no step taken that was not authorized by the CCAA or the orders of this Court.

41. The Canadian Debtors respectfully submit that the Plan is fair and reasonable, a fact reflected by the favorable vote of a vast majority of Unsecured Creditors.

42. If the Plan is implemented, it is estimated that the net value will translate into a recovery under the Plan corresponding to approximately 4% to 5% of the Unsecured Creditors' claims.

43. As appeared in the Monitor's Report dated April 14, 2015, the Monitor recommended that the Unsecured Creditors vote for the resolution to approve the Plan. It is expected that a Monitor's report which will be filed prior to the hearing on this Motion, in which the Monitor will submit its comments and recommendations regarding the sanction of the Plan.

44. The Canadian Debtors respectfully submit that it is in their best interest as well as in the best interest of all of their stakeholders that the Plan be sanctioned by this Court.

45. In addition, the Canadian Debtors also respectfully submit that it is appropriate, under the circumstances, should the Plan be sanctioned by this Court, that the Stay Period (which currently expires on May 14, 2015) be extended until the Effective Date.

46. The Canadian Debtors submit that the extension of the Stay Period is necessary while the Canadian Debtors prepare for the implementation of the Plan.

47. For these very same reasons, the Canadian Debtors also request that provisional execution of this order be granted notwithstanding any appeal.

48. The Canadian Debtors respectfully submit that the notices given of the presentation of the present Motion are proper and sufficient.

WHEREFORE, MAY THIS COURT:

[1] **GRANT** this *Motion for the Issuance of an Order Sanctioning A Plan of Compromise and Other Relief* (the "**Motion**");

[2] **DECLARE** that the Motion was validly served in conformity with the provisions of the Initial Order;

[3] **ISSUE** an order substantially in the form of the draft Sanction Order communicated as Exhibit R-1 in support of the Motion.

WITHOUT COSTS save in case of contestation.

Montreal, this 1st day of May, 2015

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for the Petitioners

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the foregoing *Motion for the Issuance of an Order Sanctioning A Plan of Compromise and For Other Relief* will be presented for adjudication before the Honourable Robert Mongeon, J.S.C., on May 14th, 2015 at 9h15 a.m., in a room of the Montreal Courthouse to be determined by the Court and communicated to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, this 1st day of May, 2015

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for the Petitioners

AFFIDAVIT

I, the undersigned, **TIMOTHY J. BUTLER**, Treasurer of Estate WBPC Company (formerly known as White Birch Paper Company), do solemnly declare as follows:

A) I am a duly authorized representative of the Petitioners; and

B) The facts set forth in the present motion are based upon, *inter alia*, my personal knowledge, my review of relevant documents and information provided to me by other representatives of the Petitioners, and, to the best of my knowledge, are true.

AND I HAVE SIGNED

TIMOTHY J. BUTLER

SOLEMNLY DECLARED before me on this 1st day of May, 2015

Notary Public

Notary Public
Commission Expires
July 31, 2019
Lic. # 70193

ATTESTATION OF AUTHENTICITY

I, the undersigned, JOSEPH REYNAUD, attorney, practicing my profession at Stikeman Elliott LLP, located at 1155 René-Lévesque Boulevard West, Suite 4000, in the City and District of Montréal, Province of Quebec, H3B 3V2, do hereby solemnly affirm as follows:

1. I am an attorney at the law firm of Stikeman Elliott LLP;
2. On May 1st, 2015, at 11:53 AM Eastern time (ET), I received the Affidavit of Timothy J. Butler, dated May 1st, 2015, by email received from Timothy J. Butler (timbutler@whitebirchpaper.com);
3. The copy of the Affidavit attached hereto is a true copy of the said Affidavit of Timothy J. Butler received by email today;
4. The facts alleged herein are true.

Solemnly declared before me, at Montréal, Quebec, this 1st day of May, 2015

AND I HAVE SIGNED

Joan Grenon #37,764

Commissioner of Oaths for the all judicial district(s) of the Province of Quebec

JOSEPH REYNAUD

SUPERIOR C O U R T

N°. 500-11-038474-108

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PROVINCE OF QUEBEC
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Mises-en-Cause

BS0350 **File:** 118326-1019

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(*Sections 6, 9 and 10 of the Companies' Creditors Arrangement Act, R.C.S. 1985 c. C-36*)

ORIGINAL

Mtre. Joseph Reynaud **514-397-3019**
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Mises-en-Cause

LIST OF EXHIBITS

DESCRIPTION		TAB
Exhibit R-1	Draft Sanction Order	1
Exhibit R-2	Plan of Compromise and Executed copy of the EACSA	2

MONTRÉAL, May 1st, 2015

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for the WB Group

SUPERIOR C O U R T

N°. 500-11-038474-108

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