

NO. S206189

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.*
1985, c. C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57*

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1057863
B.C. LTD., NORTHERN RESOURCES NOVA SCOTIA CORPORATION, NORTHERN
PULP NOVA SCOTIA CORPORATION, NORTHERN TIMBER NOVA SCOTIA
CORPORATION, 3253527 NOVA SCOTIA LIMITED, 3243722 NOVA SCOTIA
LIMITED and NORTHERN PULP NS GP ULC

PETITIONERS

APPLICATION RESPONSE

Application response of: The Nova Scotia Superintendent of Pensions (the "**Application Respondent**" and the "**Superintendent**")

THIS IS A RESPONSE TO the Notice of Application of 1057863 B.C. Ltd., Northern Resources Nova Scotia Corporation, Northern Pulp Nova Scotia Corporation, Northern Timber Nova Scotia Corporation, 3253527 Nova Scotia Limited, 3243722 Nova Scotia Limited and Northern Pulp NS GP ULC (the "**Applicants**") filed April 27, 2022.

Part 1: Orders Consented to

None

Part 2: Orders Opposed

None

Part 3: Order on Which No Position is Taken

Other relief requested by the Applicants in the Application

Part 4: Factual Basis

Position of the Superintendent

1. The Superintendent noted in response to the Application filed December 4, 2020, that paragraph 52 of the 8th affidavit of Bruce Chapman states that “[t]he Revised Forecast does not include the payment of \$342,267 in special defined benefit pension contributions due in 2020, or the payment of additional special defined benefits pension contributions in the total amount of approximately \$3.34 million for each of 2021 and 2022.”
2. The Superintendent was concerned at that time that the special defined benefit contributions were not included in the forecasts for 2021 and going forward into 2022.
3. The Superintendent noted in response to the Application, dated April 13, 2021, that the proposal that funds advanced under the Subordinated Interim Financing Facility be utilized to make contributions to Special Pension Payments, as detailed at paragraph 46 of the 9th Affidavit of Bruce Chapman, was a positive development. Unfortunately, this has not come to pass.
4. In the 10th Affidavit of Bruce Chapman, at paragraph 73, Mr. Chapman confirmed that \$342,267 in respect of the 2020 Special Payments was made. No other contributions towards the Special Pension Payments have been made since the April 2021 Application.
5. In the 10th Affidavit of Bruce Chapman, at paragraph 74, Mr. Chapman noted that payment of the post-2020 Special Pension Payments under the Subordinated Interim Financing Facility is subject to the “Satisfactory Progress Condition” that the Subordinated Lender has provided written notice to Northern Pulp that it is satisfied that the Petitioners have made satisfactory progress in settlement discussions.
6. In Mr. Chapman’s most-recent affidavit, at paragraph 56, he notes that the Subordinated Lender has not provided written notice to Northern Pulp that it is satisfied that the Petitioners have made satisfactory progress in Settlement Discussions and so, the Petitioners do not anticipate making any post-2020 Special Pension Payments during the proposed extension of the Stay Period.
7. Likewise, noted at paragraphs 88 and 107 of the Tenth Report of the Monitor:
 88. The Tenth Report Forecast does not contemplate any pension payments during the proposed Stay Period. Under the terms of the SIFF, pension amounts are subject to the Satisfactory Progress Condition. As detailed in the Twelfth Chapman Affidavit, the Subordinated Lender has not provided notice that is satisfied that the Petitioners have made

satisfactory progress in Settlement Discussions. Accordingly, pension funding is assumed to be delayed until after the end of the forecast period.

[...]

107. The balance on the SIFF is \$1.8 million approved to pay for salary continuance, retiree benefits and pay, and severance, and \$2.5 million approved for special pension payments. Special Pension payments totalling \$2.5 million for 2021 have not yet been paid as the conditions in the SIFF with respect to progression of the settlement discussions has not yet been made (as detailed above).

PART 5: Legal Basis

1. The Superintendent continues to harbour serious concerns with the failure to make contributions in respect of the post-2020 Special Pension Payments as contemplated in the last Application, and the anticipated failure to make any such contributions during the extension of the Stay Period.
2. As the Superintendent has noted in previous Applications, the failure to pay the special payments to liquidate a going concern deficit in relation to the defined benefits of the pension plan, as well as the planned failure to pay post-2020 Special Pension Payments, is contrary to law, and specifically, the Nova Scotia *Pension Benefits Act*, SNS 2011, c. 41 (“PBA”) and the *Pension Benefits Regulations*, NS Reg 200/2015, made under the PBA.
3. The PBA at section 75 requires that an employer make contributions in a prescribed manner, at prescribed times in accordance with the prescribed requirements for funding. It states:

75 (1) A pension plan must provide for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this Act and the regulations.

(2) An employer required to make contributions under a pension plan, or a person or entity required to make contributions under a pension plan on behalf of an employer, shall make the contributions to

(a) the pension fund; or

(b) where pension benefits under the pension plan are paid by an insurance company, the insurance company that is the administrator,

in the prescribed manner, at the prescribed times and in accordance with the prescribed requirements for funding.

4. Subsection 86(1) of the *PBR* prescribes the minimum contributions required to be made under a pension plan, as follows:

Minimum contributions to pension plan

86 (1) Except as provided in subsections (3) and (5) and Section 86A, the employer contributions and employee contributions made under a pension plan must not be less than the sum of all of the following:

- (a) all employer contributions and employee contributions required to pay the normal cost;
- (b) all special payments set out in a previous valuation report that remain to be paid with respect to any going concern unfunded liability;
- (c) all special payments set out in a previous valuation report that remain to be paid with respect to any solvency deficiency;
- (d) all special payments required to be paid with respect to any going concern unfunded liability that is determined in the most recently filed or submitted valuation report;
- (e) all special payments to be paid with respect to any solvency deficiency that is determined in the most recently filed or submitted valuation report;
- (f) all payments determined in accordance with Sections 183 to 186 as the payments required to be made to a pension plan on wind-up or partial wind-up of the plan under Sections 99 and 100 of the Act.

5. The Superintendent is hopeful that the Monitor's use of the word "yet" in paragraph 107 of the latest report ("Special Pension payments totalling \$2.5 million for 2021 have not yet been paid...") is indicative of a good-faith intention by the Petitioner to make these payments as soon as possible.
6. While it remains understood that special payments are unsecured, the Superintendent viewed the Petitioner's proposal in the April 2021 Application as a positive development. The conditions for payments as contained in the Petitioner's proposal were outside of the Superintendent's control, and statements by Mr. Chapman makes it unlikely that any post-2020 Special Pension Payments will be made, at least through the

period of the proposed extension. This raises concerns for the Superintendent with how the conditions are being interpreted. The importance of these payments to pensioners cannot be overstated and the control lies entirely with the Subordinated Lender.

7. The Superintendent continues to be hopeful that the extension of the stay of proceedings would allow the Petitioner to settle its ongoing issues, but wishes to again express his serious concern to this Honourable Court about the failure of the Petitioner to make outstanding post-2020 Special Pension Payments and the apparent ineffectiveness of the conditions that have been put in place to make those post-2020 Special Pension Payments.

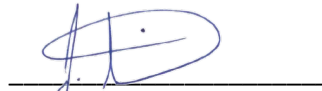
Part 6 Material to be Relied Upon

1. The 12th Affidavit of Bruce Chapman
2. The Tenth Report of the Monitor.

The Application Respondent estimates that the application will take the allotted time.

The Petitioners have filed in this proceeding a document that contains the Petitioners' address for service.

Dated April 28, 2022



Jeremy Smith
Counsel for the Nova Scotia Superintendent of Pensions