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 (f.k.a. WHITE BIRCH PAPER HOLDING COMPANY)

-and-

ESTATE WBPC COMPANY (f.k.a. WHITE BIRCH PAPER COMPANY)

-and-

ESTATE SGPI INC. (f.k.a. STADACONA GENERAL PARTNER INC.)

-and-

ESTATE BSPI INC. (f.k.a BLACK SPRUCE PAPER INC.)

-and-

ESTATE FFSGPI INC. (f.k.a. F.F. SOUCY GENERAL PARTNER INC.)

-and-

3120772 NOVA SCOTIA COMPANY

-and-

ESTATE GCSI INC. (f.k.a. ARRIMAGE DE GROS CACOUNA INC.)

-and-

ESTATE PML INC. (f.k.a. PAPIER MASSON LTÉE)

Debtors

-and-

ERNST & YOUNG INC.

Monitor

-and-

SSEC S.E.C. (f.k.a. STADACONA LIMITED PARTNERSHIP)

-and-

FFS S.E.C (f.k.a. F.F. SOUCY LIMITED PARTNERSHIP)

-and-

FFSIP S.E.C. (f.k.a. F.F. SOUCY, INC. & PARTNERS, LIMITED PARTNERSHIP)

Mises en Cause

MOTION FOR DIRECTIONS, TO APPROVE CROSS-BORDER PROTOCOL AND FOR ANCILLARY RELIEF

(Sections 7, 9, 11, 44 *et seq.* 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:

INTRODUCTION

1. On February 24th, 2010, this Court (the "**CCAA Court**") issued an order (the "**Initial Order**") extending the protection of the *Companies' Creditors Arrangement Act* (the "**CCAA**") to the Debtors and the Mises en Cause (collectively the "**WB Canada**");

2. Pursuant to the Initial Order:

   (a) Ernst & Young Inc. was appointed Monitor of White Birch Canada (the "**Monitor**");

   (b) a stay of proceedings (the "**Stay of Proceedings**") was granted until March 26, 2010, as subsequently extended from time to time (the "**Stay Period**"): the Stay Period is now set to expire on November 24, 2012; and

   (c) Estate WBPC Company (f.k.a. White Birch Paper Company) was appointed as foreign representative;

3. For the reasons set-out more fully herein below, the Monitor hereby submits this Motion and prays this Court to:

   (a) approve a cross-border insolvency protocol;

   (b) invite the interested parties to initiate discussions in view of setting a joint hearing for the purpose of dealing with the Estate Allocation Issues (as defined below);

   (c) grant further ancillary relief as may be required;

PROCEEDINGS IN THE UNITED STATES

4. Concurrently with the issuance of the Initial Order, on February 24, 2010, Bear Island Paper Company LLC ("**BIPCO**"), with activities in the United States, filed a voluntary Petition for Relief under Chapter 11 before the Bankruptcy Court for the Eastern District of Virginia (the "**US Bankruptcy Court**") in case number 10-31202-DOT;

5. On the same day, Estate WBPC Company (f.k.a. White Birch Paper Company) and five of its Canadian affiliates also applied for relief under the provisions of Chapter 15 of the *US Bankruptcy Code* before the US Bankruptcy Court in case number 10-31234 –DOT (cases 10-31202-DOT and 10-31234 –DOT, collectively referred to as the "**US Proceedings**"), ultimately resulting in giving full force and effect to the Initial Order in the United States and recognizing Estate WBPC Company (f.k.a. White Birch Paper Company) as the duly appointed foreign representative;

6. On March 3, 2010, the Office of the United States Trustee for the Eastern District of Virginia, Richmond Division, appointed a committee to represent the unsecured creditors of BIPCO (the "**BIPCO UCC**");

7. On August 24, 2011, BIPCO filed before the U.S. Bankruptcy Court:

   (a) its disclosure statement in support of its plan of liquidation under Chapter 11 of the US Bankruptcy Court, as amended on June 10 and September 30, 2011 (the "**Disclosure Statement**") [doc. No. 880, 924 and 958]; and

   (b) a plan of liquidation under Chapter 11 of the *US Bankruptcy Code*, as amended on June 10 and September 30, 2011 (the "**BIPCO Plan**") [doc. No. 879, 923 and 957].

8. The BIPCO Plan provides *inter alia* for a *pro rata* distribution of the Creditor Fund (as defined in the BIPCO Plan) to general unsecured creditors of BIPCO, including Estate WBPC Company (f.k.a. White Birch paper Company) which holds a claim in the amount of US $ 135,854,779 (the "**White Birch Claim**"), which is not disputed, contingent or unliquidated according to the Schedules and Statements filed in support of the BIPCO Plan;

9. The BIPCO Plan has been approved by all classes of impaired creditors and is subject to confirmation by the US Bankruptcy Court at which time the US Bankruptcy Court will need to approve the Estate Allocation (as defined by the BIPCO Plan, and also discussed below) during a hearing set to take place on October 17, 2012;

10. For ease of reference:

    (a) this Court and the US Bankruptcy Court shall be referred to collectively as the "**Courts**";

    (b) BIPCO and WB Canada shall be referred to collectively as the "**Debtors**" or "**WB Group**";

    (c) these CCAA proceedings with respect to WB Canada and the US Proceedings with respect to BIPCO shall be referred to collectively as the "**Restructuring Proceedings**";

<u>SALE OF ASSETS</u>

11. On September 28, 2010, this Court issued an Order approving the sale of substantially all of WB Group's assets (the "**Sale Order**") to BD White Birch Investment LLC ("**BDWBI**");

12. The sale of WB Group's assets was also later approved by the US Bankruptcy Court on November 3, 2010;

13. The Sale Order approved the sale of substantially all of WB Group's assets and undertakings to BDWBI pursuant to the terms of the Asset Sale Agreement dated August 10, 2010, as amended thereafter from time to time (the "**Sale Agreement**");

14. On September 13, 2012, the Monitor executed and delivered its Certificate confirming that the closing of the Sale Agreement occurred: the Monitor's Certificate was also filed with this Court (plumitif # 195);

15. Given that the parties to the Sale Agreement were unable to agree on various issues having an impact on the net proceeds available for distribution as part of the Restructuring Proceedings, the following agreements were signed:

    (a) a Canadian estate allocation escrow agreement dated September 13, 2012, a copy of which is communicated herewith as **Exhibit R-2** (the "**Canadian Estate Allocation Escrow Agreement R-2**");

(b) a US estate allocation escrow agreement dated September 13, 2012, a copy of which is communicated herewith as **Exhibit R-3** (the "**US Estate Allocation Escrow Agreement R-3**");

(c) a reservation of rights settlement agreement dated September 13, 2012, a copy of which is communicated herewith as **Exhibit R-4** (the "**Reservation of Rights Settlement Agreement R-4**");

16. Each of the Canadian Estate Allocation Escrow Agreement (R-2), the US Estate Allocation Escrow Agreement (R-3) and the Reservation of Rights Settlement Agreement (R-4) states in its preamble that:

> WHEREAS, the Parties have been unable to consensually resolve, among other items, (a) the allocation of the Cash Component (as defined in the Purchase Agreement) between the estate of the U.S. Seller (the "**U.S. Estate**") and the estates of the Canadian Sellers (the "**Canadian Estates**"), (b) the repayment obligations between the U.S. Seller and the Canadian Sellers under the DIP Credit Facility, including without limitation any alleged subrogation rights of the U.S. Seller against the Canadian Sellers, (c) any alleged setoff rights of White Birch Paper Company whereby any subrogation claim could be setoff against all or a part of the Intercompany Claim, (d) the interpretation of the Purchase Agreement, including section 5.17 thereof, (e) whether the Intercompany Claim should be disallowed or recharacterized as equity, (f) allocation of fees, and expenditures, including but not limited to professional fees, expenses and expenditures, between the U.S. Seller and the Canadian Sellers (collectively, along with any other issues raised or to be raised by any Party which could affect Estate Allocation or distribution of proceeds, whether previously identified or not, the "**Estate Allocation Issues**")

17. Immediately after the closing of the Sale Agreement, the BIPCO UCC filed Notices of Objections and Motions to recharacterize as equity the White Birch Claim. Said Motions are also scheduled to be heard by the US Bankruptcy Court on October 17, 2012 (with an objection deadline of October 10, 2012, at 5:00 p.m.);

CROSS-BORDER INSOLVENCY PROTOCOL

18. On March 25, 2010, the US Bankruptcy Court entered an Order approving a Cross-Border Protocol: copy of said Cross-Border Insolvency Protocol (the "**Cross-Border Insolvency Protocol R-1**") and Order is communicated herewith as **Exhibit R-1**;

19. The purpose and goals of the Cross-Border Insolvency Protocol R-1 are set-out as follows in the Cross-Border Insolvency Protocol Order R-1 (at par. 5):

> a. harmonize and coordinate activities in the Restructuring Proceedings before the Courts;
>
> b. promote the orderly and efficient administration of the Restructuring Proceedings to, among other things, maximize the efficiency of the Restructuring Proceedings, reduce the costs associated therewith and avoid duplication of efforts;
>
> c. honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;
>
> d. promote international cooperation and respect for comity among the Courts, the Debtors, the U.S. Representatives (as defined herein), the Canadian Representatives (as defined herein, and, together with the U.S. Representatives, the "Estate Representatives"), the U.S. Trustee, the Monitor and other creditors and interested parties in the Restructuring Proceedings;

e. facilitate the fair, open and efficient administration of the Restructuring Proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located; and

f. implement a framework of general principles to address basic administrative issues arising out of the cross-borer nature of the Restructuring Proceedings.

20. The Cross-Border Insolvency Protocol Order R-1 (at paragraph 23) provides that the Cross-Border Insolvency Protocol R-1 shall only become effective upon its approval by both of the Courts, so that the Cross-Border Insolvency Protocol R-1 is not yet effective and shall only become effective upon its approval by this Court;

RELIEF SOUGHT

21. By way of its Motion for Directions dated September 28, 2011, and its report dated September 27, 2011, a copy of which is communicated in support hereof as **Exhibit R-5**, the Monitor informed the creditors and this Court of possible difficulties concerning the proper manner in which the proceeds of the Sale Agreement are to be distributed;

22. On October 7, 2011, this Court granted said Motion for Directions (R-5) by way of an Order, communicated herewith as **Exhibit R-6**, which reads in part as follows:

> [39] DIRECTS the parties having an interest in the Estate Allocation to continue their negotiations towards a final and global settlement of the Estate Allocation.
>
> [40] DIRECTS that any consensual definitive Estate Allocation of the proceeds of the sale of the assets of the WB Group, establishing the proper manner in which the proceeds from the sale transaction with BD White Birch Investments Inc. are to be distributed amongst WB Canada on the one part and Bear Island on the other part, including the repayment of the Interim financing Facility to be assumed by WB Canada and Bear Island, may be approved by both the Superior Court of Quebec and by the United States Bankruptcy Court for the Southern District of Virginia within the scope of their respective jurisdictions and DIRECTS FURTHER that should the parties fail to reach a consensual allocation (or an allocation which the Monitor can support and recommend for acceptance by this Court), AUTHORIZES any interested party to seek the adjudication of any dispute before the Court having jurisdiction upon same.

23. As evidenced by the Canadian Estate Allocation Escrow Agreement (R-2), the US Estate Allocation Escrow Agreement (R-3) and the Reservation of Rights Settlement Agreement (R-4), the interested parties have been unable to resolve consensually the Estate Allocation Issues, including the disallowance or recharacterization of the White Birch Claim and as such will require the holding of a Joint Hearing (as defined in the Cross-Border Insolvency Protocol R-1);

24. The Monitor intends to file before the US Bankruptcy Court written responses to the Notices of Objections and Motions to recharacterize as equity the White Birch Claim filed on behalf of the BIPCO UCC;

25. However the Monitor is concerned that absent the implementation of the Cross-Border Insolvency Protocol R-1, its right to appear before the U.S. Court could be questioned as the Monitor is not the Foreign Representative nor a party to the proceedings in the U.S., and in any event, before appearing in the context of the US Proceedings, the Monitor would wish to avail itself of the immunities provided by the Cross-Border Insolvency Protocol Order (at paragraph 17), which reads as follows:

> 17. The Monitor Parties shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA

> Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor, the carrying out of its duties or the provisions of the CCAA and the CCAA Order by the monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

26. In the circumstances, it would be greatly beneficial to approve the Cross-Border Protocol R-1 to provide a common framework to deal with the Estate Allocation Issues on the basis of principles of cooperation and comity, and also to allow the Monitor to intervene as may be required in the US Proceedings with the benefit of the immunities provided by the Cross-Border Insolvency Protocol Order (at paragraph 17);

27. Moreover, the Debtors and the other parties to the Canadian Estate Allocation Escrow Agreement (R-2), the US Estate Allocation Escrow Agreement (R-3) and the Reservation of Rights Settlement Agreement (R-4) have all agreed that failing a consensual solution, the Estate Allocation Issues shall be subject to Joint Court Orders (as defined in the Canadian Estate Allocation Escrow Agreement (R-2) and in the US Estate Allocation Escrow Agreement (R-3));

WHEREFORE MAY IT PLEASE THE COURT TO:

GRANT the present Motion for Directions, to Approve Cross-Border Protocol and for Ancillary Relief (the "**Motion**");

DECLARE that the notices given for the presentation of the Motion are proper and sufficient;

DECLARE that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them above in the Motion;

APPROVE the Cross-Border Protocol, being Exhibit R-1 to the Motion and to be attached as Schedule A in support of the Order to be rendered by this Court;

DECLARE the Cross-Border Protocol (R-1) to be fully effective;

INVITE the interested parties in the Restructuring Proceedings to discuss amongst themselves a proposed time schedule to deal with the Estate Allocation Issues as a part of a Joint Hearing and to report to the Courts concerning said discussions within thirty (30) days of the Order to be rendered by this Court;

ORDER the provisional execution of the Order to be rendered by this Court, notwithstanding appeal;

THE WHOLE WITHOUT COSTS, save in case of contestation.

Montreal, October 3, 2012

Norton Rose Canada LLP

NORTON ROSE CANADA LLP
Attorneys for the Monitor
ERNST & YOUNG INC.

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present Motion for Directions, to Approve Cross-Border Protocol and for Ancillary Relief will be presented for adjudication before the Honourable Robert Mongeon, J.S.C., at **9:00 A.M.**, **on a date 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, October 3, 2012

Norton Rose Canada LLP

NORTON ROSE CANADA LLP
Attorneys for the Monitor
ERNST & YOUNG INC.

AFFIDAVIT

I, the undersigned, **MARTIN ROSENTHAL**, Senior Vice President 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 Directions, to Approve Cross-Border Protocol and for Ancillary Relief are true.

AND I HAVE SIGNED:

MARTIN ROSENTHAL

SOLEMNLY DECLARED before me on this 3rd day of October 2012

Commissioner for Oaths for the Province of Quebec

COMMISSAIRE À L'ASSERMENTATION POUR LE QUÉBEC
Caroline Charbonneau
197,122
COMMISSIONER FOR OATHS FOR QUÉBEC

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:

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-and-

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3120772 NOVA SCOTIA COMPANY

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-and-

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Debtors

-and-

ERNST & YOUNG INC.

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-and-

FFSIP S.E.C. (f.k.a. F.F. SOUCY, INC. & PARTNERS, LIMITED PARTNERSHIP)

Mises en Cause

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

The undersigned, **SYLVAIN RIGAUD**, Attorney of the firm Norton Rose Canada LLP, doing business at 1 Place Ville-Marie, suite 2500, in the City and District of Montreal, Province of Quebec, under my oath of office, declare:

1. On October 3, 2012, at 3:08p.m., Norton Rose Canada LLP received by electronic mail the affidavit of Martin Rosenthal in support of the Motion for Directions, to Approve Cross-Border Protocol and for Ancillary Relief;

2. The copy of the affidavit attached hereto is a true copy of the affidavit of Martin Rosenthal received by electronic mail from Ernst & Young Inc. on October 3, 2012, from the Affiant.

Montréal, October 3, 2012

SYLVAIN RIGAUD
NORTON ROSE CANADA LLP
Attorneys for the Monitor
ERNST & YOUNG INC.

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:

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-and-

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ESTATE BSPI INC. (f.k.a BLACK SPRUCE PAPER INC.)

-and-

ESTATE FFSGPI INC. (f.k.a. F.F. SOUCY GENERAL PARTNER INC.)

-and-

3120772 NOVA SCOTIA COMPANY

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ESTATE GCSI INC. (f.k.a. ARRIMAGE DE GROS CACOUNA INC.)

-and-

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-and-

FFSIP S.E.C. (f.ka. F.F. SOUCY, INC. & PARTNERS, LIMITED PARTNERSHIP)

Mises en Cause

LIST OF EXHIBIT

EXHIBIT R-1	Copy of a Cross-Border Insolvency Protocol and Order rendered on March 25, 2010, by the US Bankruptcy Court;
EXHIBIT R-2	Copy of the Canadian Estate Allocation Escrow Agreement dated September 13, 2012;
EXHIBIT R-3	Copy of the US Estate Allocation Escrow Agreement dated September 13, 2012;
EXHIBIT R-4	Copy of the Reservation of Rights Settlement Agreement dated September 13, 2012;
EXHIBIT R-5	Copy of the Motion for Direction dated September 28, 2011, and the Monitor's report dated September 27, 2011;
EXHIBIT R-6	Copy of the Order dated October 7, 2011, granting the Motion for Directions (R-5).

Montreal, October 3, 2012

Norton Rose Canada LLP

NORTON ROSE CANADA LLP
Attorneys for the Monitor
ERNST & YOUNG INC.

NO: 500-11-038474-108

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTREAL

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

ESTATE WBPHC COMPANY (f.k.a. WHITE BIRCH PAPER HOLDING COMPANY) ET AL.

Debtors

-and

ERNST & YOUNG INC.

Monitor

-and -

SSEC S.E.C. (f.k.a. STADACONA LIMITED PARTNERSHIP) ET AL.

Mises-en-cause

MOTION FOR DIRECTIONS, LIST OF EXHIBIT AND EXHIBITS R-1 TO R-6

(Sections 7, 9, 11, 44 *et seq.* of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36)

ORIGINAL

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Proposed Attorneys for the Debtor and Debtor in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	)	Chapter 11
BEAR ISLAND PAPER COMPANY, L.L.C.,[1]	)	Case No. 10-31202 (DOT)
Debtor.	)	

ORDER APPROVING THE CROSS-BORDER PROTOCOL

Upon consideration of the motion, dated March 10, 2010 (the "Motion")[2], of Bear Island Paper Company, L.L.C., as a debtor and debtor in possession ("Bear Island" or "Debtor"), for entry of an order (the "Order") approving and implementing a procedural protocol to facilitate a coordinated administration of Restructuring Proceedings in the United States and Canada (the "Protocol"), all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and

1 The last four digits of the Debtor's federal tax identification number are 0914. The principal address for the Debtor is 10026 Old Ridge Road, Ashland, Virginia 23005.

2 All capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion.

the Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors and other parties in interest; and the Debtor having provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances and no other or further notice need be provided; and <u>the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and</u> after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

2. The Protocol annexed as **<u>Exhibit 1</u>** hereto is approved in all respects.

3. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

4. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

5. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is hereby waived.

6. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Mar 24 2010

Dated: ______________, 2010
Richmond, Virginia

/s/ Douglas O. Tice Jr.

____

Chief Judge Douglas O. Tice, Jr.
United State Bankruptcy Judge

Entered on Docket: Mar 25 2010

I ASK FOR THIS:

/s/ Jonathan L. Hauser
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- and -

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Proposed Attorneys for the Debtor and
Debtor in Possession

CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jonathan L. Hauser

Exhibit 1 to Exhibit A

Proposed Cross-Border Protocol and Guidelines

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	)	Chapter 11
BEAR ISLAND PAPER COMPANY, L.L.C.,[1]	)	Case No. 10-31202 (DOT)
Debtor.	)	

**CROSS-BORDER INSOLVENCY PROTOCOL FOR
BEAR ISLAND PAPER COMPANY, L.L.C. AND ITS DEBTOR AFFILIATES**

This cross-border insolvency protocol (the "Protocol") shall govern the conduct of all parties in interest in the Restructuring Proceedings (as such term is defined herein). The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* (the "Guidelines"), attached hereto as **Exhibit A**, shall be incorporated by reference and form part of this Protocol. In the event that there is any discrepancy between the Protocol and the Guidelines, this Protocol shall govern.

Background

1. On February 24, 2010, Bear Island Paper Company, L.L.C. ("Bear Island" or the "U.S. Debtor") commenced a reorganization case (the "U.S. Case") under chapter 11 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "U.S. Court"). The U.S. Debtor continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

1 The last four digits of the Debtor's federal tax identification number are 0914. The principal address for the Debtor is 10026 Old Ridge Road, Ashland, Virginia 23005.

2. Simultaneously therewith, certain of Bear Island's Canadian affiliates (collectively, the "Canadian Debtors")[1] filed an application with the Quebec Superior Court in Montreal, Quebec, Canada (the "Canadian Court") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") seeking relief from their creditors (collectively, the "Canadian Proceedings"). Since the commencement of the Canadian Proceedings, the Canadian Debtors have since obtained an initial order of the Canadian Court (the "CCAA Order"), pursuant to which (a) the Canadian Debtors have been granted certain relief under the CCAA, (b) Ernst & Young, Inc. has been appointed as monitor (the "Monitor") of the Canadian Debtors, with the rights, powers, duties and limitations of liabilities as forth in the CCAA and the CCAA Order and (c) a stay of proceedings has been initiated with respect to the Canadian Debtors.[2]

3. On March 3, 2010, the office of the United States Trustee for the Eastern District of Virginia (the "U.S. Trustee") appointed a statutory committee of unsecured creditors in the U.S. Case (the "Committee").

4. For convenience, (a) the U.S. Debtor and the Canadian Debtors shall be referred to herein collectively as the "Debtors," (b) the U.S. Case and the Canadian Proceedings shall be referred to herein collectively as the "Restructuring Proceedings," and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "Courts," and each individually as a "Court."

1 The Canadian Debtors include (a) White Birch Holding Company, (b) White Birch Paper Company, (c) Stadacona General Partner Inc., (d) Black Spruce Paper Inc., (e) F.F. Soucy General Partner Inc., (f) 3120772 Nova Scotia Company, (g) Arrimage De Gros Cacouna Inc., (h) Papier Masson Ltee, (i) Stadacona Limited Partnership, (j) F.F. Soucy Limited Partnership and (k) F.F. Soucy Inc. & Partners, Limited Partnership.

2 Also on February 24, 2010, certain of the Canadian Debtors, through White Birch Paper Company -- their Canadian Court appointed "foreign representative" -- filed a petition, pursuant to Chapter 15 of the Bankruptcy Code, with this Court to recognize the Canadian Proceedings as "foreign main proceedings" (collectively, the "Chapter 15 Cases").

Purpose and Goals

5. Although the U.S. Case and the Canadian Proceedings are separate proceedings pending in the United States and Canada, the implementation of administrative procedures and cross-border guidelines is both necessary and desirable to coordinate certain activities in the Restructuring Proceedings, protect the rights of parties thereto, ensure maintenance of the Courts' respective independent jurisdictions and give due effect to applicable doctrines such as comity, *res judicata*, issue estoppel, and collateral estoppel. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in the Restructuring Proceedings:

a. harmonize and coordinate activities in the Restructuring Proceedings before the Courts;

b. promote the orderly and efficient administration of the Restructuring Proceedings to, among other things, maximize the efficiency of the Restructuring Proceedings, reduce the costs associated therewith and avoid duplication of effort;

c. honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;

d. promote international cooperation and respect for comity among the Courts, the Debtors, the U.S. Representatives (as defined herein), the Canadian Representatives (as defined herein, and, together with the U.S. Representatives, the "Estate Representatives"), the U.S. Trustee, the Monitor and other creditors and interested parties in the Restructuring Proceedings;

e. facilitate the fair, open and efficient administration of the Restructuring Proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located; and

f. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Restructuring Proceedings.

Comity and Independence of the Courts

6. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's respective independent jurisdiction over the subject matter of the U.S. Case and the Canadian Proceedings, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors, the Estate Representatives nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

7. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Case and the hearing and determination of matters arising in the U.S. Case. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceedings and the hearing and determination of matters arising therein.

8. In accordance with the principles of comity and independence, nothing contained herein shall be construed to:

a. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or "limited notice" basis;

b. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;

c. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

d. require the Debtors, the Estate Representatives, the U.S. Trustee or the Monitor to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

e. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

f. preclude the Debtors, the Estate Representatives, the U.S. Trustee, the Monitor or any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction, including the rights of parties in interest to appeal from the decisions taken by one or both Courts.

Cooperation

9. To assist in the efficient administration of the Restructuring Proceedings and recognizing that the U.S. Debtor and the Canadian Debtors may each be creditors of the others' estates, the Debtors and their respective Estate Representatives shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court; and (b) take any other appropriate steps to coordinate the administration of the Restructuring Proceedings for the benefit of the Debtors' respective estates.

10. To harmonize and coordinate the administration of the Restructuring Proceedings, the U.S. Court and the Canadian Court may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court. In furtherance of the foregoing:

a. the U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any procedural or substantive matter relating to the Restructuring Proceedings;

b. where the issue of the proper jurisdiction or Court to determine an issue is raised by an interested party in either of the Restructuring Proceedings with respect to a motion or an application filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which the issue of jurisdiction will be determined. Such process shall be subject to submissions by the Debtors, the Estate Representatives, the U.S. Trustee, the Monitor and any interested party before any determination on the issue of jurisdiction is made by either Court;

c. the Courts may, but are not obligated to, coordinate activities in the Restructuring Proceedings so that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in one Court; and

d. the U.S. Court and the Canadian Court may conduct joint hearings ("Joint Hearings") with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Case or the Canadian Proceedings if both Courts determine and agree that such Joint Hearings are necessary or advisable. With respect to any such Joint Hearings, unless otherwise ordered by both Courts, the following procedures shall be followed:

(i) a telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court;

(ii) notices, submissions or applications by any party that are or become the subject of a Joint Hearing (collectively, the "Pleadings") shall only be made or initially filed with the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any Joint Hearing, the party submitting such Pleadings to one Court shall file copies with the other Court. In any event, Pleadings seeking relief from both Courts must be filed with both Courts;

(iii) any party intending to rely upon written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any Joint Hearing (collectively, the "Evidentiary Materials") shall file or otherwise submit such Evidentiary Materials to both Courts in advance of the Joint Hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court;

(iv) if a party has not previously appeared in or otherwise acknowledged the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with a Joint Hearing without, by the mere act of such filings, being deemed to have acknowledged the jurisdiction of the Court in which such material is filed, so long as it does not request any affirmative relief from such Court;

(v) the Judge of the U.S. Court and the Justice of the Canadian Court who preside over any Joint Hearing shall be entitled to communicate with each other in advance of any Joint Hearing, with or without counsel being present, to (A) establish guidelines for the orderly submission of Pleadings and Evidentiary Materials, (B) establish guidelines by which the Courts shall render decisions and (C) address any related procedural, administrative or preliminary matters; and

(vi) the Judge of the U.S. Court and the Justice of the Canadian Court shall be entitled to communicate with each other during or after any Joint Hearing, with or without counsel being present, for the purposes of (A) determining whether consistent rulings can be made by both Courts, (B) coordinating the terms of the Courts' respective rulings and (C) addressing any other procedural or administrative matters.

11. Notwithstanding anything herein to the contrary, this Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to (a) matters presented to and properly before such Court and (b) the conduct of the parties appearing in such matters.

12. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to Paragraph 26 herein.

Rights to Appear and Be Heard

13. <u>Each of the Debtors, their creditors, the Estate Representatives, the U.S. Trustee and other interested parties in the Restructuring Proceedings, shall have the right and standing to:</u>

a. appear and be heard in either the U.S. Court or the Canadian Court in the Restructuring Proceedings to the same extent as a creditor or other interested party domiciled in the forum country, subject to any local rules or regulations generally applicable to all parties appearing in the forum;

b. file notices of appearance or other papers with the Clerk of the U.S. Court or the Canadian Court in the Restructuring Proceedings; provided, however, that any appearance or filing may subject such party to the jurisdiction of the Court in which the appearance or filing occurs; provided further, however, that the appearance by the Committee in the Canadian

Proceedings, or the Monitor in the U.S. Case or the Chapter 15 Cases, shall not form a basis for personal jurisdiction over the members of the Committee, or the Monitor Parties (as defined below) in their individual capacity, by the Canadian Court and U.S. Court, respectively. Notwithstanding the foregoing, and in accordance with the policies set forth above;

(i) the Canadian Court shall have jurisdiction over the U.S. Representatives and the U.S. Trustee solely with respect to the particular matters as to which the U.S. Representatives or the U.S. Trustee appear before the Canadian Court; and

(ii) the U.S. Court shall have jurisdiction over the Canadian Representatives solely with respect to the particular matters as to which the Canadian Representatives appear before the U.S. Court.

Access to Information

14. Information publicly available in either forum shall be publicly available in both forums.

Development of Plan of Arrangement or Plan of Reorganization

15. Nothing herein shall otherwise restrict or limit the U.S. Debtor or Canadian Debtors from (a) participating as creditors in the others' estates or (b) having access to information and the ability to comment on or vote on any plan of reorganization or plan of arrangement proposed in respect of the others' estates.

Retention and Compensation of Estate Representatives and Professionals

16. The Monitor and its respective officers, directors, employees, counsel and agents, wherever located (collectively, the "Monitor Parties"), and any other estate representatives appointed or retained by the Canadian Debtors in the Canadian Proceedings other than any foreign representative appointed in connection with the chapter 15 cases or any subsequently filed proceedings under chapter 15 with respect to the Canadian Debtors (collectively, with the Monitor

Parties, the "Canadian Representatives") shall (subject to Paragraph 13) be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Proceedings or under the CCAA or other applicable Canadian law. The Canadian Representatives shall not be required to seek approval of their retention or compensation in the U.S. Court for services rendered in such capacity and shall be compensated for their services solely in accordance with the CCAA, the CCAA Order and other applicable laws of Canada or orders of the Canadian Court.

17. The Monitor Parties shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor, the carrying out of its duties or the provisions of the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

18. Any estate representatives appointed in the U.S. Case, including, the Committee and, without limitation, any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, the "U.S. Representatives"), shall (subject to Paragraph 13) be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters,

including: (a) the U.S. Representatives' tenure in office; (b) the retention and compensation of the U.S. Representatives; (c) the U.S. Representatives' liability, if any, to any person or entity, including the U.S. Debtor and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the U.S. Representatives arising in the U.S. Case under the Bankruptcy Code or other applicable laws of the United States. The U.S. Representatives and their counsel and other U.S. professionals shall not be required to seek approval of their retention or compensation in the Canadian Court and shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court.

19. Subject to Paragraph 13, any professionals retained by the Canadian Debtors, (collectively, the "Canadian Professionals") shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the CCAA Order and any other applicable Canadian law or orders of the Canadian Court with respect to services performed on behalf of the Canadian Debtors and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court in connection with the Canadian Proceedings.

20. Subject to Paragraph 13, any professionals retained by the U.S. Debtor (collectively, the "Chapter 11 Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the Chapter 11 Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code with respect to services performed on behalf of the U.S. Debtor and any other applicable laws of

the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court with respect to services performed in connection with the U.S. Case.

Notice

21. Notice of any motion, application or other pleading or paper filed in any of the Restructuring Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, facsimile or other electronic forms of communication) to the following: (a) all creditors and other interested parties, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under subpart (a) of this sentence, counsel to the Debtors, counsel to the Committee, the U.S. Trustee, the Monitor and such other parties as may be designated from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of any orders, decisions, opinions or similar papers issued by the other Court in the Restructuring Proceedings.

22. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notice shall be provided in the manner and to the parties referred to in Paragraph 21 above.

Effectiveness; Modification

23. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

24. This Protocol may not be supplemented, modified, terminated or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceedings to supplement, modify, terminate or replace this Protocol shall be given in accordance with Paragraph 21 above.

Procedure for Resolving Disputes Under the Protocol

25. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to the U.S. Court, the Canadian Court or both Courts upon notice in accordance with Paragraph 21 above. In rendering a determination in any such dispute, the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either (i) render a binding decision after such consultation, (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court or (iii) seek a Joint Hearing in accordance with Paragraph 10 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

Advice and Directions

26. In implementing the terms of the Protocol, the U.S. Court and the Canadian Court may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

a. the U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

b. the Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;

c. copies of such written advice or guidance shall be served by the applicable Court in accordance with Paragraph 20 hereof; and

d. the Courts may jointly decide to invite the Debtors, the Estate Representatives, the U.S. Trustee, the Monitor and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

For clarity, the provisions of this Paragraph 26 shall not be construed to restrict the ability of the U.S. Court or the Canadian Court to confer, as provided above, whenever they deem it appropriate to do so.

Preservation of Rights

27. Nothing contained herein shall affect or limit the rights of the Debtors, the Estate Representatives or other parties in interest to assert the applicability or non-applicability of the stay of proceedings and actions against or respecting the U.S. Debtor and its property under section 362 of the Bankruptcy Code (the "U.S. Stay") or the stay of proceedings and actions against or respecting the Canadian Debtors and their property under the CCAA and the CCAA Order (the "Canadian Stay"), which was recognized by the U.S. Court in the Chapter 15 Cases, to any particular proceeding, property, asset, activity or other matter, wherever pending or located; provided, however, that the Canadian Stay shall not prevent the Committee from taking any actions or engaging in any conduct in the U.S. Case so long as such actions or engagements are in accordance with the U.S. Stay.

28. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall (a) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Estate Representatives, the U.S. Trustee, the Monitor or any of the Debtors' creditors under applicable law, including the Bankruptcy Code, the CCAA and the Orders of the Courts or (b) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of the United States or Canada.

Exhibit A

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

THE AMERICAN LAW INSTITUTE

in association with

THE INTERNATIONAL INSOLVENCY INSTITUTE

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

As Adopted and Promulgated in Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries

BY

THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

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At New York, June 10, 2001

The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at http://www.iiiglobal.org/international/guidelines.html.

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Foreword by the Director of The American Law Institute

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website (www.ali.org).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the III, whose members include leaders of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the Guidelines in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN
Director
The American Law Institute

January 2004

Foreword by the Chair of the International Insolvency Institute

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases.* The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy, and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: *info@iiiglobal.org*) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at *www.iiiglobal.org*.

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD
Chairman
The International Insolvency Institute

Toronto, Ontario
March 2004

Judicial Preface

We believe that the advantages of co-operation and co-ordination between Courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between Courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings which became effective for the Member States of the European Union in 2002.

The *Guidelines for Court-to-Court Communications in Cross-Border Cases* were developed in the American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the Courts. The *Guidelines* are intended to encourage and facilitate co-operation in international cases while observing all applicable rules and procedures of the Courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of co-operation possible between the Courts in dealing with a multinational insolvency or liquidation. The *Guidelines*, however, are not restricted to insolvency cases and may be of assistance in dealing with non-insolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines*.

Mr. Justice David Baragwanath
High Court of New Zealand
Auckland, New Zealand

Chief Justice Donald I. Brenner
Supreme Court of British Columbia
Vancouver

Hon. Sidney B. Brooks
United States Bankruptcy Court
District of Colorado
Denver

Hon. Charles G. Case, II
United States Bankruptcy Court
District of Arizona
Phoenix

Mr. Justice Miodrag Dordević
Supreme Court of Slovenia
Ljubljana

Mr. Justice J.M. Farley
Ontario Superior Court of Justice
Toronto

Hon. James L. Garrity, Jr.
United States Bankruptcy Court
Southern District of New York (Ret'd)
Shearman & Sterling
New York

Hon. Allan L. Gropper
Southern District of New York
United States Bankruptcy Court
New York

Mr. Justice Paul R. Heath
High Court of New Zealand
Auckland, New Zealand

Hon. Hyungdu Kim
Supreme Court of Korea
Seoul

Chief Judge Burton R. Lifland
United States Bankruptcy Appellate
Panel for the Second Circuit
New York

Mr. Justice Gavin Lightman
Royal Courts of Justice
London

Hon. George Paine II
United States Bankruptcy Court
District of Tennessee
Nashville

Hon. Chiyong Rim
District Court
Western District of Seoul
Seoul, Korea

Mr. Justice Adolfo A.N. Rouillon
Court of Appeal
Rosario, Argentina

Hon. Shinjiro Takagi
Supreme Court of Japan (Ret'd)
Industrial Revitalization Corporation of Japan
Tokyo

Mr. Justice Wisit Wisitsora – At
Business Reorganization Office
Government of Thailand
Bangkok

Mr. Justice R.H. Zulman
Supreme Court of Appeal of South Africa
Parklands

Guidelines
Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administrating authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an authorized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

(a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

(d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

(d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

(a) Each Court should be able to simultaneously hear the proceedings in the other Court.

(b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

(c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.

(d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

(e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized

Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

R2

CANADIAN ESTATE ALLOCATION ESCROW AGREEMENT

ESCROW AGREEMENT, dated as of September 13, 2012 (this "**Escrow Agreement**"), among Bear Island Paper Company, L.L.C., a Virginia limited liability company, and its successors and assigns (the "**U.S. Seller**"), White Birch Paper Company, a Nova Scotia Unlimited Liability Company, along with its subsidiaries Stadacona General Partner Inc., Stadacona L.P., F.F. Soucy General Partner Inc., F.F. Soucy, Inc. & Partners, Limited Partnership, F.F. Soucy L.P., Arrimage de Gros Cacouna Inc. and Papier Masson Ltée, and their successors and assigns (the "**Canadian Sellers**"), BD White Birch Investment LLC, a Delaware limited liability company (the "**Purchaser**"), the Monitor appointed in the CCAA Proceedings (as defined below) (the "**Canadian Monitor**"), acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity, and BNY Trust Company of Canada (in its capacity as escrow agent hereunder, the "**Escrow Agent**").

WHEREAS, U.S. Seller is a debtor-in-possession under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "**Bankruptcy Code**") which commenced a voluntary proceeding (the "**Chapter 11 Case**") on February 24, 2010 by filing a petition for relief in the United States Bankruptcy Court for the Eastern District of Virginia (the "**U.S. Bankruptcy Court**");

WHEREAS, U.S. Seller continues to operate its business and manage its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Canadian Sellers are party to proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**," and the proceedings thereunder, the "**CCAA Proceedings**") which commenced on February 24, 2010 when the Canadian Sellers along with certain affiliates filed an application for protection pursuant to the CCAA in the Quebec Superior Court, District of Montreal (the "**Canadian Court**") and the Canadian Court issued an initial order for protection (the "**Initial CCAA Order**") on February 24, 2010;

WHEREAS, Ernst & Young Inc. has been appointed the Canadian Monitor;

WHEREAS, U.S. Seller, Canadian Seller, and Purchaser have entered into that certain Asset Sale Agreement dated as of August 10, 2010 (as amended, modified, superseded or substituted from time to time, the "**Purchase Agreement**"), pursuant to which Purchaser has agreed, subject to the terms and conditions of the Purchase Agreement, to purchase certain assets from the U.S. Seller and the Canadian Sellers;

WHEREAS, pursuant to the Purchase Agreement, among other things, the purchase price includes a cash component of $90 million (the "**Cash Component**");

WHEREAS, the U.S. Seller and White Birch Paper Company, Stadacona L.P., F.F. Soucy L.P. and Papier Masson Ltée are party to the *$140,000,000 Senior Secured Super Priority Debtor-In-Possession Term Loan Credit Agreement*, dated as of March 1, 2010 and as amended, modified, supplemented or otherwise approved in the Initial CCAA Order and by an order of the Bankruptcy Court (the "**DIP Credit Agreement**" and the facility contemplated thereunder, the "**DIP Credit Facility**");

WHEREAS, White Birch Paper Company has booked an intercompany claim against the U.S. Seller for $135,920,395.00 (the "**Intercompany Claim**");

WHEREAS, the Parties have been unable to consensually resolve, among other items, (a) the allocation of the Cash Component (as defined in the Purchase Agreement) between the estate of the U.S. Seller (the "**U.S. Estate**") and the estates of the Canadian Sellers (the "**Canadian Estates**"), (b) the repayment obligations between the U.S. Seller and the Canadian Sellers under the DIP Credit Facility, including without limitation any alleged subrogation rights of the U.S. Seller against the Canadian Sellers, (c) any alleged setoff rights of White Birch Paper Company whereby any subrogation claim could be setoff against all or a part of the Intercompany Claim, (d) the interpretation of the Purchase Agreement, including section 5.17 thereof, (e) whether the Intercompany Claim should be disallowed or recharacterized as equity, (f) allocation of fees, expenses, and expenditures, including but not limited to professional fees, expenses and expenditures, between the U.S. Seller and the Canadian Sellers (collectively, along with any other issues raised or to be raised by any Party which could affect estate allocation or distribution of proceeds, whether previously identified or not, the "**Estate Allocation Issues**");

WHEREAS, the sale contemplated pursuant to the Purchase Agreement is scheduled to close on September 13, 2012 (the "**Closing Date**");

WHEREAS, in order to close the sale on the Closing Date without impairing any party's rights with respect to the Estate Allocation Issues, the parties to this Escrow Agreement have agreed to establish this escrow fund to be funded by the Canadian Sellers in an amount equal to US$25,000,000 (the "**Canadian Estate Allocation Escrow Fund**" or "**Escrowed Canadian Funds**") and the escrow fund in the U.S. pursuant to the *U.S. Estate Allocation Escrow Agreement* by and between the U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor of even date to be funded by the U.S. Seller in an amount equal to US$19,500,000 (the "**U.S. Estate Allocation Escrow Fund**" and with the Canadian Estate Allocation Escrow Fund, the "**Escrow Funds**") to hold, collectively, US$44,500,000 as security for anticipated litigation in connection with the Estate Allocation Issues;

WHEREAS, simultaneously with the execution of this Escrow Agreement, the U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor will execute the *U.S. Estate Allocation Escrow Agreement* establishing the U.S. Estate Allocation Escrow Fund;

WHEREAS, should the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor fail to execute the *U.S. Estate Allocation Escrow Agreement* and to establish the U.S. Estate Allocation Escrow Fund within 10 days of the date hereof and the Escrow Agent is so advised in writing by the U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor, this Escrow Agreement shall be terminated and any amounts funded to the Escrow Agent by the Canadian Sellers shall be promptly returned less any applicable taxes and fees to be charged to the U.S. Seller and the Canadian Sellers in accordance with direction given pursuant to section 3.2 hereof;

WHEREAS, all dollar ($) amounts herein are US$ (unless otherwise expressly indicated);

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

INTENTION AND PRESERVATION OF RIGHTS

Section 1.1 Intent of the U.S. Seller, the Canadian Sellers and the Purchaser. It is the intent of the U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor in establishing the Escrow Funds to facilitate closure of the Sale pursuant to the Purchase Agreement and enable the U.S. Seller and the Canadian Sellers to emerge from Bankruptcy and the CCAA proceedings, respectively, without impairing any party's rights with respect to the Escrow Funds and the Estate Allocation Issues.

Section 1.2 Preservation of Rights. The U.S Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor agree that the Reservation of Rights Settlement Agreement, attached hereto as Exhibit A, reserves the rights of all parties to the Reservation of Rights Settlement Agreement as more fully set forth therein.

ARTICLE II

ESCROW

Section 2.1 Appointment of Escrow Agent. The U.S. Seller, Canadian Sellers, Purchaser and the Canadian Monitor hereby appoint and designate BNY Trust Company of Canada as Escrow Agent. The Escrow Agent hereby accepts such appointment and designation upon the terms, conditions and provisions provided in this Escrow Agreement.

Section 2.2 Establishment of the Canadian Estate Allocation Escrow Fund. The Escrow Agent has established the Canadian Estate Allocation Escrow Fund as an account segregated on its books and records that shall be maintained, and from which funds shall be disbursed, in accordance with the terms and conditions of this Escrow Agreement.

Section 2.3 Purpose of the Canadian Estate Allocation Escrow Fund. The Canadian Estate Allocation Escrow Fund has been established for the purpose of holding the Escrowed Funds, in contemplation of the consummation of the transactions contemplated by the Purchase Agreement in accordance with its terms. Except for the offset described in Section 5.4 hereof, the Escrowed Funds shall be maintained free and clear of all Liens (as defined in the Purchase Agreement) whatsoever.

Section 2.4 Funding of the Canadian Estate Allocation Escrow Fund. On the date of this Escrow Agreement White Birch Paper Company shall deliver to the Escrow Agent US$25,000,000 by wire transfer of immediately available funds, and the Escrow Agent shall deposit such amount into the Canadian Estate Allocation Escrow Fund.

Section 2.5 Canadian Estate Allocation Escrow Fund to Remain In Canada. The parties hereto agree that the Escrowed Canadian Funds shall, for so long as such funds are held by the Escrow Agent, remain in accounts located in Canada.

Section 2.6 No Offset. The Escrowed Funds shall be held by the Escrow Agent in accordance with the terms of this Escrow Agreement and, except as set forth in Section 5.4 hereof, shall not be available to, and shall not be used by, the Escrow Agent to set-off any obligations owing to the Escrow Agent in any capacity.

ARTICLE III

DISBURSEMENT OF THE ESCROWED CANADIAN FUNDS

Section 3.1 Disbursement upon Court Orders. Upon issuance of joint final non appealable orders from the U.S. Bankruptcy Court and the Canadian Court resolving the Estate Allocation Issues (the "**Joint Court Orders**"), the U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor will provide the Escrow Agent with a joint written direction which shall direct the distribution of the Canadian Estate Allocation Escrow Fund and shall contain copies of the Joint Court Orders. Subject to Section 5.4, the Escrow Agent shall, within two (2) business days, promptly disburse the Canadian Estate Allocation Escrow Fund in accordance with such joint written direction.

Section 3.2 Disbursement upon Joint Written Instructions. Upon joint written instructions by the U.S. Seller and the Canadian Sellers and the Purchaser and the Canadian Monitor (the "**Joint Written Disbursement Instructions**"), subject to Section 5.4, the Escrow Agent shall, within two (2) business days, promptly disburse the Canadian Estate Allocation Escrow Fund in accordance with the Joint Written Disbursement Instructions.

Section 3.3 Termination. Subject to Section 5.4, upon (a) the disbursement of all of the Escrowed Funds by either Joint Court Orders or Joint Written Disbursement Instructions or (b) the receipt by the Escrow Agent of joint written instructions from the U.S. Seller and the Canadian Sellers and the Purchaser and the Canadian Monitor, this Escrow Agreement shall terminate and be of no further force and effect except that the provisions of Section 5.1(b), Section 5.3 and Section 5.4 hereof shall survive termination, the resignation or removal of the Escrow Agent and/or any conclusion of the U.S. Seller's Chapter 11 Case and CCAA Proceedings to which the Canadian Sellers are a party. In the event that this Escrow Agreement terminates prior to the distribution of all of the Escrowed Funds, the U.S. Seller, Canadian Sellers, the Purchaser, and the Canadian Monitor shall deliver joint written instructions to the Escrow Agent regarding the disposition of the Escrowed Funds.

Section 3.4 Reporting. Other than reporting earnings in accordance with Section 4.2, the Escrow Agent shall have no tax reporting duties with respect to any disbursements made pursuant to this Article 3.

Section 3.5 Tax Withholding. Notwithstanding anything contained herein, the Escrow Agent shall have the right to deduct and withhold taxes from any payments to be made hereunder if such withholding is required by applicable law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Escrow Agreement as having been delivered and paid to the recipient of payments in respect of which such deduction and withholding was made.

ARTICLE IV

INVESTMENTS

Section 4.1 Investment of Canadian Estate Allocation Escrow Fund. The Escrow Agent is authorized, subject to the receipt of directions from White Birch Paper Company, to invest the Escrowed Funds in one or a combination of the following: (a) direct obligations by the Government of Canada or any province of Canada; (b) obligations guaranteed by the Government of Canada; or (c) certificates of deposit, bankers acceptances and other instruments issued or endorsed by any Schedule 1 Canadian chartered bank. The term of any such investment shall not exceed ninety (90) days. All earnings shall become part of the Escrowed Funds and shall be disbursed in accordance with this Escrow Agreement. The Escrow Agent is authorized to liquidate promptly any portion of the Canadian Estate Allocation Escrow Fund consisting of investments to provide for payments required to be made under this Escrow Agreement. The Escrow Agent will not be liable for any loss incurred at such liquidation which is due to fluctuations in market rates, depreciation in the value of the investment or penalties incurred in connection with any such liquidation. The Escrow Agent will not be liable for any losses resulting from any investment made in accordance with the terms of this Section 4.1.

Section 4.2 Taxes. In the event of any earnings on the Canadian Estate Allocation Escrow Fund, or any portion thereof, White Birch Paper Company shall be treated as the owner of such earnings, the Escrow Agent shall disburse to White Birch Paper Company such earnings, if any, at the end of each Calendar Quarter and, accordingly, White Birch Paper Company will report all such income in such proportions, in the taxable year or years in which such income is properly includible and pay any taxes attributable thereto. The Escrow

Agent shall provide any necessary information reporting forms as required under Canadian federal, provincial, and local laws, if any.

ARTICLE V

ESCROW AGENT

Section 5.1 Responsibilities and Duties of the Escrow Agent.

(a) The duties, responsibilities and obligations of the Escrow Agent shall be limited to those expressly set forth in this Escrow Agreement, and no duties, responsibilities or obligations shall be inferred or implied. The Escrow Agent shall not be subject to, nor required to comply with, any other agreement among Purchaser or the U.S. Seller or the Canadian Sellers or the Canadian Monitor, even though reference thereto may be made herein, including, but not limited to the Reservation of Rights Settlement Agreement and the Purchase Agreement, or to comply with any direction or instruction (other than those contained herein or delivered in accordance with this Escrow Agreement) from the Purchaser or the U.S. Seller or the Canadian Sellers or the Canadian Monitor. The Escrow Agent shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. The Escrow Agent is authorized to rely in good faith upon any joint written instruction of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor believed by it to be genuine and to have been sent or given by the foregoing parties, and the Escrow Agent shall incur no liability in connection with acting in accordance with any such joint written instruction. The Escrow Agent shall have no responsibility to investigate or confirm whether any direction it receives hereunder is in compliance with the Joint Court Orders, any order of the Bankruptcy Court, or any order of the Canadian Court.

(b) The Escrow Agent shall not be liable for any action taken or omitted or for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder in the absence of bad faith, gross negligence or willful misconduct. In no event shall the Escrow Agent be liable (i) for any consequential, punitive or special damages or (ii) for the acts or omissions of its nominees, correspondents, designees, subagents or subcustodians appointed with due care by the Escrow Agent.

(c) The Escrow Agent may act through agents and attorneys and may consult with legal counsel (with the reasonable fees and disbursements of such counsel to be paid as provided in Section 5.4) as to any matter relating to this Escrow Agreement, and the Escrow Agent shall not incur any liability in acting in good faith in accordance with any advice from such counsel.

(d) The Escrow Agent shall provide to the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor monthly statements identifying transactions, transfers or holdings of the Canadian Estate Allocation Escrow Fund.

(e) The Escrow Agent shall not be responsible in any respect for the form, execution, validity, value or genuineness of documents or securities deposited hereunder, or for any description therein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document, security or endorsement.

(f) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Escrow Agent hereunder, the Escrow Agent may, in its sole discretion, refrain from taking any action other than retaining possession of the Canadian Estate Allocation Escrow Fund, unless the Escrow Agent receives joint written instructions, signed by the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor which eliminates such ambiguity or uncertainty.

(g) In the event of any dispute between or conflicting claims by or between the U.S. Seller, the Canadian Sellers, the Purchaser, and/or the Canadian Monitor with respect to the Canadian Estate Allocation Escrow Fund, the Escrow Agent shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to the Canadian Estate Allocation Escrow Fund so long as such dispute or conflict shall continue, and the Escrow Agent shall not be or become liable in any way for failure or refusal to comply with such conflicting claims, demands or instructions. The Escrow Agent shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction (a "**Court Order**"), which order, judgment or decree is not subject to appeal (as certified in writing by the Purchaser, U.S. Seller, Canadian Sellers and the Canadian Monitor), or settled by agreement between the conflicting parties as evidenced in a writing reasonably satisfactory to the Escrow Agent or (ii) the Escrow Agent shall have received security or an indemnity reasonably satisfactory to it sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Escrow Agent may, in addition, elect, in its sole discretion, to commence an interpleader action or seek other judicial relief or orders as it may deem, in its sole discretion, necessary.

(h) The Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Escrow Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or telex or other wire or communication facility).

(i) If at any time Escrow Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Canadian Estate Allocation Escrow Fund (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of the Canadian Estate Allocation Escrow Fund), Escrow Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if Escrow Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, Escrow Agent shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

Section 5.2 Removal; Resignation. The U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor may jointly remove the Escrow Agent at any time by giving the Escrow Agent at least thirty (30) calendar days' prior written notice. The Escrow Agent may resign as escrow agent at any time, by giving at least thirty (30) calendar days' prior written notice of such resignation to the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor. In either event, the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor will jointly and promptly select a successor escrow agent, and the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor will enter into an agreement with such successor escrow agent in substantially the form of this Escrow Agreement. The removal or resignation of the Escrow Agent shall relieve the Escrow Agent of any responsibility or duty thereafter arising hereunder, but shall not relieve the Escrow Agent of responsibility to account to the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor for funds received by the Escrow Agent prior to the effective date of such removal or resignation. If a substitute for the Escrow Agent hereunder shall not have been selected prior to the expiration of sixty (60) calendar days following the date of the notice of removal or resignation, the Escrow Agent shall be entitled to petition any court of competent jurisdiction with the fees and expenses of such petition being payable under section 5.4 hereof, for the appointment of a substitute for it hereunder or, in the alternative, it may (i) transfer and deliver the Escrowed Funds to or upon the order of such court or (ii) keep safely all Escrowed Funds until it receives joint notice from the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor of a substitute appointment. The Escrow Agent shall be discharged from all subsequently arising duties hereunder upon acceptance by the substitute escrow agent of the Escrow Agent's duties hereunder or upon transfer and delivery of the funds in the escrow account to or upon the order of any court.

Section 5.3 Indemnification of the Escrow Agent. The U.S. Seller and the Canadian Sellers each, jointly and severally, agree to hold the Escrow Agent harmless from and to indemnify the Escrow Agent against, any loss, liability, cost, damage, expense, claim or demand (collectively, "Losses") arising out of or in connection with the performance of its obligations in accordance with the provisions of this Escrow Agreement or in anyway arising from or in connection with this Escrow Agreement or its acting as Escrow Agent hereunder (including but not limited to Losses incurred by Escrow Agent in connection with its successful defense, in whole or in party, of any claim of gross negligence, willful misconduct or bad faith on its part), except to the extent such loss, liability, claim or demand arises from the bad faith, gross negligence or willful misconduct of the Escrow Agent.

Section 5.4 Fees and Expenses. The fees for the services rendered by the Escrow Agent pursuant to the provisions of this Escrow Agreement with respect to the Canadian Estate Allocation Escrow Fund, in accordance with the fee schedule attached hereto as Exhibit B, shall be paid by the the Canadian Sellers. The Escrow Agent shall be entitled to receive all reasonable, out-of-pocket expenses, disbursements and advances incurred or made by the Escrow Agent in connection with this Escrow Agreement. All such expenses, disbursements and advances shall be paid in cash to the Escrow Agent by the Canadian Sellers. The Escrow Agent does not have and will not have any interest in the funds deposited hereunder but is serving only as escrow holder and having only possession thereof; provided, however, if any fees, expenses or costs incurred by, or any obligations owed to (including any obligations owed pursuant to Section 5.3 hereof), the Escrow Agent hereunder are not paid within five Business Days of the date requested, the Escrow Agent may reimburse itself therefor from the Escrowed Funds and may sell, convey or otherwise dispose of any Escrowed Canadian Funds for such purpose and (ii) the Escrow Agent shall retain $100,000.00 (the "**Holdback Amount**") of the Escrowed Canadian Funds for the payment of any such fees, expenses, costs or obligations until the later of (1) the termination of this Agreement pursuant to Section 3.3 hereof, (2) the conclusion of the U.S. Seller's bankruptcy proceedings pursuant to the United Stated Code and the conclusion of the Canadian Sellers' proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**Holdback Termination Date**") or (3) the conclusion of any litigation that the Escrow Agent is a party to relating to this Agreement. Upon the occurrence of the Holdback Termination Date, the Escrow Agent shall distribute the remainder of the Holdback Amount in accordance with the joint written direction of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor.

Section 5.5 Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notices, demands or other communication required to be sent or given hereunder by any of the parties shall in every case be in writing and shall be deemed properly served if (a) delivered personally to the recipient, (b) sent to the recipient by reputable express courier service (charges paid) or mailed to the recipient by registered or certified mail, return receipt requested and postage paid, or (c) sent to the recipient by facsimile or electronic mail. Date of service of such notice shall be the date such notice is actually received by the recipient, unless such notice is received after 5:00 p.m. eastern time, in which case the date of service will be deemed to be the next business day. Such notices, demands and other communications shall be sent to the addresses indicated below or such other address or to the attention of such other person as the recipient has indicated by prior written notice to the sending party in accordance with this Section 6.1::

(a) If to the U.S. Seller:

Bear Island Paper Company L.L.C.
c/o White Birch Paper Company
80 Field Point Road
Greenwich, CT 06830
Attention: Ed Sherrick & Tim Butler
Facsimile: (203) 661-3349
E-Mail: edsherrick@whitebirchpaper.com

with a copy to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York
10022-4611
Attention: Christopher J. Marcus
Facsimile: (212) 446-4900
E-Mail: cmarcus@kirkland.com

(b) If to Canadian Sellers:

White Birch Paper Company
80 Field Point Road
Greenwich, CT 06830
Attention: Ed Sherrick & Tim Butler
Facsimile: (203) 661-3349
E-Mail: edsherrick@whitebirchpaper.com

with a copy to:

Stikeman Elliott LLP
1155 René-Lévesque Blvd. West
40th Floor
Montréal, Quebec
H3B 3V2
Attention: Kevin Kyte & Jean Fontaine
Facsimile: (514) 397-3222
E-Mail: kkyte@stikeman.com
E-Mail: jfontaine@stikeman.com

(c) If to the Canadian Monitor:

Ernst & Young Inc.
800 René-Lévesque Blvd. West
Bureau 1900
Montréal, Quebec
H3B 1X9
Attention: Jean-Daniel Breton & Martin Rosenthal
Facsimile: (514) 395-4933
E-Mail: martin.rosenthal@ca.ey.com
E-Mail: jean-daniel.breton@ca.ey.com

Norton Rose OR S.E.N.C.R.L., s.r.l./LLP
1 Place Ville Marie
Bureau 2500
Montréal, Quebec
H3B 1R1
Attention: Sylvain Rigaud
Facsimile: (514) 286-5474
E-Mail: sylvain.rigaud@nortonrose.com

(d) If to Purchaser:

B.D. White Birch Investment LLC
c/o Black Diamond Capital Management, L.L.C.
100 Field Drive, Suite 300
Lake Forest, IL 60045
Attention: Les Meier
Facsimile: (847) 615-9064
E-Mail: les@bdcm.com

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive
Suite 2700
Chicago, Illinois 60606
Attention: Kimberly A. deBeers, Esq.
Facsimile: (312) 407-8576
E-Mail: Kimberly.debeers@skadden.com

(e) If to the Escrow Agent:

BNY Trust Company of Canada
320 Bay Street, 11th floor
Toronto, Ontario M5H 4A6
Attention: Vice President, Transaction Management Group
Facsimile: (416) 360-1711
E-Mail:

with a copy to:
BNY Trust Company of Canada
1001 de Maisonneuve Blvd. West
Suite 650
Montreal, Quebec
H3A 3C8
Facsimile: (514) 228-8662

Section 6.2 Severability. Whenever possible, each provision of this Escrow Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Escrow Agreement is held to be prohibited by or invalid under applicable law or rule in any jurisdiction, in any respect, such invalidity shall not affect the validity, legality and enforceability of any other provision or any other jurisdiction and, the remaining terms and provisions of this Escrow Agreement shall not in any way be affected or impaired thereby, all of which shall remain in full force and effect, and the affected term or provision shall be modified to the minimum extent permitted by law so as to achieve most fully the intention of this Escrow Agreement.

Section 6.3 Amendment and Waiver. This Escrow Agreement may be amended, or any provision of this Escrow Agreement may be waived, provided that any such amendment must be signed by each party hereto. Any provision of this Escrow Agreement may be waived, provided such waiver will be binding on a party only if such amendment or waiver is set forth in a writing executed by such party. The waiver by any party hereto of a breach of any provision of this Escrow Agreement shall not operate or be construed as a waiver of any other breach.

Section 6.4 Counterparts. This Escrow Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other.

Section 6.5 Construction. This Escrow Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Escrow Agreement shall be governed by, the laws of the Province of Quebec, without giving effect to provisions thereof regarding conflict of laws.

Section 6.6 Headings. The Section captions used hereunder are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

Section 6.7 Parties in Interest; Assignment. This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Other than pursuant to Section 5.5, neither this Escrow Agreement nor any of the rights interests or obligations hereunder shall be assigned by either of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party, such consent not to be unreasonably withheld.

Section 6.8 Entire Agreement. Subject to Section 5.1(a) hereof, this Escrow Agreement (including the documents and the instruments referred to herein) constitutes the entire agreement and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

Section 6.9 No Strict Construction. The language used in this Escrow Agreement will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party hereto.

Section 6.10 Jurisdiction. Each party hereby irrevocably submits to the exclusive jurisdiction of the Superior Court of Quebec, district of Montreal, in respect of any claim relating to the interpretation and enforcement of the provisions of this Escrow Agreement, and hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding in which any such claim is made that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Escrow Agreement or any such document may not be enforced in or by such courts.

Section 6.11 Not Subjecting the Canadian Monitor to the jurisdiction of the U.S. Bankruptcy Court. All Parties acknowledge and agree that the entry into and the execution of this Escrow Agreement shall not be used to subject the Canadian Monitor to the jurisdiction of the U.S. Bankruptcy Court.

Section 6.12 Ernst & Young Inc.'s capacity as the Canadian Monitor. All Parties acknowledge and agree that Ernst & Young Inc. acts herein in its representative capacity as the Canadian Monitor appointed by the Canadian Court in the matter of the proceedings commenced by the Canadian Sellers in connection with the CCAA Proceedings, and shall assume no personal liability whatsoever under the terms of this Escrow Agreement.

Section 6.13 WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES (TO THE FULLEST EXTENT PERMITTED BY LAW) ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS ESCROW AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS ESCROW AGREEMENT. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS ESCROW AGREEMENT OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. IN THE EVENT OF LITIGATION, THIS ESCROW AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 6.14 Electronic Communications. The Escrow Agent shall be entitled to treat a facsimile, pdf or e-mail communication or communication by other similar electronic means in a form satisfactory to the Escrow Agent ("Electronic Methods") from a person purporting to be (and whom such Escrow Agent, acting reasonably, believes in good faith to be) the authorized representative of the Purchaser, the U.S. Seller, the Canadian Sellers or the Canadian Monitor, as the case may be, as sufficient instructions and authority of the issuer for the Escrow Agent to act and shall have no duty to verify or confirm that person is so authorized. The Escrow Agent shall have no liability for any losses, liabilities, costs or expenses incurred by it as a result of such reliance upon or compliance with such instructions or directions. The Purchaser, the U.S. Seller, the Canadian Sellers and the Canadian Monitor agree: (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that each of them is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Escrow Agent and that there may be more secure methods of transmitting instructions than the method(s) selected by them; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

Section 6.15 Representations. Each of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor hereby represents and warrants (a) that this Escrow Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation and (b) that the execution, delivery and performance of this Escrow Agreement by does not and will not violate any applicable law or regulation.

Section 6.16 Change of Name. The Canadian Sellers and the U.S. Seller hereby advise the other parties hereto that they will be changing their names shortly after the date hereof.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereunto have duly caused this Escrow Agreement to be executed as of the date first above written.

BEAR ISLAND PAPER COMPANY L.L.C.

By: ______________________________
Name:
Title:

WHITE BIRCH PAPER COMPANY

By: ______________________________
Name:
Title:

STADACONA GENERAL PARTNER INC.

By: ______________________________
Name:
Title:

STADACONA L.P., by WHITE BIRCH PAPER COMPANY, a general partner

By: ______________________________
Name:
Title:

F.F. SOUCY GENERAL PARTNER INC.

By: ______________________________
Name:

Title:

F.F. SOUCY, INC. & PARTNERS LIMITED PARTNERSHIP, by WHITE BIRCH PAPER COMPANY, a general partner

By: ______________________________
Name:
Title:

F.F. SOUCY L.P., by WHITE BIRCH PAPER COMPANY, a general partner

By: ______________________________
Name:
Title:

ARRIMAGE DE GROS CACOUNA INC.

By: ______________________________
Name:
Title:

PAPIER MASSON LTÉE.

By: ______________________________
Name:
Title:

BD WHITE BIRCH INVESTMENT LLC

By: ______________________________
Name:
Title:

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity.

By: ______________________________
Name:
Monitor Appointed in the CCAA Cases

BNY TRUST COMPANY OF CANADA, as
Escrow Agent

By: ______________________________
Name:
Title:

Exhibit A

Reservation of Rights Settlement Agreement

Exhibit B

Escrow Agent Fee Schedule

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity.

By: ______________________

Name: MARTIN P. ROSENTHAL

Monitor Appointed in the CCAA Cases

R3

U.S. ESTATE ALLOCATION ESCROW AGREEMENT

ESCROW AGREEMENT, dated as of September 13, 2012 (this "**Escrow Agreement**"), among Bear Island Paper Company, L.L.C., a Virginia limited liability company, and its successors and assigns (the "**U.S. Seller**"), White Birch Paper Company, a Nova Scotia Unlimited Liability Company, along with its subsidiaries Stadacona General Partner Inc., Stadacona L.P., F.F. Soucy General Partner Inc., F.F. Soucy, Inc. & Partners, Limited Partnership, F.F. Soucy L.P., Arrimage de Gros Cacouna Inc. and Papier Masson Ltée, and their successors and assigns (the "**Canadian Sellers**"), BD White Birch Investment LLC, a Delaware limited liability company (the "**Purchaser**"), the Monitor appointed in the CCAA Proceedings (as defined below) (the "**Canadian Monitor**"), acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity, and The Bank of New York Mellon (in its capacity as escrow agent hereunder, the "**Escrow Agent**").

WHEREAS, U.S. Seller is a debtor-in-possession under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "**Bankruptcy Code**") which commenced a voluntary proceeding (the "**Chapter 11 Case**") on February 24, 2010 by filing a petition for relief in the United States Bankruptcy Court for the Eastern District of Virginia (the "**U.S. Bankruptcy Court**");

WHEREAS, U.S. Seller continues to operate its business and manage its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Canadian Sellers are party to proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**" and the proceedings thereunder, the "**CCAA Proceedings**") which commenced on February 24, 2010 when the Canadian Sellers along with certain affiliates filed an application for protection pursuant to the CCAA in the Quebec Superior Court, District of Montreal (the "**Canadian Court**") and the Canadian Court issued an initial order for protection (the "**Initial CCAA Order**") on February 24, 2010;

WHEREAS, Ernst & Young Inc. has been appointed the Canadian Monitor;

WHEREAS, U.S. Seller, Canadian Seller, and Purchaser have entered into that certain Asset Sale Agreement dated as of August 10, 2010 (as amended, modified, superseded or substituted from time to time, the "**Purchase Agreement**"), pursuant to which Purchaser has agreed, subject to the terms and conditions of the Purchase Agreement, to purchase certain assets from the U.S. Seller and the Canadian Sellers;

WHEREAS, pursuant to the Purchase Agreement, among other things, the purchase price includes a cash component of $90 million (the "**Cash Component**");

WHEREAS, the U.S. Seller and White Birch Paper Company, Stadacona L.P., F.F. Soucy L.P. and Papier Masson Ltée are party to the *$140,000,000 Senior Secured Super Priority Debtor-In-Possession Term Loan Credit Agreement*, dated as of March 1, 2010 and as amended, modified, supplemented or otherwise approved in the Initial CCAA Order and by an order of the Bankruptcy Court (the "**DIP Credit Agreement**" and the facility contemplated thereunder, the "**DIP Credit Facility**");

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity.

By: ______________________

Name: MARTIN P. ROSENTHAL

Monitor Appointed in the CCAA Cases

WHEREAS, White Birch Paper Company has booked an intercompany claim against the U.S. Seller for $135,920,395.00 (the "**Intercompany Claim**");

WHEREAS, the Parties have been unable to consensually resolve, among other items, (a) the allocation of the Cash Component (as defined in the Purchase Agreement) between the estate of the U.S. Seller (the "**U.S. Estate**") and the estates of the Canadian Sellers (the "**Canadian Estates**"), (b) the repayment obligations between the U.S. Seller and the Canadian Sellers under the DIP Credit Facility, including without limitation any alleged subrogation rights of the U.S. Seller against the Canadian Sellers, (c) any alleged setoff rights of White Birch Paper Company whereby any subrogation claim could be setoff against all or a part of the Intercompany Claim, (d) the interpretation of the Purchase Agreement, including section 5.17 thereof, (e) whether the Intercompany Claim should be disallowed or recharacterized as equity, (f) allocation of fees, expenses, and expenditures, including but not limited to professional fees, expenses and expenditures, between the U.S. Seller and the Canadian Sellers (collectively, along with any other issues raised or to be raised by any Party which could affect Estate Allocation or distribution of proceeds, whether previously identified or not, the "**Estate Allocation Issues**");

WHEREAS, the sale contemplated pursuant to the Purchase Agreement is scheduled to close on September 13, 2012 (the "**Closing Date**");

WHEREAS, in order to close the sale on the Closing Date without impairing any party's rights with respect to the Estate Allocation Issues, the parties to this Escrow Agreement have agreed to establish this escrow fund to be funded by the U.S. Seller in an amount equal to $19,500,000.00 (the "**U.S. Estate Allocation Escrow Fund**" or the "**Escrowed U.S. Funds**") and the escrow fund in Canada pursuant to the *Canadian Estate Allocation Escrow Agreement* by and between the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor, dated as of September 13, 2012 to be funded by the Canadian Sellers in an amount equal to $25,000,000.00 (the "**Canadian Estate Allocation Escrow Fund**" and with the U.S. Estate Allocation Escrow Fund, the "**Escrow Funds**") to hold, collectively, $44,500,000.00 as security for anticipated litigation in connection with the Estate Allocation Issues;

WHEREAS, simultaneously with the Execution of this Escrow Agreement, the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor will execute the *Canadian Estate Allocation Escrow Agreement* establishing the Canadian Estate Allocation Escrow Fund; and

WHEREAS, should the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor fail to execute the *Canadian Estate Allocation Escrow Agreement* and to establish the Canadian Estate Allocation Escrow Fund within 10 days of the date hereof and the Escrow Agent is so advised in writing by the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor, this Escrow Agreement shall be terminated and any amounts funded to the Escrow Agent by the U.S. Seller shall be promptly returned less any applicable taxes and fees to be charged to the U.S. Seller and the Canadian Sellers in accordance with direction given pursuant to section 3.2 hereof.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

INTENTION AND PRESERVATION OF RIGHTS

Section 1.1 Intent of the U.S. Seller, the Canadian Sellers, and the Purchaser. It is the intent of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor in establishing the Escrow Funds to facilitate closure of the Sale pursuant to the Purchase Agreement and enable the U.S. Seller and the Canadian Sellers to emerge from Bankruptcy and the CCAA proceedings, respectively, without impairing any party's rights with respect to the Escrow Funds and the Estate Allocation Issues.

Section 1.2 Preservation of Rights. The U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor agree the Reservation of Rights Settlement Agreement, attached hereto as Exhibit A, reserves the rights of all parties to the Reservation of Rights Settlement Agreement as more fully set forth therein.

ARTICLE II

ESCROW

Section 2.1 Appointment of Escrow Agent. The U.S. Seller, Canadian Sellers, and Purchaser hereby appoint and designate The Bank of New York Mellon as Escrow Agent. The Escrow Agent hereby accepts such appointment and designation upon the terms, conditions and provisions provided in this Escrow Agreement.

Section 2.2 Establishment of the U.S. Estate Allocation Escrow Fund. The Escrow Agent has established the U.S. Estate Allocation Escrow Fund as an account segregated on its books and records that shall be maintained, and from which funds shall be disbursed, in accordance with the terms and conditions of this Escrow Agreement.

Section 2.3 Purpose of the U.S. Estate Allocation Escrow Fund. The U.S. Estate Allocation Escrow Fund has been established for the purpose of holding the Escrowed U.S. Funds, in contemplation of the consummation of the transactions contemplated by the Purchase Agreement in accordance with its terms. Except for the offset described in Section 5.4 hereof, the Escrowed U.S. Funds shall be maintained free and clear of all Liens (as defined in the Purchase Agreement) whatsoever.

Section 2.4 Funding of the U.S. Estate Allocation Escrow Fund. On the date of this Escrow Agreement, U.S. Seller shall deliver to the Escrow Agent \$19,500,000.00 by wire transfer of immediately available funds, and the Escrow Agent shall deposit such amount into the U.S. Estate Allocation Escrow Fund.

Section 2.5 No Offset. The Escrowed U.S. Funds shall be held by the Escrow Agent in accordance with the terms of this Escrow Agreement and, except as set forth in Section 5.4 hereof, shall not be available to, and shall not be used by, the Escrow Agent to set-off any obligations owing to the Escrow Agent in any capacity.

ARTICLE III

DISBURSEMENT OF THE ESCROWED U.S. FUNDS

Section 3.1 Disbursement upon Court Orders. Upon the issuance of joint final non-appealable orders from the U.S. Bankruptcy Court and the Canadian Court resolving the Estate Allocation Issues (the "**Joint Court Orders**"), the U.S. Seller, the Canadian Sellers, the Purchaser and the Canadian Monitor will provide the Escrow Agent with a joint written direction which shall direct the distribution of the U.S. Estate Allocation Escrow Fund and shall contain copies of the Joint Court Orders. Subject to Section 5.4, the Escrow Agent shall, within two business days, promptly disburse the U.S. Estate Allocation Escrow Fund in accordance with such joint written direction.

Section 3.2 Disbursement upon Joint Written Instructions. Upon joint written instructions by the U.S. Seller and the Canadian Sellers and the Purchaser and the Canadian Monitor (the "**Joint Written Disbursement Instructions**"), subject to Section 5.4, the Escrow Agent shall, within two business days, promptly disburse the U.S. Estate Allocation Escrow Fund in accordance with the Joint Written Disbursement Instructions.

Section 3.3 Termination. Subject to Section 5.4, upon (a) the disbursement of all of the Escrowed U.S. Funds by either Joint Court Orders or Joint Written Disbursement Instructions or (b) the receipt by the Escrow Agent of joint written instructions from the U.S. Seller and the Canadian Sellers and the Purchaser and the Canadian Monitor, this Escrow Agreement shall terminate and be of no further force and effect except that the provisions of Section 5.1(b), Section 5.3 and Section 5.4 hereof shall survive termination, the resignation or removal of the Escrow Agent and/or any conclusion of the U.S. Seller's Chapter 11 Case and CCAA Proceedings to which the Canadian Sellers are a party. In the event that this Escrow Agreement terminates prior to the distribution of all of the Escrowed U.S. Funds, the U.S. Seller, Canadian Sellers, the Purchaser, and the Canadian Monitor shall deliver joint written instructions to the Escrow Agent regarding the disposition of the Escrowed U.S. Funds.

Section 3.4 Reporting. Other than reporting Earnings in accordance with Section 4.2, the Escrow Agent shall have no tax reporting duties with respect to any disbursements made pursuant to this Article 3.

Section 3.5 Tax Withholding. Notwithstanding anything contained herein, the Escrow Agent shall have the right to deduct and withhold taxes from any payments to be made hereunder if such withholding is required by applicable law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Escrow Agreement as having been delivered and paid to the recipient of payments in respect of which such deduction and withholding was made.

ARTICLE IV

INVESTMENTS

Section 4.1 Investment of U.S. Estate Allocation Escrow Fund. The Escrow Agent is hereby authorized and directed to invest the Escrowed U.S. Funds in The Bank of New York Mellon Cash Reserve account. All Earnings shall become part of the Escrowed U.S. Funds and shall be disbursed in accordance with this Escrow Agreement. The Escrow Agent is authorized to liquidate promptly any portion of the U.S. Estate Allocation Escrow Fund consisting of investments to provide for payments required to be made under this Escrow Agreement. The Escrow Agent will not be liable for any loss incurred at such liquidation which is due to fluctuations in market rates, depreciation in the value of the investment or penalties incurred in connection with any such liquidation. The Escrow Agent will not be liable for any losses resulting from any investment made in accordance with the terms of this Section 4.1.

Section 4.2 Taxes. In the event of any Earnings on the U.S. Estate Allocation Escrow Fund, or any portion thereof, the U.S. Seller shall be treated as the owner of such Earnings, the Escrow Agent shall disburse to the U.S. Seller such Earnings, if any, at the end of each Calendar Quarter and, accordingly, the U.S. Seller will report all such income in such proportions, in the taxable year or years in which such income is properly includible and pay any taxes attributable thereto. The Escrow Agent shall provide any necessary information reporting forms as required under U.S. federal, state, and local laws, if any.

ARTICLE V

ESCROW AGENT

Section 5.1 Responsibilities and Duties of the Escrow Agent.

(a) The duties, responsibilities and obligations of the Escrow Agent shall be limited to those expressly set forth in this Escrow Agreement, and no duties, responsibilities or obligations shall be inferred or implied. The Escrow Agent shall not be subject to, nor required to comply with, any other agreement among the U.S. Seller or the Canadian Sellers or the Purchaser or the Canadian Monitor, even though reference thereto may be made herein, including, but not limited to the Reservation of Rights Settlement Agreement and the Purchase Agreement, or to comply with any direction or instruction (other than those contained herein or delivered in accordance with this Escrow Agreement) from the U.S. Seller or the Canadian Sellers or the Purchaser or the Canadian Monitor. The Escrow Agent shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. The Escrow Agent is authorized to rely in good faith upon any joint written instruction of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor believed by it to be genuine and to have been sent or given by the foregoing parties, and the Escrow Agent shall incur no liability in connection with acting in accordance with any such joint written instruction. The Escrow Agent shall have no responsibility to investigate or confirm whether any direction it receives hereunder is in compliance with the Joint Court Orders, any order of the Bankruptcy Court, or any order of the Canadian Court.

(b) The Escrow Agent shall not be liable for any action taken or omitted or for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder in the absence of bad faith, gross negligence or willful misconduct. In no event shall the Escrow Agent be liable (i) for any consequential, punitive or special damages or (ii) for the acts or omissions of its nominees, correspondents, designees, subagents or subcustodians appointed with due care by the Escrow Agent.

(c) The Escrow Agent may act through agents and attorneys and may consult with legal counsel (with the reasonable fees and disbursements of such counsel to be paid as provided in Section 5.4) as to any matter relating to this Escrow Agreement, and the Escrow Agent shall not incur any liability in acting in good faith in accordance with any advice from such counsel.

(d) The Escrow Agent shall provide to the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor monthly statements identifying transactions, transfers or holdings of the U.S. Estate Allocation Escrow Fund.

(e) The Escrow Agent shall not be responsible in any respect for the form, execution, validity, value or genuineness of documents or securities deposited hereunder, or for any description therein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document, security or endorsement.

(f) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Escrow Agent hereunder, the Escrow Agent may, in its sole discretion, refrain from taking any action other than retaining possession of the U.S. Estate Allocation Escrow Fund, unless the Escrow Agent receives joint written instructions, signed by the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor which eliminates such ambiguity or uncertainty.

(g) In the event of any dispute between or conflicting claims by or between the U.S. Seller, the Canadian Sellers, the Purchaser, and/or the Canadian Monitor with respect to the U.S. Estate Allocation Escrow Fund, the Escrow Agent shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to the U.S. Estate Allocation Escrow Fund so long as such dispute or conflict shall continue, and the Escrow Agent shall not be or become liable in any way for failure or refusal to comply with such conflicting claims, demands or instructions. The Escrow Agent shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction (a "**Court Order**"), which order, judgment or decree is not subject to appeal (as certified in writing by the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor), or settled by agreement between the conflicting parties as evidenced in a writing reasonably satisfactory to the Escrow Agent or (ii) the Escrow Agent shall have received security or an indemnity reasonably satisfactory to it sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Escrow Agent may, in addition, elect, in its sole discretion, to commence an interpleader action or seek other judicial relief or orders as it may deem, in its sole discretion, necessary.

(h) The Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Escrow Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

(i) If at any time Escrow Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the U.S. Estate Allocation Escrow Fund (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of the U.S. Estate Allocation Escrow Fund), Escrow Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if Escrow Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, Escrow Agent shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

Section 5.2 Removal; Resignation. The U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor may jointly remove the Escrow Agent at any time by giving the Escrow Agent at least thirty (30) calendar days' prior written notice. The Escrow Agent may resign as escrow agent at any time, by giving at least thirty (30) calendar days' prior written notice of such resignation to the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor. In either event, the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor will jointly and promptly select a successor escrow agent, and the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor will enter into an agreement with such successor escrow agent in substantially the form of this Escrow Agreement. The removal or resignation of the Escrow Agent shall relieve the Escrow Agent of any responsibility or duty thereafter arising hereunder, but shall not relieve the Escrow Agent of responsibility to account to the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor for funds received by the Escrow Agent prior to the effective date of such removal or resignation. If a substitute for the Escrow Agent hereunder shall not have been selected prior to the expiration of sixty (60) calendar days following the date of the notice of removal or resignation, the Escrow Agent shall be entitled to petition any court of competent jurisdiction with the fees and expenses of such petition being payable under section 5.4 hereof, for the appointment of a substitute for it hereunder or, in the alternative, it may (i) transfer and deliver the Escrowed U.S. Funds to or upon the order of such court or (ii) keep safely all Escrowed U.S. Funds until it receives joint notice from the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor of a substitute appointment. The Escrow Agent shall be discharged from all subsequently arising duties hereunder upon acceptance by the substitute escrow agent of the Escrow Agent's duties hereunder or upon transfer and delivery of the funds in the escrow account to or upon the order of any court.

Section 5.3 Indemnification of the Escrow Agent. The U.S. Seller and the Canadian Sellers each, jointly and severally, agree to hold the Escrow Agent harmless from and to indemnify the Escrow Agent against, any loss, liability, cost, damage, expense, claim or demand (collectively, "**Losses**") arising out of or in connection with the performance of its obligations in accordance with the provisions of this Escrow Agreement or in anyway arising from or in connection with this Escrow Agreement or its acting as Escrow Agent hereunder (including but not limited to Losses incurred by Escrow Agent in connection with its successful defense, in whole or in party, of any claim of gross negligence, willful misconduct or bad faith on its part), except to the extent such loss, liability, claim or demand arises from the bad faith, gross negligence or willful misconduct of the Escrow Agent.

Section 5.4 Fees and Expenses. The fees for the services rendered by the Escrow Agent pursuant to the provisions of this Escrow Agreement with respect to the U.S. Estate Allocation Escrow Fund, in accordance with the fee schedule attached hereto as Exhibit B, shall be paid by the U.S. Seller. The Escrow Agent shall be entitled to receive all reasonable, out-of-pocket expenses, disbursements and advances incurred or made by the Escrow Agent in connection with this Escrow Agreement. All such expenses, disbursements and advances shall be paid in cash to the Escrow Agent by the U.S. Seller. The Escrow Agent does not have and will not have any interest in the funds deposited hereunder but is serving only as escrow holder and having only possession thereof; provided, however, (i) if any fees, expenses or costs incurred by, or any obligations owed to (including any obligations owed pursuant to Section 5.3 hereof), the Escrow Agent hereunder are not paid within five Business Days of the date requested, the Escrow Agent may reimburse itself therefor from the Escrowed U.S. Funds and may sell, convey or otherwise dispose of any Escrowed U.S. Funds for such purpose and (ii) notwithstanding any disbursement pursuant to Article III hereof, the Escrow Agent shall retain $100,000.00 (the "**Holdback Amount**") of the Escrowed U.S. Funds for the payment of any such fees, expenses, costs or obligations until the later of (1) the termination of this Agreement pursuant to Section 3.3 hereof, (2) the conclusion of the U.S. Seller's bankruptcy proceedings pursuant to the United Stated Code and the conclusion of the Canadian Sellers' proceedings pursuant to the *Companies' Creditors Arrangement Act* or (3) the conclusion of any litigation that the Escrow Agent is a party to relating to this Agreement (the "**Holdback Termination Date**"). Upon the occurrence of the Holdback Termination Date, the Escrow Agent shall distribute the remainder of the Holdback Amount in accordance with the joint written direction of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor.

Section 5.5 Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notices, demands or other communication required to be sent or given hereunder by any of the parties shall in every case be in writing and shall be deemed properly served if (a) delivered personally to the recipient, (b) sent to the recipient by reputable express courier service (charges paid) or mailed to the recipient by registered or certified mail, return receipt requested and postage paid, or (c) sent to the recipient by facsimile or electronic mail. Date of service of such notice shall be the date such notice is actually received by the recipient. Such notices, demands and other communications shall be sent to the addresses indicated below or such other address or to the attention of such other person as the recipient has indicated by prior written notice to the sending party in accordance with this Section 6.1:

(a) If to the U.S. Seller:

Bear Island Paper Company L.L.C.
c/o White Birch Paper Company
80 Field Point Road
Greenwich, CT 06830
Attention: Ed Sherrick
Facsimile: (203) 661-3349
E-Mail: edsherrick@whitebirchpaper.com

with a copy to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York
10022-4611
Attention: Christopher J. Marcus
Facsimile: (212) 446-4900
E-Mail: cmarcus@kirkland.com

(b) If to Canadian Sellers:

White Birch Paper Company
80 Field Point Road
Greenwich, CT 06830
Attention: Ed Sherrick
Facsimile: (203) 661-3349
E-Mail: edsherrick@whitebirchpaper.com

with a copy to:

Stikeman Elliott LLP
1155 René-Lévesque Blvd. West
40th Floor
Montréal, Quebec
H3B 3V2
Attention: Kevin Kyte & Jean Fontaine
Facsimile: (514) 397-3222
E-Mail: kkye@stikeman.com
E-Mail: jfontaine@stikeman.com

(c) If to the Canadian Monitor:

Ernst & Young Inc.
800 René-Lévesque Blvd. West
Bureau 1900
Montréal, Quebec
H3B 1X9
Attention: Jean-Daniel Breton & Martin Rosenthal
Facsimile: (514) 395-4933
E-Mail: martin.rosenthal@ca.ey.com
E-Mail: jean-daniel.breton@ca.ey.com

Norton Rose OR S.E.N.C.R.L., s.r.l./LLP
1 Place Ville Marie
Bureau 2500
Montréal, Quebec
H3B 1R1
Attention: Sylvain Rigaud
Facsimile: (514) 286-5474
E-Mail: sylvain.rigaud@nortonrose.com

(d) If to Purchaser:

B.D. White Birch Investment LLC
c/o Black Diamond Capital Management, L.L.C.
100 Field Drive, Suite 300
Lake Forest, IL 60045
Attention: Les Meier
Facsimile: (847) 615-9064
E-Mail: les@bdcm.com

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive
Suite 2700
Chicago, Illinois 60606
Attention: Kimberly A. deBeers, Esq.
Facsimile: (312) 407-8576
E-Mail: kimberly.debeers@skadden.com

(e) If to the Escrow Agent:

The Bank of New York Mellon
Specialty Products - Escrow
Attn: Alicia Strope
525 William Penn Place, 38th Floor
New York, NY 10286
Facsimile: (212) 815-5875
E-Mail: alicia.c.strope@bnymellon.com

(f) If to Counsel to the Agents (as defined in the Reservation of Rights Settlement Agreement)

LATHAM & WATKINS LLP
885 Third Avenue
New York, NY 10022-4834
Attention: Keith Simon
Facsimile: (212) 751-4864
Email: keith.simon@lw.com

Section 6.2 Severability. Whenever possible, each provision of this Escrow Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Escrow Agreement is held to be prohibited by or invalid under applicable law or rule in any jurisdiction, in any respect, such invalidity shall not affect the validity, legality and enforceability of any other provision or any other jurisdiction and, the remaining terms and provisions of this Escrow Agreement shall not in any way be affected or impaired thereby, all of which shall remain in full force and effect, and the affected term or provision shall be modified to the minimum extent permitted by law so as to achieve most fully the intention of this Escrow Agreement.

Section 6.3 Amendment and Waiver. This Escrow Agreement may be amended, or any provision of this Escrow Agreement may be waived, provided that any such amendment must be signed by each party hereto. Any provision of this Escrow Agreement may be waived, provided such waiver will be binding on a party only if such amendment or waiver is set forth in a writing executed by such party. The waiver by any party hereto of a breach of any provision of this Escrow Agreement shall not operate or be construed as a waiver of any other breach.

Section 6.4 Counterparts. This Escrow Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other.

Section 6.5 Construction. This Escrow Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Escrow Agreement shall be governed by, the laws of the State of New York, without giving effect to provisions thereof regarding conflict of laws.

Section 6.6 Headings. The Section captions used hereunder are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

Section 6.7 Parties in Interest; Assignment. This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Other than pursuant to Section 5.5, neither this Escrow Agreement nor any of the rights interests or obligations hereunder shall be assigned by either of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party, such consent not to be unreasonably withheld.

Section 6.8 Entire Agreement. Subject to Section 5.1(a) hereof, this Escrow Agreement (including the documents and the instruments referred to herein) constitutes the entire agreement and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

Section 6.9 No Strict Construction. The language used in this Escrow Agreement will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party hereto.

Section 6.10 Jurisdiction. Each party hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York or the New York State Court located in Manhattan, New York, in respect of any claim relating to the interpretation and enforcement of the provisions of this Escrow Agreement, and hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding in which any such claim is made that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Escrow Agreement or any such document may not be enforced in or by such courts.

Section 6.11 Not Subjecting the Canadian Monitor to the jurisdiction of the U.S. Bankruptcy Court. All Parties acknowledge and agree that the entry into and the execution of this Escrow Agreement shall not be used to subject the Canadian Monitor to the jurisdiction of the U.S. Bankruptcy Court.

Section 6.12 Ernst & Young Inc.'s capacity as the Canadian Monitor. All Parties acknowledge and agree that Ernst & Young Inc. acts herein in its representative capacity as the Canadian Monitor appointed by the Canadian Court in the matter of the proceedings commenced by the Canadian Sellers in connection with the CCAA Proceedings, and shall assume no personal liability whatsoever under the terms of this Escrow Agreement.

Section 6.13 WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES (TO THE FULLEST EXTENT PERMITTED BY LAW) ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS ESCROW AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS ESCROW AGREEMENT. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS ESCROW AGREEMENT OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. IN THE EVENT OF LITIGATION, THIS ESCROW AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 6.14 Electronic Communications. The Escrow Agent shall have the right to accept and act upon instructions or directions pursuant to this Escrow Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the instructions or directions shall be signed by a person as may be designated and authorized to sign for the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor as applicable, by an authorized representative of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor, as applicable, who shall provide to the Escrow Agent an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor elect to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's understanding of such instructions shall be deemed controlling. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor, as applicable, agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 6.15 Representations. Each of the U.S. Seller, the Canadian Sellers, the Purchaser, and the Canadian Monitor hereby represents and warrants (a) that this Escrow Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation and (b) that the execution, delivery and performance of this Escrow Agreement by does not and will not violate any applicable law or regulation.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereunto have duly caused this Escrow Agreement to be executed as of the date first above written.

Accepted and Agreed to By:

BEAR ISLAND PAPER COMPANY
L.L.C.

By: ______________________
Name: Edward Sherrick
Title: Chief Financial Officer

WHITE BIRCH PAPER COMPANY

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

STADACONA GENERAL PARTNER
INC.

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

STADACONA L.P., by White Birch Paper Company, a General Partner

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

F.F. SOUCY GENERAL PARTNER INC.

By: ______________________
Name: Edward Sherrick
Title: Vice President

F.F. SOUCY, INC. & PARTNERS LIMITED PARTNERSHIP, by White Birch Paper Company, a General Partner

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

F.F. SOUCY L.P., by White Birch Paper Company, a General Partner

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

ARRIMAGE DE GROS CACOUNA INC.

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

PAPIER MASSON LTÉE

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

BD WHITE BIRCH INVESTMENT LLC

By: ______________________
Name: Tim Butler
Title: Treasurer

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity.

By: ____________________________
Name: MARTIN P. ROSENTHAL
Monitor Appointed in the CCAA Cases

THE BANK OF NEW YORK MELLON, as
Escrow Agent

By: M. Joseph
Name: Maryann Joseph
Title: Vice President

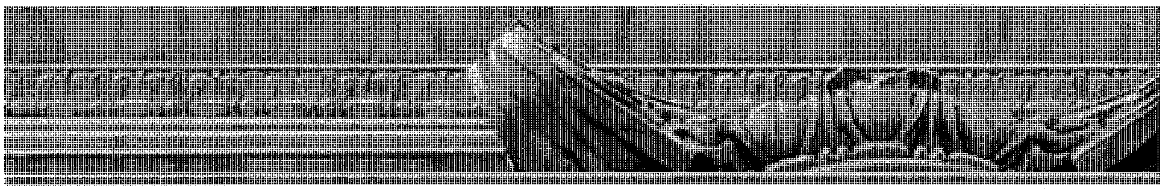
Exhibit A

Reservation of Rights Settlement Agreement

Exhibit B

Escrow Agent Fee Schedule

BNY MELLON
CORPORATE TRUST



Bear Island Paper Company, L.L.C.
U.S. Estate Allocation Escrow Agreement

Escrow Agent Services
Fee Schedule
September 13, 2012

Presented By:

Charles Baker
Vice President

BNY Mellon

Phone: 312.827.8576

E-mail:
charles.baker@BNYMellon.com

Fee Schedule for the Services of:

- Escrow Agent

Fee Schedule

Upon appointment of The Bank of New York Mellon ("BNYM") as Escrow Agent, the Seller shall be responsible for the payment of the fees, expenses and charges as set forth in this Fee Schedule.

General Fees

Acceptance Fee	**Waived**

This one time charge is payable at the time of the closing and includes the review and execution of the agreement and all documents submitted in support thereof and establishment of accounts.

Annual Administration Fee	**$5,000**

An annual fee of $5,000 will cover the duties and responsibilities related to account administration and servicing, which may include maintenance of accounts on various systems, custody and securities servicing, reporting, etc. This fee is payable in advance for the year and shall not be prorated.

Disbursement Fee (Check or Wire)	**$ 25.00 per disbursement**

A fee of $25.00 will be assessed for each disbursement.

Investment Compensation	

With respect to investments in money market mutual funds for which BNYM provides shareholder services BNYM (or its affiliates) may also receive and retain additional fees from the mutual funds (or their affiliates) for shareholder services as set forth in the Authorization and Direction to BNYM to Invest Cash Balances in Money Market Mutual Funds.

BNYM will charge a $25.00 transaction fee for each purchase, sale, or redemption of securities other than the aforementioned Money Market Mutual Funds.

Counsel Fees	

If counsel is retained by BNYM, a fee covering the fees and expenses of Counsel for its services, including review of governing documents, communication with members of the closing party (including representatives of the purchaser, investment banker(s), attorney(s) and BNYM), attendance at meetings and the closing, and such other services as BNYM may deem necessary. The Counsel fee will be the actual amount of the fees and expenses charged by Counsel and is payable at closing. Should closing not occur, you would still be responsible for payment of Counsel fees and expenses.

Miscellaneous Fees

The fees for performing extraordinary or other services not contemplated at the time of the execution of the transaction or not specifically covered elsewhere in this schedule will be commensurate with the service to be provided and will be charged in BNYM's sole discretion. These extraordinary services may include, but are not limited to: proxy dissemination/tabulation, customized reporting and/or procedures, electronic account access, etc. Counsel, accountants, special agents and others will be charged at the actual amount of fees and expenses billed.

Other Miscellaneous Fees

FDIC or other governmental charges will be passed along to you as incurred.

Out-of-Pocket Expenses

Additional out-of-pocket expenses may include, but are not limited to, telephone; facsimile; courier; copying; postage; supplies; expenses of foreign depositaries; and expenses of BNYM's representative(s) and Counsel for attending special meetings. Fees and expenses of BNYM's representatives and Counsel will be charged at the actual amount of fees and expenses charged and all other expenses will be charged at cost or in an amount equal to 0% of all expenses billed for the year, in BNYM's discretion, and BNYM may charge certain expenses at cost and others on a percentage basis.

Terms and Disclosures

TERMS OF PROPOSAL

Final acceptance of the appointment as escrow agent under the escrow agreement is subject to approval of authorized officers of BNYM and full review and execution of all documentation related hereto. Please note that if this transaction does not close, you will be responsible for paying any expenses incurred, including Counsel fees. We reserve the right to terminate this offer if we do not enter into final written documents within three months from the date this document is first transmitted to you. Fees may be subject to adjustment during the life of the engagement.

MISCELLANEOUS

The terms of this Fee Schedule shall govern the matters set forth herein and shall not be superseded or modified by the terms of the escrow agreement. This Fee Schedule shall be governed by the laws of the State of New York without reference to laws governing conflicts. BNYM and the undersigned agree to jurisdiction of the federal and state courts located in the City of New York, State of New York.

Bear Island Paper Company
Escrow Agent Services

CUSTOMER NOTICE REQUIRED BY THE USA PATRIOT ACT

To help the US government fight the funding of terrorism and money laundering activities, US Federal law requires all financial institutions to obtain, verify, and record information that identifies each person (whether an individual or organization) for which a relationship is established.

What this means to you: When you establish a relationship with BNYM, we will ask you to provide certain information (and documents) that will help us to identify you. We will ask for your organization's name, physical address, tax identification or other government registration number and other information that will help us to identify you. We may also ask for a Certificate of Incorporation or similar document or other pertinent identifying documentation for your type of organization.

We thank you for your assistance.

	Accepted By:	For The Bank of New York Mellon:
Signature:	______________________	______________________
Date:	______________________	______________________
Name:	______________________	______________________
Title:	______________________	______________________

➤ Who's helping you?

As a leader in securities services and the world's foremost corporate trust provider, we have in-depth knowledge of specialized products and services, a profound understanding of local markets around the world, and vast global capabilities. These attributes, combined with our ability to work collaboratively with clients, enable us to define and develop solutions that address your unique needs.

Who's helping you succeed in the world's financial markets? Turn to BNY Mellon.

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity.

By: ________________________________
Name: MARTIN P. ROSENTHAL
Monitor Appointed in the CCAA Cases

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Reservation of Rights Settlement Agreement

This Settlement Agreement (the "**Agreement**") dated as of September 13, 2012 is entered into by and between Bear Island Paper Company, L.L.C., a Virginia limited liability company (the **"U.S. Seller"**), White Birch Paper Company, a Nova Scotia Unlimited Liability Company, along with its subsidiaries Stadacona General Partner Inc., Stadacona L.P., F.F. Soucy General Partner Inc., F.F. Soucy, Inc. & Partners, Limited Partnership, F.F. Soucy L.P., Arrimage de Gros Cacouna Inc. and Papier Masson Ltée, (the "**Canadian Sellers**"), BD White Birch Investment LLC, a Delaware limited liability company (the "**Purchaser**"), the Official Committee of Unsecured Creditors of Bear Island Paper Company, L.L.C. (the "**Unsecured Creditors' Committee**"), the Monitor appointed in the CCAA Proceedings (as defined below) (the "**Canadian Monitor**"), acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity, Credit Suisse AG, Cayman Islands Branch, solely in its capacity as US collateral agent (in such capacity, the "**US Collateral Agent**") under that certain *First Lien Term Loan Credit Agreement* entered into on or about April 8, 2005 (as amended and restated on January 27, 2006 and May 8, 2007, the "**First Lien Credit Agreement**") by White Birch Paper Holding Company, a Nova Scotia Unlimited Liability Company and the ultimate corporate parent to both the U.S. Seller and the Canadian Sellers, with Credit Suisse First Boston, as sole lead arranger, sole bookrunner, syndication agent and documentation agent, Credit Suisse AG, Cayman Islands Branch (f/k/a Credit Suisse, Cayman Islands Branch), as US collateral Agent, Credit Suisse AG, Toronto Branch (f/k/a Credit Suisse, Toronto Branch), as Canadian collateral agent and Administrative Agent and TD Securities (USA) LLC, as Co-Arranger, and Credit Suisse AG, Toronto Branch, solely in its capacity as Canadian Collateral Agent under the First Lien Credit Agreement (in such capacity, the "**Canadian Collateral Agent**") and Administrative Agent under the First Lien Credit Agreement (in such capacity, the "**Administrative Agent**" and collectively with the US Collateral Agent and Canadian Collateral Agent, the "**Agents**," and the Agents, collectively with the U.S. Seller, the Canadian Sellers, the Purchaser, the Unsecured Creditors' Committee, the Canadian Monitor, the "**Parties**," each of which is a "**Party**").

Recitals

WHEREAS, U.S. Seller is a debtor-in-possession under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "**Bankruptcy Code**") which commenced a voluntary proceeding (the "**Chapter 11 Case**") on February 24, 2010 by filing a petition for relief in the United States Bankruptcy Court for the Eastern District of Virginia (the "**U.S. Bankruptcy Court**");

WHEREAS, U.S. Seller continues to operate its business and manage its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Canadian Sellers are party to proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**," and the proceedings thereunder, the "**CCAA Proceedings**") which commenced on February 24, 2010 when the Canadian Sellers along with certain affiliates filed an application for protection pursuant to the CCAA in the Quebec Superior Court, District of Montreal (the "**Canadian Court**") and the Canadian Court issued an initial order for protection (the "**Initial CCAA Order**") on February 24, 2010;

WHEREAS, U.S. Seller, Canadian Sellers, and Purchaser have entered into that certain Asset Sale Agreement dated as of August 10, 2010 (as amended, modified, superseded or substituted from time to time, the "**Purchase Agreement**"), pursuant to which Purchaser has agreed, subject to the terms and conditions of the Purchase Agreement, to purchase certain assets from the U.S. Seller and the Canadian Sellers;

WHEREAS, pursuant to the Purchase Agreement, among other things, the purchase price includes a cash component of $90 million (the "**Cash Component**");

WHEREAS, the U.S. Seller and White Birch Paper Company, Stadacona L.P., F.F. Soucy L.P. and Papier Masson Ltée are party to the *$140,000,000 Senior Secured Super Priority Debtor-In-Possession Term Loan Credit Agreement*, dated as of March 1, 2010 and as amended, modified, supplemented or otherwise approved in the Initial CCAA Order and by an order of the Bankruptcy Court (the "**DIP Credit Agreement**" and the facility contemplated thereunder, the "**DIP Credit Facility**");

WHEREAS, White Birch Paper Company has booked an intercompany claim against the U.S. Seller for $135,920,395.00 (the "**Intercompany Claim**");

WHEREAS, the Parties have not consensually resolved, among other items, (a) the allocation of the Cash Component (as defined in the Purchase Agreement) between the estate of the U.S. Seller (the "**U.S. Estate**") and the estates of the Canadian Sellers (the "**Canadian Estates**"), (b) the repayment obligations between the U.S. Seller and the Canadian Sellers under the DIP Credit Facility, including without limitation any alleged subrogation rights of the U.S. Seller against the Canadian Sellers, (c) any alleged setoff rights of White Birch Paper Company whereby any subrogation claim could be setoff against all or a part of the Intercompany Claim, (d) the interpretation of the Purchase Agreement, including section 5.17 thereof, (e) whether the Intercompany Claim should be disallowed or recharacterized as equity, (f) allocation of fees, expenses, and expenditures, including but not limited to professional fees, expenses and expenditures, between the U.S. Seller and the Canadian Sellers (collectively, along with any other issues raised or to be raised by any Party which could affect Estate Allocation or distribution of proceeds, whether previously identified or not, the "**Estate Allocation Issues**");

WHEREAS, the sale contemplated pursuant to the Purchase Agreement is scheduled to close on September 13, 2012 (the "**Closing Date**"); and

WHEREAS, in order to close the sale on the Closing Date without impairing any Party's rights with respect to the Estate Allocation Issues, the Parties have agreed to establish an escrow fund in the United States (the "**U.S. Escrow Fund**") pursuant to the U.S. Estate Allocation Escrow Agreement (the "**U.S. Escrow Agreement**"), substantially in the form attached hereto as Exhibit A, to hold $19,500,000.00 and an escrow fund in Canada (the "**Canadian Escrow Fund**") pursuant to the Canadian Estate Allocation Escrow Agreement (the "**Canadian Escrow Agreement**"), substantially in the form attached hereto as Exhibit B, to hold $25,000,000.00 (collectively, the "**Escrow Funds**," which together hold $44,500,000.00) because of anticipated litigation in connection with the Estate Allocation Issues.

Agreement

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. All Parties acknowledge and agree that this Agreement and the Escrow Funds mechanism contemplated hereby are being used to facilitate the consummation of the Purchase Agreement. All Parties reserve and retain all rights with respect to the Estate Allocation Issues and the Escrow Funds. No admission shall be construed against any Party as a result of its execution of this Agreement, including but not limited to the jurisdiction in which any of the Escrow Funds are located.

2. All Parties acknowledge and agree that neither this Agreement, the U.S. Escrow Agreement, the Canadian Escrow Agreement, the deposit of the Escrow Funds in accordance therewith, nor the holding of such Escrow Funds will in any way affect or alter any Party's rights or the rights of any Party's successors and assigns with respect to the Estate Allocation Issues and the Escrow Funds.

3. All Parties acknowledge and agree that neither this Agreement, the U.S. Escrow Agreement, the Canadian Escrow Agreement, the deposit of the Escrow Funds in accordance therewith, nor the holding of such Escrow Funds will in any way limit or impose a cap on the recovery of any Party or its successors and assigns or alter, affect, or prejudice the rights of any Party or its successors and assigns to recover amounts in excess of the Escrow Funds from cash or property held by the U.S. Estate or the Canadian Estates as applicable.

4. No action, event, or outcome related to the flow of funds at closing (including, without limitation, cash balances after closing of each of the U.S. Seller and the Canadian Sellers), which occurred to close the transaction contemplated by the Purchase Agreement, shall be used in any way by any Party hereto or its successors and assigns against any other Party hereto and its successors and assigns. Moreover, neither this Agreement, nor any statement made or action taken in connection with the negotiation of this Agreement, shall be offered or received in evidence or in any way referred to in any legal action or administrative proceeding among, between or involving the Parties hereto or their successors and assigns, other than as may be necessary (a) to obtain approval of and to enforce this Agreement or (b) to seek any and all remedies related thereto.

5. All Parties acknowledge and agree that the entry into and the execution of this Agreement shall not be used to subject the Canadian Monitor to the jurisdiction of the U.S. Bankruptcy Court.

6. All Parties acknowledge and agree that Ernst & Young Inc. acts herein in its representative capacity as the Canadian Monitor appointed by the Canadian Court in the matter of the proceedings commenced by Canadian Sellers in connection with the CCAA Proceedings, and shall assume no personal liability whatsoever under the terms of the present agreement.

7. Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary or appropriate in conjunction with the performance of their respective obligations hereunder; provided, however, the Agents shall be entitled to request and receive prior direction from the Majority Lenders (as defined in the First Lien Credit Agreement) with respect thereto in accordance with the terms of the First Lien Credit Agreement and to receive an indemnity from the Majority Lenders (as defined in the First Lien Credit Agreement) with respect thereto, in each case on terms and conditions satisfactory to the Agents.

8. This Agreement shall be binding upon and inure to the benefit of the Parties and to all successors and assigns of the Parties.

9. Except where preempted by applicable Federal law, this Agreement shall be governed by and construed in accordance with the internal laws of the Province of Ontario without regard to any choice of law provisions.

10. This Agreement may be signed in counterpart originals and delivered by facsimile or email, which, when fully executed, shall constitute a single original.

11. This Agreement constitutes the entire agreement and understanding of the Parties regarding the Agreement and the subject matter thereof.

12. Each person or entity who executes this Agreement on behalf of another person or entity represents and warrants that he, she, or it is duly authorized to execute this Agreement on behalf of such person or entity, has the requisite authority to bind such person or entity, and such person or entity has full knowledge of and has consented to this Agreement. The representations and warranties set forth in this paragraph shall survive execution of this Agreement.

13. This Agreement shall not be modified, altered, amended or vacated without the written consent of all Parties hereto.

IN WITNESS WHEREOF, this Agreement is hereby executed as of September 13, 2012.

Accepted and Agreed to By:

BEAR ISLAND PAPER COMPANY
L.L.C.

By: ______________________
Name: Edward Sherrick
Title: Chief Financial Officer

WHITE BIRCH PAPER COMPANY

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief
Financial Officer

STADACONA GENERAL PARTNER
INC.

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief
Financial Officer

STADACONA L.P., by White Birch Paper
Company, a General Partner

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President
and Chief Financial Officer

F.F. SOUCY GENERAL PARTNER INC.

By: ______________________
Name: Edward Sherrick
Title: Vice President

F.F. SOUCY, INC. & PARTNERS LIMITED PARTNERSHIP, by White Birch Paper Company, a General Partner

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

F.F. SOUCY L.P., by White Birch Paper Company, a General Partner

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial officer.

ARRIMAGE DE GROS CACOUNA INC.

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

PAPIER MASSON LTÉE

By: ______________________
Name: Edward Sherrick
Title: Senior Vice President and Chief Financial Officer

BD WHITE BIRCH INVESTMENT LLC

By: ______________________

Name: Tim Butler

Title: Treasurer

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity

By: ______________________

Name: MARTIN R. ROSENTHAL

Monitor Appointed in the CCAA Cases

HUNTON & WILLIAMS LLP

By:
Name: Jason W. Harbour (VA Bar #68220)
As *Counsel to the Official Committee of Unsecured Creditors of Bear Island, L.L.C.*

Credit Suisse AG, Cayman Islands Branch,
as US Collateral Agent

By: ______________________
Name: Didier Siffer
Title: Authorized Signatory

By: ______________________
Name: Megan Kane
Title: Authorized Signatory

Credit Suisse AG, Toronto Branch,
as Administrative Agent and Canadian
Collateral Agent

By: ______________________
Name: Alain Daoust
Title: Director

By: ______________________
Name: Ash Bisaria
Title: Vice President, Financial Accou

Exhibit A

Form of U.S. Estate Allocation Escrow Agreement

Exhibit B

Form of Canadian Estate Allocation Escrow Agreement

ERNST & YOUNG, INC., acting solely in its capacity as the Canadian Monitor and not acting in its personal capacity

By: ______________________

Name: MARTIN R. ROSENTHAL

Monitor Appointed in the CCAA Cases

R5

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

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

MOTION FOR DIRECTIONS
(Sections 7 and 9 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36)

TO THE HONOURABLE ROBERT MONGEON, J.S.C., THE MONITOR SUBMITS AS FOLLOWS:

INTRODUCTION

1. On February 24, 2010, this Court issued an order (the "**Initial Order**") extending the protection of the *Companies' Creditors Arrangement Act* (the "**CCAA**") to the Debtors and the Mises en Cause (collectively, "**WB Canada**");

2. Pursuant to the Initial Order, Ernst & Young Inc. was appointed Monitor of WB Canada (the "**Monitor**"), and a stay of proceedings (the "**Stay of Proceedings**") was granted until March 26, 2010, as subsequently extended from time to time (the "**Stay Period**");

3. The most recent order of this Court extended the Stay Period until November 18, 2011;

4. By way of the present motion, the Monitor seeks to inform this Court and the creditors of WB Canada:

   (i) about the range of values based on various allocation alternatives of the net proceeds from the sale transaction with BD White Birch Investments Inc. (together with certain of its subsidiaries, "**BDWBI**"), that will be presented by Bear Island Paper Company, LLC ("**Bear Island**") in the course of the restructuring proceedings instituted in the United States (Case No. 10-31202-DOT) (the "**US Proceedings**") before the Bankruptcy Court for the Eastern District of Virginia (the "**Bankruptcy Court**");

   (ii) about the impact that such potential estate allocation alternatives could have on creditors having a claim against WB Canada;

5. The Monitor further seeks to receive directions as to how to resolve a possible deadlock and avoid incompatible outcomes between the decisions of the Bankruptcy Court and decisions that this Honourable Court may render in the future with respect to the proper manner in which the proceeds from the sale transaction with BDWBI are distributed, while at the same time protecting the interests of creditors having claims against WB Canada;

6. The Monitor refers this Court to its report dated September 27, 2011 (the "**Monitor's Report (M-1)**");

<u>SALE OF WB GROUP'S ASSETS</u>

7. On September 28, 2010, this Court issued an order approving the sale of substantially all of WB Group's assets (the "**Sale Order**") to BDWBI;

8. The sale of WB Group's assets was also later approved by the Bankruptcy Court on November 3, 2010;

9. The Sale Order approved the sale of substantially all of WB Group's assets and undertakings to BDWBI pursuant to the terms of the Asset Sale Agreement dated August 10, 2010, as amended thereafter from time to time (the "**Sale Agreement**");

10. The closing of the said transaction has yet to occur, due to delays in satisfying certain closing conditions set forth in the Sale Agreement, in particular the settlement of certain pension issues with labour unions representing WB Group employees, which are still the subject of on-going negotiations;

<u>PROCEEDINGS IN THE UNITED STATES</u>

11. On February 24, 2010, Bear Island, a subsidiary of White Birch Paper Holding Company with activities in the United States, filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**") before the Bankruptcy Court;

12. On the same day, some entities within WB Group also applied for relief under the provisions of Chapter 15 of the Bankruptcy Code, ultimately resulting in giving full force and effect to the Initial Order in the United States and recognizing White Birch Paper Company as the duly appointed foreign representative;

13. Pursuant to the Bankruptcy Code, a debtor has the exclusive right to propose a chapter 11 plan for the first 120 days of a chapter 11 case, and to solicit votes for its plan for an additional 60 days, subject to the power of the Bankruptcy Court to extend or curtail these exclusive periods;

14. Bear Island's exclusive right to propose a chapter 11 plan could not be extended beyond August 24, 2011;

15. On August 24, 2011, in light of the impending expiry of its exclusivity period, Bear Island filed the following documents before the Bankruptcy Court:

    (i) a *Disclosure Statement for the Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* (the "**Disclosure Statement**");

    (ii) a plan of liquidation, which is conditional upon the occurrence of a closing of the transaction with BDWBI (the "**Bear Island Plan**"); and

    (iii) a *Motion of the Debtor for the Entry of an Order Approving the Debtor's Disclosure Statement and Relief Related Thereto* (the "**Disclosure Statement Motion**");

16. Although Bear Island has yet to file its definitive proposed estate allocation, which shall be part of Bear Island Plan, the Monitor is concerned that Bear Island may well adopt an allocation methodology that favors the U.S. estate to the detriment of the Canadian estate;

17. The Disclosure Statement Motion is scheduled to be held on October 5, 2011, at which time the Bankruptcy Court will be called to approve the Disclosure Statement;

18. At this stage, the basis of allocation had not yet been disclosed by Bear Island notwithstanding the fact that the hearing on the adequacy of the disclosure statement is scheduled for October 5, 2011. The Monitor has been informed that the disclosure statement will be amended to reflect a range of values based on various allocation alternatives, and that Bear Island will not seek an approval by the US Bankruptcy Court of any definitive allocation but rather will suggest that the parties will continue to seek a consensual allocation, with such an allocation being subject to the approval of the US Court at the latest at the hearing to confirm a plan;

SALE PROCEEDS ALLOCATION

19. The Bear Island Plan essentially contemplates a *pro rata* distribution amongst creditors of Bear Island, including holders of general unsecured claims;

20. Between August 24 and September 20, 2011, numerous discussions were held between WB Group, the Monitor, BDWBI, the First Term Loan lenders and the Official Unsecured Creditors' Committee, in order to determine the basis of allocation of the sale proceeds between the U.S. and Canadian estates;

21. In the course of these discussions, several models of allocation were explored, from which derived a wide range of different results;

22. Indeed, depending upon the formula used to allocate assets and the principles adopted to allocate the responsibility for the repayment of the Interim Financing facility, the results of the allocation models yielded a greater allocation to the U.S. estate in some cases, and a greater allocation to the Canadian estate in other cases, by a wide margin;

23. The undersigned attorneys refer this Court to the Monitor's Report (M-1) for greater details on the different allocation methodologies that were considered and the range of values yielded by these methodologies;

24. The difficulty in selecting the appropriate model of allocation also comes from the fact that the amount to be allocated is not precisely known at this stage, since this amount will depend upon the timing of the closing of the transaction with BDWBI;

DIRECTIONS SOUGHT

25. Originally, the Bankruptcy Court's entry of the Disclosure Statement Order was to constitute the US Bankruptcy Court's approval of Bear Island's proposed estate allocation;

26. As mentioned above, Bear Island will seek the approval of the Disclosure Statement at a hearing scheduled to be held on October 5, 2011;

27. The Monitor understands that Bear Island will make changes to the Bear Island Plan and supporting Disclosure Statement to provide a range of values under its proposed estate allocation and provide that the US Bankruptcy Court will only be called to confirm or determine the appropriate estate allocation at the stage of confirmation of the Bear Island Plan;

28. The Monitor is concerned that the First Term Loan lenders and the Official Unsecured Creditors' Committee may favor an allocation methodology that results in an allocation

that favors the estate of Bear Island, and thus prejudices the rights of creditors with claims against WB Canada;

29. The Monitor considers it would be appropriate to ensure that the proposed allocation is discussed in a context where the views of Canadian stakeholders can be expressed in order to arrive at a consensual allocation formula;

30. In the event a consensual allocation formula cannot be developed, the Monitor considers it would be preferable to debate the allocation in a context of a joint hearing in order to avoid, if possible, incompatible outcomes between the decisions of the US Bankruptcy Court and decisions that this Honourable Court may render in the future with respect to the proper manner in which the proceeds from the sale transaction with BDWBI are distributed amongst WB Canada and Bear Island and the repayment of the Interim Financing facility is assumed by WB Canada and Bear Island;

31. The Monitor will comment and issue a supplementary report, if necessary, once Bear Island files its definitive proposed estate allocation;

WHEREFORE MAY IT PLEASE THE COURT TO:

GRANT the present Motion for Directions;

DIRECT the Monitor as to the information that should be given to the creditors with claims against the Debtors with respect to the specific issue of estate allocation;

DECLARE that any definitive estate allocation shall be approved by this Court;

ORDER the Debtors, should the parties with an interest fail to reach a consensual estate allocation or an estate allocation which the Monitor can support and recommend for acceptance by this Court, to request a joint hearing between the United States Bankruptcy Court for the Eastern District of Virginia and this Court to deal with the specific issue of estate allocation;

APPROVE the Monitor's activities, as described in the Monitor's Report dated September 27, 2011;

ORDER the provisional execution of this Order, notwithstanding appeal;

THE WHOLE WITHOUT COSTS, save in case of contestation.

Montreal, this 28th day of September, 2011

Norton Rose OR LLP

NORTON ROSE OR LLP
Attorneys for the Monitor

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE of the foregoing *"Motion for Directions"* and that same will be presented for adjudication before the Honourable Robert Mongeon, J.S.C., at 9:30 **A.M.** on **October 5, 2011,** in **room** [to be confirmed] of the **Montreal Courthouse,** located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, this 28th day of September, 2011

Norton Rose OR LLP

NORTON ROSE OR LLP
Attorneys for the Monitor

AFFIDAVIT

I, the undersigned, **JEAN-DANIEL BRETON**, CA, CIRP, Senior Vice-President of Ernst & Young Inc., having a place of business located at suite 1900, 800 René-Lévesque Boulevard West, in the City and District of Montreal, Province of Québec, H3B 1X9, solemnly declare that:

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

2. All facts alleged in the *Motion for Directions* are true to my personal knowledge.

AND I HAVE SIGNED:

JEAN-DANIEL BRETON

SOLEMNLY DECLARED before me on this 28th day of September, 2011

Chantal Lapointe 102-406

Commissioner for Oaths for the Province of Quebec

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

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

LIST OF EXHIBITS

EXHIBIT M-1: Monitor's Report dated September 27, 2011;

Montreal, this 28th day of September, 2011

Norton Rose OR LLP

NORTON ROSE OR LLP
Attorneys for the Monitor

NO: 500-11-038474-108

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.

Monitor

-and -

STADACONA LIMITED PARTNERSHIP

-and-

F.F. SOUCY LIMITED PARTNERSHIP

-and-

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

Mises-en-cause

MOTION FOR DIRECTIONS, LIST OF EXHIBIT AND EXHIBIT M-1

(Sections 7 and 9 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36)

ORIGINAL

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Mtre Sylvain Rigaud
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CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
NO: 500-11038474-108

SUPERIOR COURT
Commercial Division
Designated tribunal under the Companies' Creditors Arrangement Act[1]

IN THE MATTER OF THE PROPOSED PLAN OF COMPROMISE AND ARRANGEMENT OF WHITE BIRCH PAPER HOLDING COMPANY AND VARIOUS SUBSIDIARIES AND AFFILIATES

DEBTORS

- and -

ERNST & YOUNG INC.

MONITOR

REPORT OF THE MONITOR – SEPTEMBER 27, 2011

INTRODUCTION AND BACKGROUND

1. On February 24, 2010, on a Motion made by White Birch Paper Holding Company ("**White Birch**") and various of its affiliates (collectively referred to as the "**Applicants**"), the Superior Court of the Province of Québec for the District of Montréal ("**Court**"), sitting as the designated tribunal pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**")[1] issued an order ("**Initial Order**") declaring that the Applicants are debtor companies to which the CCAA applies, appointing Ernst & Young Inc. ("**EYI**" or "**Monitor**") as monitor and granting certain relief to the Applicants and various partnerships in which the Applicants have an interest ("**Partnerships**") (the Applicants and the Partnerships are hereinafter referred to collectively as "**WB Canada**")[2]. The Initial Order has since been extended and is now scheduled to expire on November 18, 2011.

2. Also on February 24, 2010, Bear Island Paper Company, LLC ("**Bear Island**"), a subsidiary of White Birch with activities in the U.S., commenced a case under the provisions of Chapter 11 of the U.S. *Bankruptcy Code*[3] (the "**Code**") (Bear Island and WB Canada are hereinafter referred to collectively as "**WB Group**" or "**Companies**"). The information regarding the proceedings initiated by Bear Island under the Code, together with the "first day orders" made by the

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[1] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

[2] The entities subject to the Initial Order are White Birch Paper Holding Company, White Birch Paper Company, Stadacona General Partner Inc., Black Spruce Paper Inc., F.F. Soucy General Partner Inc., 3120772 Nova Scotia Company, Arrimage De Gros Cacouna Inc., Papier Masson Ltée., Stadacona Limited Partnership, F.F. Soucy Limited Partnership, and F.F. Soucy, Inc. & Partners, Limited Partnership.

[3] *U.S. Code*, title 11, chapter 11.

Bankruptcy Court for the Eastern District of Virginia, Richmond Division ("**US Court**") at the request of Bear Island, can be found on the website of the claims agent retained by Bear Island, Garden City Group, Inc., at www.gardencitygroup.com/cases/bip.

3. Also on February 24, 2010, some of the entities within WB Canada[4] applied for relief under the provisions of Chapter 15 of the Code. On February 26, 2010, the U.S. Court issued a temporary restraining order under the provisions of Chapter 15 of the Code, and on March 5, 2010, it granted a preliminary injunction, pending a more complete hearing to be held on March 22, 2010. At the hearing held on March 22, 2010, the U.S. Court granted recognition of the Canadian proceedings under the CCAA as foreign main proceedings, recognised White Birch Paper Company as the duly appointed foreign representative, declared that all of the provisions of section 1520 of the Code apply to the proceedings initiated by some of the entities within WB Canada, and gave full force and effect to the Initial Order[5] in the U.S., provided that the Initial Order[5] is not revoked, terminated or expired.

4. The orders granted by this Court and by the U.S. Court (collectively, the "**Courts**"), together with the relief provided under the CCAA and the Code[6] (collectively the "**Orders**") provide, among other things, for a stay of proceedings against the entities comprising WB Group while they restructure their business and financial affairs.

5. The present report is intended to provide the Court with information on the progress of WB Group's restructuring efforts. This report is presented under the following headings:

    5.1. Introduction and background;

    5.2. Terms of reference and disclaimer;

    5.3. Status of Proceedings in Canada;

    5.4. Status of Proceedings in the U.S.; and

    5.5. Overall comments and recommendations.

TERMS OF REFERENCE AND DISCLAIMER

6. In preparing this report, EYI has relied upon unaudited financial information, company records, company prepared financial information and projections, discussions with management and employees of WB Group, and information from various other sources.

    While we reviewed various documents and believe that the information therein provides a fair summary of the transactions as presented to us or as reflected in the documents presented to us, such work does not constitute an audit or verification of such information for accuracy,

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[4] The entities which requested relief under Chapter 15 of the Code are White Birch Paper Company, Stadacona General Partner Inc., Papier Masson Ltée., Stadacona Limited Partnership, F.F. Soucy Limited Partnership, and F.F. Soucy, Inc. & Partners, Limited Partnership.

[5] As amended, modified or extended from time to time by the Court.

[6] Sections §361 and §362 of the U.S. *Bankruptcy Code*.

completeness, or compliance with generally accepted accounting principles. Accordingly, EYI expresses no opinion or other form of assurance in respect of such information.

Some of the information used in preparing this report consists of financial projections. We caution the reader that these projections are based upon assumptions about future events and conditions that are not ascertainable, and that the actual results may vary from the projections, even if the assumptions materialize, and the variations could be significant.

In the course of our mandate, we have assumed the integrity and truthfulness of the information and explanations presented to us, within the context in which it was presented. To date, nothing has come to our attention which would cause us to question the reasonableness of this assumption.

Finally, we have requested that management bring to our attention any significant matters which were not addressed in the course of our specific inquiries. Accordingly, this report is based solely on the information (financial or otherwise) made available to us.

This report has been prepared for the use of this Court and WB Group's stakeholders as general information relating to the entities comprising WB Group and their operations. Accordingly, the reader is cautioned that this report may not be appropriate for any other purpose. We will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

7. Terms not otherwise defined herein shall have the meaning ascribed to them in the Initial Order, or in previous reports of the Monitor, as the case may be.

STATUS OF PROCEEDINGS IN CANADA

8. The Initial Order was made on February 24, 2010 and was extended on several occasions since that date. The most recent order of the Court extending the Initial Order was made on August 22, 2011, and grants an extension until November 18, 2011.

9. As mentioned in the most recent reports of the Monitor[7], the Companies' restructuring activities, at this stage, continue to be focused on the sale process, as the Companies are preparing for the closing of the transaction that was approved by the Court by order made on September 28, 2010[8], which transaction contemplates the sale of substantially all of the Companies' assets and undertakings to BD White Birch Investments Inc. and certain of its subsidiaries ("**BDWBI**").

10. The conditions to closing have not yet been fulfilled. We understand from our discussions with Management and counsel for BDWBI that negotiations have taken place with the union representing the employees, but that an agreement has not yet been reached on the terms of a new collective bargaining agreement. We understand that the main hurdle is still the issue of the pension benefits on a going forward basis.

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[7] Reports of the Monitor dated December 7, 2010, February 18, May 9 and August 17,, 2011, each addressing requests by the Companies for an extension of the delay to file a plan of arrangement.

[8] A motion for permission to appeal from this judgment was filed on October 15, 2010, and the Court of Appeal denied permission to appeal by judgment rendered on October 25, 2010.

11. Based on the information provided to the Monitor, a negotiation session was scheduled to commence in the week of September 6 to 9, 2011. This meeting occurred, although the issues have not yet been resolved. At the request of the Companies, a conciliator was appointed by the government, to facilitate the negotiations. The negotiations were apparently suspended by the conciliator, who requested that a technical committee be formed to analyse the issues separating the parties and make recommendations to the conciliator. The report of the technical committee is expected around the end of September 2011. No schedule has yet been set to recommence the negotiations, although the Monitor expects these will recommence shortly after the report of the technical committee is available.

STATUS OF PROCEEDINGS IN THE U.S.

12. As indicated earlier in this report, Bear Island commenced a case under the provisions of Chapter 11 of the Code on February 24, 2010. The exclusivity period provided for under the Code[9], during which a debtor has the exclusive right to file a plan, has been extended on several occasions, but was scheduled to expire on August 24, 2011.

13. In view of the impending expiry of the exclusivity period, Bear Island has prepared and filed a plan and a draft disclosure statement.

14. A hearing is scheduled for October 5, 2011 in the US Court, to consider the proposed disclosure statement and assess whether or not it constitutes adequate disclosure[10].

15. The plan filed by Bear Island is essentially a liquidation plan that is conditional upon the occurrence of a closing of a transaction with BDWBI. The plan and draft disclosure statement contemplate essentially a pro rata distribution amongst creditors of a fund ("**Fund**") comprised of the proceeds of the sale to BDWBI that are allocated to Bear Island; proceeds of the settlement or prosecution of causes of action for fraudulent preferences, void or voidable transactions; and proceeds from the disposition of any remaining asset during the wind down of the activities of Bear Island.

    It should be noted that the plan contemplates that WB Canada will share in the distribution of the proceeds of the Fund, based on an admitted intercompany claim of approximately US$136M, representing 17.6% of the scheduled claims.

16. While the plan and the draft disclosure statement provide for a distribution from the Fund, the plan and the draft disclosure statement as filed do not indicate what would be the allocation of the proceeds of the sale to BDWBI, as between Bear Island and WB Canada.

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[9] *U.S. Code*, title 11, chapter 11, *U.S. Code*, title 11, chapter 11, §1121(b).

[10] *U.S. Code*, title 11, chapter 11, *U.S. Code*, title 11, chapter 11, §1125(b).

17. During the period from the filing of the plan and draft disclosure statement, on August 24, 2011, to September 22, 2011, representatives of the Companies have consulted with the Monitor in an attempt to develop an appropriate basis of allocation of the proceeds of the sale to BDWBI between Bear Island and WB Canada. The Monitor understands that parallel consultations were held also with a number of other stakeholders, such as the Official Unsecured Creditors' Committee ("UCC"), BDWBI and the First Term Loan[11] lenders, although the Monitor has not been invited and has not taken part in these discussions.

18. In the course of the discussions with the Monitor, several different models of allocation have been explored, which yield a wide range of different results. Depending upon the formula used to allocate assets and the principles adopted to allocate the responsibility for the repayment of the Interim Financing facility, the results of the allocation models yielded a greater allocation to Bear Island in some cases, and a greater allocation to WB Canada in other cases, by a wide margin. The main factors influencing the allocation are summarized below:

    18.1. Whether the allocation for the assets sold is based on a standard formula derived from the historical breakdown in working capital (current assets minus assumed current liabilities) as between Bear Island and WB Canada, or on the actual break down in working capital on a set date. In the past, the break down in working capital has been approximately 20% for Bear Island and 80% for WB Canada, although more recently the break down has been in the range of 10% to 15% for Bear Island and 85% to 90% for WB Canada.

    18.2. The manner in which the responsibility for the repayment of the Interim Financing facility is allocated between the co-borrowers, namely Bear Island and certain entities comprising WB Canada. At the time the Interim Financing facility was negotiated, the Companies' cash flow forecasts suggested that a portion of the borrowings would be necessary for Bear Island and a portion for WB Canada, and the aggregate requirements were built into the Interim Financing Credit Facility. In fact, the drawings under the Interim Financing facility were all made by WB Canada, although the Interim Financing facility was necessary for all entities within WB Group in order to provide the required degree of confidence to the trade suppliers that the Companies had the necessary resources to pay for the merchandise supplied and services rendered after the commencement of the restructuring proceedings.

    Depending on the perspective, an argument can be made that the responsibility for the repayment of the Interim Financing facility lies with the entities that made the draws under the credit facility. Another argument can be made that the responsibility for the repayment should be shared amongst all of the entities that benefitted from the availability of funds, since the DIP was negotiated for the benefit of both WB Canada and Bear Island equally, and was necessary to satisfy the creditors of both WB Canada and Bear Island that the Companies had the resources to carry on business.

    The difference in approach leads to widely different results.

19. The problem of determining which specific formula to use to allocate the working capital is compounded by the fact that the amount that needs to be allocated is not known with certainty. The amount that will ultimately be available for distribution to the creditors depends upon the

[11] As defined in the Monitor's 1st report dated February 23, 2010.

timing of the closing of the transaction with BDWBI, which has not yet been established, and the amount to be distributed will depend on the funds that will be left over, if any, after repayment of the Interim Financing facility. At this juncture, the models of allocation prepared by the Companies for the purpose of completing the disclosure statement and the plan are based on cash flow projections and historical results, and the actual amounts may be different when the residual amounts are calculated at the time of the closing.

20. As mentioned earlier, the basis of allocation had not yet been disclosed, as of the date of drafting of this report, notwithstanding the fact that the hearing on the adequacy of the disclosure statement is scheduled for October 5, 2011. The Monitor has been informed that the disclosure statement will be amended to reflect a range of values based on various allocation alternatives, and that Bear Island will not seek an approval by the US Court of any definitive allocation but rather will suggest that the Companies and the creditors continue to seek a consensual allocation, with such an allocation being subject to the approval of the US Court at the latest at the hearing to confirm a plan[12].

Based on the most recent information made available to the Monitor, which is still subject to adjustment, the range in values could provide an allocation of net proceeds to WB Canada that varies between US$23.4 million and US$0.5 million, or an allocation of between 88.5% and 1.8% of the funds estimated to be available for distribution to the unsecured creditors.

21. The Monitor is concerned that the First Term Loan lenders and the UCC may favour an allocation methodology that results in an allocation that favours the estate of Bear Island, and thus prejudices the rights of creditors with claims against WB Canada.

The Monitor understands that the First Term Loan lenders consist in large part of the purchaser for the assets of the Companies or companies or entities related to the purchaser, and that an allocation that favours Bear Island as compared with WB Canada would benefit primarily the First Term Loan lenders, at the expense of the other creditors that have filed claims in the proceedings in Canada.

22. The Monitor considers it would be necessary to ensure that stakeholders in Canada are given an opportunity to express their views on the proposed allocation if a consensual allocation formula is to be devised, and that the allocation of proceeds to each respective estate is made after a joint hearing in which the views of the interested stakeholders from Canada and the U.S can be expressed, if a consensual allocation cannot be reached.

OVERALL COMMENTS AND RECOMMENDATIONS

23. As mentioned above, Bear Island will seek approval of its disclosure statement, at a hearing scheduled to be held on October 5, 2011. The Monitor has been informed that Bear Island will not seek a definitive approval of any allocation, but rather will suggest that the discussions continue amongst stakeholders with a view to arrive at a consensual basis of allocation, with such an allocation being subject to the approval of the US Court at the latest at the hearing to confirm a plan.

[12] *U.S. Code*, title 11, chapter 11, *U.S. Code*, title 11, chapter 11, §1128 and §1129

24. Although there is no urgency to resolve the issue of allocation at this time, the Monitor considers it would be appropriate to ensure that the proposed allocation is discussed in a context where the views of Canadian stakeholders can be expressed in order to arrive at a consensual allocation formula.

25. In the event that it becomes impossible to develop a consensual allocation formula, the Monitor considers it would be preferable to debate the allocation in a context of a joint hearing between the Court and the U.S. Court, in order to avoid, if at all possible, conflicting outcomes between the decisions of the US Court and those of this Court with respect to the proper manner in which the proceeds from the sale transaction with BDWBI are distributed amongst WB Canada and Bear Island and the repayment of the Interim Financing facility is assumed by WB Canada and Bear Island.

All of which is respectfully submitted this 27th day of September 2011.

ERNST & YOUNG INC.
In its capacity as the monitor appointed by the Court
in the matter of the proposed compromise and
arrangement of White Birch Paper Holding Company *et al.*

Per: Martin P. Rosenthal, CA, CIRP
Senior Vice-President

Per: Jean-Daniel Breton, CA, CIRP
Senior Vice-President

R6

SUPERIOR COURT

(Commercial division)

The Companies' Creditors Arrangement Act

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-038474-108

DATE: October 7, 2011

UNDER THE PRESIDENCY OF: THE HONOURABLE ROBERT MONGEON, J.S.C.

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 PARATNER INC.
-and-
3120772 NOVA SCOTI COMPAPNY
-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-

JM1838

F.F. SOUCY INC. & PARTNERS, LIMITED PARTNERSHIP
Mises-en-cause

JUDGMENT

The context

[1] The Monitor comes before me with a Motion for Directions in the following context.

[2] The Debtors (collectively WB Canada) are under the protection of the CCAA. The Initial Order extending this protection has been in force since February 24, 2010 and will remain in force at least until November 18, 2011, whereupon it shall most likely be extended further.

[3] The Debtors also conduct business in the United States of America through a subsidiary of White Birch Paper Holding Company known as Bear Island Paper Company LLC ("Bear Island") presently under the protection of Chapter 11 of the United States Bankruptcy Code (WB Canada and Bear Island are hereinafter referred to as the "WB Group"). Both the Canadian proceedings and the U.S. proceedings are being conducted simultaneously and appropriate Cross-Border Insolvency Protocols have been put in place in the early stages of this restructuration. It is to be noted, however, that Bear Island is not a "Debtor" under the current CCAA proceedings.

[4] It is also to be noted that the United States Bankruptcy Court for the Southern District of Virginia (the USBC) has recognized the Canadian Proceedings under the CCAA as "foreign main proceedings" and has recognized White Birch Paper Holding Company as "foreign representative".

[5] In the course of both the U.S. and the Canadian restructuring process, the usual DIP financing was put in place guaranteed by appropriate super-priority charges upon all Canadian and U.S. assets of the WB Group.

[6] Furthermore, it has been previously decided and approved by both jurisdictions that the greater majority (if not the totality of the assets) of the WB Group would be sold through a "Stalking Horse" bidding process. The auction has taken place but the sale has not yet closed. The purchaser is an entity known as BD White Birch Investments Inc. and certain of its subsidiaries (BDWBI).

[7] As indicated above, Bear Island has commenced proceedings in the U.S. under Chapter 11 of the U.S. Bankruptcy Code pursuant to which it must file its Plan of

Arrangement as well as a "Disclosure Statement' of all circumstances surrounding the submission and administration of the proposed Plan, including which assets may be used by Bear Island for a proposal to its creditors.

[8] In its Report dated September 27, 2011, the Monitor specifically represents that:

...

> **15. The plan filed by Bear Island is essentially a liquidation plan that is conditional upon the occurrence of a closing of a transaction with BDWBI. The plan and draft disclosure statement contemplate essentially a pro rata distribution amongst creditors of a fund ("Fund") comprised of the proceeds of the sale to BDWBI that are allocated to Bear Island; proceeds of the settlement or prosecution of causes of action for fraudulent preferences, void or voidable transactions; and proceeds from the disposition of any remaining asset during the wind down of the activities of Bear Island.**
>
> **It should be noted that the plan contemplates that WB Canada will share in the distribution of the proceeds of the Fund, based on an admitted intercompany claim of approximately US$136M, representing 17.6% of the scheduled claims.**
>
> **16. While the plan and the draft disclosure statement provide for a distribution from the Fund, the plan and the draft disclosure statement as filed do not indicate what would be the allocation of the proceeds of the sale to BDWBI, as between Bear Island and WB Canada.**

...

(emphasis added)

[9] This allocation of proceeds is crucial to WB Canada, inasmuch as its share of the sale proceeds will form the basis of its own. Plan of Restructuration to be approved by all appropriate Canadian stakeholders.

[10] The Monitor further represents that:

...

> **18. In the course of the discussions with the Monitor, several different models of allocation have been explored, which yield a wide range of different results. Depending upon the formula used to allocate assets and the principles adopted to allocate the responsibility for the repayment of the Interim Financing facility, the results of the allocation models yielded a greater allocation to Bear Island in some cases, and a greater allocation to WB Canada in other cases, by a**

wide margin. The main factors influencing the allocation are summarized below:

18.1 Whether the allocation for the assets sold is based on a standard formula derived from the historical breakdown in working capital (current assets minus assumed current liabilities) as between Bear Island and WB Canada, or on the actual breakdown in working capital on a set date. In the past, the breakdown in working capital has been approximately 20% for Bear Island and 80% for WB Canada, although more recently the breakdown has been in the range of 10% to 15% for Bear Island and 85% to 90% for WB Canada.

18.2 The manner in which the responsibility for the repayment of the Interim Financing facility is allocated between the co-borrowers, namely Bear Island and certain entities comprising WB Canada. At the time the Interim Financing facility was negotiated, the Companies' cash flow forecasts suggested that a portion of the borrowings would be necessary for Bear Island and a portion for WB Canada, and the aggregate requirements were built into the Interim Financing Credit Facility. In fact, the drawings under the Interim Financing facility were all made by WB Canada, although the Interim Financing facility was necessary for all entities within WB Group in order to provide the required degree of confidence to the trade suppliers that the Companies had the necessary resources to pay for the merchandise supplied and services rendered after the commencement of the restructuring proceedings.

Depending on the perspective, an argument can be made that the responsibility for the repayment of the Interim Financing facility lies with the entities that made the draws under the credit facility. Another argument can be made that the responsibility for the repayment should be shared amongst all of the entities that benefited from the availability of funds, since the DIP was negotiated for the benefit of both WB Canada and Bear Island equally, and was necessary to satisfy the creditors of both WB Canada and Bear Island that the Companies had the resources to carry on business.

The difference in approach leads to widely different results.

19. The problem of determining which specific formula to use to allocate the working capital is compounded by the fact that the amount that needs to be allocated is not known with certainty. The amount that will ultimately be available for distribution to the creditors depends upon the timing of the closing of the transaction with BDWBI, which

has not yet been established, and the amount to be distributed will be left over, if any, after repayment of the Interim Financing facility. At this juncture, the models of allocation prepared by the Companies for the purpose of completing the disclosure statement and the plan are based on cash flow projections and historical results, and the actual amounts may be different when the residual amounts are calculated at the time of the closing.

20. As mentioned earlier, the basis of allocation had not yet been disclosed, as of the date of drafting of this report, notwithstanding the fact that the hearing on the adequacy of the disclosure statement is scheduled for October 5, 2011. The Monitor has been informed that the disclosure statement will be amended to reflect a range of values based on various allocation alternatives, and that Bear Island will not seek an approval by the US Court of any definitive allocation but rather will suggest that the Companies and the creditors continue to seek a consensual allocation, with such an allocation being subject to the approval of the US Court at the latest at the hearing to confirm a plan.

Based on the most recent information made available to the Monitor, which is still subject to adjustment, the range in values could provide an allocation of net proceeds to WB Canada that varies between US$23.4 million and US$0.5 million, or an allocation of between 88.5% and 1.8% of the funds estimated to be available for distribution to the unsecured creditors.

21. The Monitor is concerned that the First Term Loan lenders and the UCC may favour an allocation methodology that results in an allocation that favours the estate of Bear Island, and thus prejudices the rights or creditors with claims against WB Canada.

The Monitor understands that the First Term Loan lenders consist in large part of the purchaser for the assets of the Companies or companies or entities related to the purchaser, and that an allocation that favours Bear Island as compared with WB Canada would benefit primarily the First Term Loan lenders, at the expense of the other creditors that have filed claims in the proceedings in Canada.

22. The Monitor considers it would be necessary to ensure that stakeholders in Canada are given an opportunity to express their views on the proposed allocation if a consensual formula is to be devised, and that the allocation of proceeds to each respective estate is made after a joint hearing in which the views of the interested stakeholders from Canada and the U.S. can be expressed, if a consensual allocation cannot be reached.

(emphasis added)

[11] This was the situation at the time of filing of the Monitor's Motion and Report.

[12] However, at the hearing of the present Motion, an extract of Bear Island's Disclosure Statement was submitted to this Court. The said extract deals with current problems surrounding the finalization of an "Estate Allocation" between WB Canada and Bear Island.[1]

[13] This document states:

> **The Estate Allocation**
>
> **The Estate Allocation provides the manner by which the Debtor and the Canadian Sellers, and their respective estates, shall allocate proceeds from the Sale and satisfy certain obligations that remain as of the Sale Closing, including obligations under the DIP Credit Facility. As discussed in more detail below, the outcome of, among other things, the Estate Allocation, will determine monies available for distribution to creditors of both the Debtor's Estate and the Canadian Sellers' estates. The determination of the proper Estate Allocation has required, and will continue to require, significant and extensive negotiations and compromise between various parties in interest.**
>
> **(emphasis added)**

[14] The document further describes the way the cash funds held by Bear Island and WB Canada will firstly be used and allocated towards the DIP reimbursement of the loan and, thereafter, how the cash component of the sale proceeds (US$ 90 000 000,00) will be used. Bear Island represents that:

> **Once the First DIP Repayment is consummated, at which point the Debtor's Estate and Canadian Sellers' estates shall be depleted of all cash, the Debtor and Canadian Sellers shall allocate the $90,000,000 cash component (after accounting for earnings on escrowed amounts and periodic taxes, the "Cash Component") of the Purchase Price. The ASA does not prescribe the manner in which the Cash Component shall be allocated between the Debtor's Estate and the Canadian Sellers' estates, and parties in interest have yet to agree regarding this allocation. One outstanding issue is whether to allocate the Cash Component according to the relative proportions of each estate's gross current assets or net current assets. On this point, both the Sale Order and the ASA support an allocation based on gross current assets. In particular, the Sale Order entered by he Bankruptcy Court provides that the Cash Component is to be allocated to "Current Assets[,]" which are defined as the collateral under the Revolving ABL Agreement, including, "among other things, Bear**

[1] Pages 15 to 17 of Bear Island's Disclosure Statement.

Island's inventory, accounts receivable and cash[.]" Likewise, the Asset Allocation Schedule, attached to and as defined in the ASA, provides that "the Cash Component shall be allocated exclusively to the current assets of the Sellers." Neither document nor any other document identified by any party makes mention of subtracting accounts payable or accrued liabilities assumed by the Purchaser, as would be required under a net current assets analysis. An additional issue is whether to include the respective estates' cash positions in such current asset amounts.

Upon allocation of the Cash Component, the Debtor and Canadian Sellers must then pay the remaining balance under the DIP Credit Facility (the "Final DIP Repayment"). Similar to the allocation of the Cash Component, the ASA does not prescribe the Debtor and Canadian Sellers' respective obligations to satisfy the Final DIP Repayment. Accordingly, the Debtor, Creditors' Committee, the majority lenders under the First Lien Credit Facility (the "Majority First Lien Lenders"), Canadian Sellers and Monitor in the CCAA Cases engaged in extensive good-faith discussions with respect to potential methodologies by which to allocate obligations on account of the Final DIP Repayment. The parties, however, maintain divergent views of the Debtor's obligations on the one hand, and the Canadian Sellers' obligations on the other hand, to repay amounts due under the DIP Credit Facility.

(emphasis added)

[15] As can be seen from the foregoing, the issues are serious, the parties are engaged in serious negotiations and a consensus has not yet been reached.

[16] There is more: Bear Island further contends that one of the difficulties which may be encountered has to do with Bear Island's obligation to assume liability for part of the repayment of the DIP loan although it never benefited from the DIP funds. Bear Island expresses the problem as follows:

One issue raised for consideration is that, upon the Debtor's repayment of the $2.5 million in DIP Credit Facility funds that were used to satisfy the Debtor's obligation under the Revolving ABL Agreement, the Debtor had, and currently has, no borrowings under the DIP Credit Facility. Additionally, the Debtor does not anticipate borrowing any funds from the DIP Credit Facility. Yet, under the terms of the ASA, the Debtor and Canadian Sellers are both required to apply their remaining cash on hand to repay a portion of the DIP Credit Facility as described above in connection with the First DIP Repayment. Arguably, any such payment made by the Debtor constitutes a payment by the Debtor under the DIP Credit Facility Guarantee of the obligations of the Canadian Sellers, which

entitles the Debtor, by right of subrogation, to seek repayment from the Canadian Sellers' estate of the amount the Debtor paid under the First DIP Repayment. Specifically, the DIP Credit Facility Guarantee provides that, if a guarantor thereunder (a "Guarantor") makes payment under the DIP Credit Facility Guarantee, and if the obligations under the DIP Credit Facility are paid in full, the DIP Lenders will, at such Guarantor's request, transfer by subrogation their interest in the DIP Credit Facility obligations and any security held therefore to the Guarantor without recourse and without representation and warranty. The Plan provides for such transfer upon repayment of the DIP Credit Facility. Accordingly, the Debtor, as Guarantor, would succeed to the rights of the DIP Lenders and maintain a postpetition Subrogation Claim in the CCAA Cases in an amount equal the Debtor's portion of the First DIP Repayment, which, based on the Debtor's 13-week cash flow forecast dated as of September 22, 2011, would equal approximately $16.1 million.

An additional issue raised for consideration is that because the Debtor will have no borrowings under the DIP Credit Facility as of the Sale Closing, the Debtor should not be obligated to pay any amounts owed by the Canadian Sellers on account of the Final DIP Repayment when (a) Final DIP Repayment should be based on direct borrowings of the respective estates and (b) the Canadian Sellers have sufficient financial wherewithal to meet their obligations under the DIP Credit Facility. The Debtor would be entitled to assert a Subrogation Claim against the Canadian Sellers in the event that it pays any amounts under the Final DIP Repayment. If the Canadian Sellers' allocated portion of the Cash Component is not sufficient to satisfy the Final DIP Repayment, the Debtor would pay the balance and such amounts would also become part of the Debtor's Subrogation Claim. An Estate Allocation that adopts these arguments would, based on the Debtors' and Canadian Sellers' 13-week cash flow forecast dated as of September 22, 2011, provide the Debtor's Estate with approximately $26.5 million (less the costs of administration and Wind Down of the Debtor's Estate) and the Canadian Sellers' estates with approximately $400,000 (in addition to any recovery on account of the Intercompany Claims, which, if allowed in their asserted amount, would equal approximately $5.4 million).

A final issue for consideration is that, similar to the allocation of the Cash Component, the Final DIP Repayment should be allocated based on the relative proportions of the Debtor's and the Canadian Sellers' net or gross current assets. Consideration has also been given to the notion that the Debtor benefited from the DIP Credit Facility, and as such, cannot seek to recover the amount paid under the First DIP Repayment from the Canadian Debtors' and Canadian Sellers' 13-week cash flow forecast dated as of September 22, 2011, provide the Debtor's Estate with approximately $3.1 million (less the costs of administration and Wind Down of the Debtor's Estate) and the Canadian Sellers' estates with approximately $23.8 million.

In light of the foregoing and assuming that the currently estimated ratio of current assets and the total amount of cash available following repayment of the DIP Credit Facility do not change materially, as of the Sale Closing, the Debtor's Estate will receive a recovery ranging from approximately $3.1 million to approximately $26.9 million. The components of the Estate Allocation and the ranges of recovery based on the various positions discussed above are set forth in Exhibit B to this Disclosure Statement.

Further, it is important to note that, as of the date hereof, a significant number of creditors of the debtors in the CCAA Cases have not been informed of, or consulted with, regarding the Estate Allocation. Once informed of the issues identified herein, such creditors may seek to investigate (a) the basis for payment of outstanding obligations under the DIP Credit Facility and (b) thee right, if any, of the debtors in the CCAA Cases to (i) offset the Intercompany Claims against any Subrogation Claims and (ii) assert an Administrative Claim or right of setoff against the Debtor, or require transfer of funds prior to the Sale Closing, on account of fees, expenses and repayments potentially due from the Debtor to the debtors in the CCAA Cases under the DIP Credit Facility, the Revolving ABL Agreement or certain Intercompany transfers. The assertion and outcome of any of the foregoing may impact the monies available for distribution to the Debtor's creditors.

In sum, given the various issues concerning repayment of the DIP Credit Facility, the parties have been unable to reach final agreement on the proper Estate Allocation. Nevertheless, to enable the Debtor to proceed with solicitation and Confirmation, the Debtor, Creditors' Committee and Majority First Lien Lenders have agreed that all parties shall reserve their rights with respect to the Estate Allocation. The Debtor, Creditors' Committee and Majority First Lien lenders believe that this approach is fair and reasonable, and allows the parties to continue to negotiate a consensual resolution to the Estate Allocation or, to the extent necessary, conduct cross-border litigation to resolve these issues at or prior to Confirmation.

(emphasis added)

[17] Based upon the foregoing, the Monitor is very seriously concerned with the risk of an Estate Allocation being decided in the United States without taking into consideration all of the effects of such a decision upon the Canadian proceedings. In light of such a possibility, the Monitor seeks the following conclusions:

[1] GRANT the present Motion for Directions;

[2] DIRECT the monitor as to the information that should be given to the creditors with claims against the Debtors with respect to the specific issue of Estate Allocation;

> [3] **DECLARE that any definitive Estate Allocation shall be approved by this Court;**
>
> [4[**ORDER the Debtors, should the parties with an interest fail to reach a consensual Estate Allocation or an Estate Allocation which the Monitor can support and recommend for acceptance by this Court, to request a joint hearing between the United States Bankruptcy Court for the Eastern District of Virginia and this Court to deal with the specific issue of Estate Allocation;**
>
> [5] **APPROVE the Monitor's activities, as described in the monitor's Report dated September 27, 2011;**

[18] But for the wording of conclusion no. [3] above, the stakeholders present at the hearing do not oppose the Monitor's Motion. Several stakeholders, however, believe that this conclusion is premature and that the parties should continue their negotiations in order to arrive at a consensual Estate Allocation. They do not wish to see an Order from this Court which could be interpreted as subordinating the validity of Estate Allocation to a unilateral judgment of this Court.

Analysis

[19] The Court's intervention in CCAA proceedings must always be framed within the powers given to it by the legislation. As Deschamps J. stated in Re: Century Services[2], those powers are broad, because of the broad language used by the statute. More particularly, she writes:

> [77] **The CCAA creates conditions for preserving the *status quo* while attempts are made to find common ground amongst stakeholders for a reorganization which is fair to all.**

[20] Fairness to all, here, goes through negotiation in good faith of all disputes with the least possible intervention of supervising Courts.

[21] Primarily, the function of the Court in CCAA proceedings is to facilitate an orderly restructuration process and to promote a negotiated settlement of any disputes which may arise. The Court should not be asked to intervene to promote the point of view of one particular stakeholder or group of stakeholders. Furthermore, the Court's duty in cross-border proceedings is to protect the jurisdiction of all tribunals involved in an international restructuration.

[22] At this point in time, the parties, on both sides of the border, are engaged in negotiations. Furthermore, there is no indication that these negotiations will not come to fruition. Accordingly, the Court should abstain to intervene.

[2] [2010] 3, SCR 379; [2010] SCC 60

[23] It is quite obvious that this Court may have some implication in the use and/or allocation of the proceeds resulting from the sale of the WB Group's assets. It should not be forgotten that the sale process and draft Asset Purchase Agreement had been previously agreed to and authorized by this Court. Furthermore, the bidding process including the use of credit bidding was not only authorized and sanctioned by the undersigned, but also the validity of the auction procedure held in New-York was the subject matter of a vivid contestation which resulted in a judgment ratifying the entire process (see 2010 QCCS 4915; Motion for Leave to Appeal denied per Dalphond JCA, 2010, QCCA 1950).

[24] Nevertheless, the Monitor suggests at paragraphs 16 of its Motion:

> **16. Although Bear Island has yet to file its definitive proposed Estate Allocation, which shall be part of Bear Island Plan, the Monitor is concerned that Bear Island may well adopt an allocation methodology that favours the U.S. estate to the detriment of the Canadian estate;**

[25] Given the position taken by Bear Island in its above-noted comments on the issue of Estate Allocation, it is expected that, in the absence of a consensus, very important issues may have to be debated and decided either before this Court, the United-States Bankruptcy Court or perhaps even in a Joint Hearing before both jurisdictions.

[26] Furthermore, in order to arrive at a consensus, all stakeholders on both sides of the border should be kept informed of their respective positions. The Monitor point is well taken when he suggests that:

> **29. The Monitor considers it would be appropriate to ensure that the proposed allocation is discussed in a context where the views of Canadian stakeholders can be expressed in order to arrive at a consensual allocation formula;**
>
> **30. In the event a consensual allocation formula cannot be developed, the Monitor considers it would be preferable to debate the allocation in a context of a joint hearing in order to avoid, if possible, incompatible outcomes between the decisions of the US Bankruptcy Court and decisions that this honourable Court may render in the future with respect to the proper manner in which the proceeds from the sale transaction with BDWBI are distributed amongst WB Canada and Bear Island and the repayment of the Interim Financing facility is assumed by WB Canada and Bear Island;**

[27] This is an interesting suggestion. A joint hearing may prove to be a good way to dispose of some of the disputes but may not be the best vehicle to dispose of complex matters where legal principles may differ depending upon which legal regime is applicable to the dispute and which Court has jurisdiction to decide upon same.

[28] The undersigned is aware of the importance of protecting and asserting this Court's jurisdiction in CCAA matters and, when such matters involve Cross-Border issues, it is equally important to protect, and not to interfere with, the jurisdiction of the United States Bankruptcy Court.

[29] It seems that the question of Estate Allocation is an essential element of the Disclosure Statement, which is a necessary requirement of U.S. procedure in Chapter 11 proceedings. In this context, the U.S. Court may have to approve the allocation. It also must be emphasized that the Canadian Court has no direct jurisdiction over Bear Island which has never filed for protection under the CCAA and, conversely, the U.S. Court has no direct jurisdiction over the Canadian Debtors.

[30] On the other hand, any allocation of the sale price of the WB Group's assets between WB Canada on the one part, and Bear Island on the other part, should not be the result of any Canadian or U.S. unilateral decision. Although the Estate Allocation of proceeds may have to be ratified and/or approved by both Courts, such a step may only come after a negotiated settlement, or after all disputes blocking a negotiated settlement will have been decided.

[31] The end result of this allocation is equally important in Canada: WB Canada expects to obtain sufficient funds from the allocation of proceeds of the sale in order to implement its Plan of restructuration.

[32] Accordingly, both Courts will most probably have to intervene upon the issue of final Estate Allocation and approve or ratify same, both within the scope of their respective jurisdictions.

[33] Consequently, any unresolved dispute over any issue involving the allocation of the proceeds of sale of the assets of the WB Group shall firstly be submitted to either this Court or the U.S. Bankruptcy Court depending upon which Court has jurisdiction. Upon resolution of these disputes, both Courts, either jointly or separately, may approve the final allocation in accordance with their respective rules of procedure.

[34] Inasmuch as this Motion is brought by the Monitor in its capacity as Officer of the Court, there shall be no adjudication as to costs.

[35] As indicated above, the other conclusions sought by the Monitor, they cause no specific difficulties and they will be granted as sought.

FOR THESE REASONS, the Court

[36] **GRANTS** the Monitor's Motion for Directions;

[37] **DIRECTS** the Monitor to inform the creditors with claims against the Debtors with respect to the specific issue of Estate Allocation, by way of a general mailing containing

a copy of this Order together with a copy of the Monitor's Report dated September 27, 2011;

[38] **APPROVES** the Monitor's activities as described in its Report of September 27, 2011;

[39] **DIRECTS** the parties having an interest in the Estate Allocation to continue their negotiations towards a final and global settlement of the Estate Allocation.

[40] **DIRECTS** that any consensual definitive Estate Allocation of the proceeds of the sale of the assets of the WB Group, establishing the proper manner in which the proceeds from the sale transaction with BD White Birch Investments Inc. are to be distributed amongst WB Canada on the one part and Bear Island on the other part, including the repayment of the Interim financing Facility to be assumed by WB Canada and Bear Island, may be approved by both the Superior Court of Quebec and by the United States Bankruptcy Court for the Southern District of Virginia within the scope of their respective jurisdictions and **DIRECTS FURTHER** that should the parties fail to reach a consensual allocation (or an allocation which the Monitor can support and recommend for acceptance by this Court), **AUTHORIZES** any interested party to seek the adjudication of any dispute before the Court having jurisdiction upon same.

[41] **THE WHOLE WITHOUT COSTS.**

ROBERT MONGEON, J.S.C. J.S.C.

Counsel and parties present: see attendance list annexed to the Procès-Verbal

Date of hearing: 5 October 2011

CANADA
PROVINCE DE QUÉBEC

District ____

N° ____

ENREGISTREMENT

M
Dist. An Mois Jour Cas.

Dist. An Mois Jour Cas. Salle Piste

RÉFÉRENCES

PROCÈS-VERBAL D'AUDIENCE (suite)

JEAN-DANIEL BRETON ERNST & YOUNG INC.
SYLVAIN RIGAUD NORTON ROSE CONTRÔLEUR
MARTIN ROSENTHAL ERNST & YOUNG INC.
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MARTIN DESROSIERS OSLER CREDIT SUISSE
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