

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR) MONDAY, THE 31ST
)
JUSTICE MORAWETZ) DAY OF MAY, 2010



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TERRACE BAY PULP INC.

ORDER

THIS Motion, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order:

- (a) pursuant to paragraph 11 of the Orders of the Honourable Mr. Justice Morawetz dated March 11, 2009 and May 14, 2009 in these proceedings, permitting Mark A. Lewis and Angela Archer (the "Plaintiffs") to commence an action (the "Action") by issuing and serving the Statement of Claim attached hereto as **Schedule "1"** (the "Statement of Claim") in the Action on the condition that the Plaintiffs shall not be entitled to proceed further with the Action as against the Applicant without further order of this Court obtained on notice to the Applicant and the Monitor, that the time for delivery of any Defence by the Applicant shall be extended to a date to be determined by this Court and that no party is permitted to take action as against the Applicant by way of counterclaim or third party proceeding, or otherwise, without (i) the consent of the Applicant and the Monitor, or (ii) further Order of this Court obtained on notice to the Applicant and the Monitor,

was heard this day at 330 University Avenue, Toronto, Ontario.

UPON HEARING the submissions of counsel for the Applicant and counsel for the Monitor and upon reading the consent of counsel to the Plaintiffs,

1. **THIS COURT ORDERS** that pursuant to paragraph 11 of the Orders of the Honourable Mr. Justice Morawetz dated March 11, 2009 and May 14, 2009 in these proceedings, the Plaintiffs are hereby permitted to commence the Action by issuing and serving the Statement of Claim in the Action on the condition that the Plaintiffs shall not be entitled to proceed further with the Action as against the Applicant without further order of this Court obtained on notice to the Applicant and the Monitor, that the time for delivery of any Defence by the Applicant shall be extended to a date to be determined by this Court and that no party is permitted to take action as against the Applicant by way of counterclaim or third party proceeding, or otherwise, without (i) the consent of the Applicant and the Monitor, or (ii) further Order of this Court obtained on notice to the Applicant and the Monitor.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 01 2010

PER / PAR:  Joanne Nicoara
Registrar, Superior Court of Justice

Schedule "1"

05/07/2010 FRI 16:57 FAX

003/012

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARK ANTHONY LEWIS and ANGELA ARCHER

Plaintiffs

- and -

TERRACE BAY PULP INC.

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff(s) lawyer(s) or, where the Plaintiff(s) do(es) not have a lawyer, serve it on the Plaintiff(s), and file it, with proof of service, in this Court Office, **WITHIN TWENTY DAYS**, after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

DATE:

Issued by _____
Court Registrar
Address: 277 Camelot Street
Thunder Bay, ON P7A 4B3

TO: TERRACE BAY PULP INC.
21 Mill Road
Terrace Bay, ON
P0T 2W0

CLAIM

1. **The Plaintiff Mark Anthony Lewis claims:**
 - (a) damages for personal injury in the amount of \$100,000.00;
 - (b) damages for economic loss in the amount of \$150,000.00;
2. **The Plaintiff Angela Archer claims:**
 - (a) damages under the *Family Law Act*, R.S.O. 1990, c. F-3, as amended, as hereinafter set out in the amount of \$25,000.00;
3. **The Plaintiffs each claim against the Defendant:**
 - (a) pre-judgment interest pursuant to the Courts of Justice Act, R.S.O. 1990, Chapter C. 43 and any amendments thereto;
 - (b) post-judgment interest pursuant to the Courts of Justice Act, R.S.O. 1990, c. C. 43, and any amendments thereto;
 - (c) costs of this action on a substantial indemnity basis; and
 - (d) such further and other relief as this Honourable Court deems just.
4. The Plaintiff Mark Anthony Lewis (hereinafter referred to as the "male Plaintiff") is a resident of the Township of Geraldton, in the District of Thunder Bay and Province of Ontario.
5. The Plaintiff Angela Archer (hereinafter referred to as the "female Plaintiff") is a resident of the Township of Geraldton, in the District of Thunder Bay and Province of Ontario, and is the common-law spouse of the male Plaintiff. This Plaintiff brings this action against the Defendant for damages pursuant to the *Family Law Act*, R.S.O.

1990, c.F-3, as amended, and in particular Section 61 thereof, to recover from the Defendant damages for her loss of care, guidance and companionship from the male Plaintiff.

6. The Defendant Terrace Bay Pulp Inc. (hereinafter referred to as the "Defendant") is a company incorporated under the laws of the Province of Ontario, having its head office in the Township of Terrace Bay, District of Thunder Bay and Province of Ontario.

7. The male Plaintiff states that he is the President of the Kenogamisis Snow Club located in Geraldton, Ontario which belongs to District 16 of the Ontario Federation of Snowmobile Clubs (O.F.S.C.). This District governs Thunder Bay, Nipigon, Terrace Bay, Geraldton, Schreiber, Marathon, Manitouwadge, Hornepayne, Longlac, Nakina, and White River.

8. The male Plaintiff states that on Saturday, January 23, 2010 at approximately 06:45 he left his home in Geraldton on his 2009 Polaris snowmobile to travel approximately 135 km cross-country to Terrace Bay for the purposes of an O.F.S.C. meeting in Terrace Bay, Ontario at 10:00 a.m. that same morning.

9. The male Plaintiff states that at approximately 09:30 he was travelling westbound on a snowmobile trail behind the Terrace Bay Airport runway at a speed of approximately 50 km/hr, which is the speed limit on O.F.S.C. trails.

10. The male Plaintiff states that he was unfamiliar with this particular section of the

trail and as he was driving his snowmobile down a straight and level section of the trail he drove over what appeared to be a large mogul located directly on the trail and occupying the entire width of the trail. He suddenly became airborne at the top of the mogul and landed directly into the face of what appeared to be a second mogul, bounced violently off the second mogul and became airborne once again.

11. The male Plaintiff states that approximately 3 meters (10 feet) separated the 2 moguls and when he struck the second mogul, he was thrown forward over the top of his snowmobile, landing heavily on his left shoulder and the left side of his face on the hard-packed surface of the trail.

12. The male Plaintiff states that upon closer inspection, the aforementioned moguls turned out to be man-made, appearing as though a culvert was dug up with a mound of excavated earth placed on either side or alternatively, the Defendant had dumped 2 loads of gravel to create an obstruction on the trail, presumably to block it off.

13. The male Plaintiff states that there was no signage of any description in the area to warn users of the trail of the presence of any obstructions on the trail itself or to warn that it had been blocked off.

14. The male Plaintiff states that locals who frequent the area were likely aware of these obstructions, but because the male Plaintiff was not familiar with this portion of the trail, he could not possibly be aware that there were obstructions on the trail without proper signage or other warning devices being in place.

15. The male Plaintiff states that as a result of the violent collision with the second of the two trail obstructions, his 2009 Polaris snowmachine was a total loss: the male Plaintiff was indemnified by Pembridge Insurance Company in the amount of \$8,680.00 in property damage.

16. The male Plaintiff states that after the collision into the second mogul, he used his cellphone to call Gabriel Boulanger, President of Nakina Sno Club and Vice-President of District 16, to pick him up on Highway 17 outside Terrace Bay,

17. The male Plaintiff states that he was taken to McCausland Hospital in Terrace Bay, Ontario for medical treatment, where he was seen by an Emergency physician and x-rays were taken. On examination, it was determined that the male Plaintiff had suffered from an anterior dislocation of his left shoulder and an undisplaced fracture of the scapula, which may result in possible long-term axillary nerve damage, a laceration on the inner part of the upper lip, his top teeth had cut through his bottom lip, a cracked left rotator cuff and cervical spine pain, all as a result of the above-noted accident.

18. The male Plaintiff states that he will have to undergo further medical treatment including an extended regimen of physiotherapy. It is not known as this time whether the male Plaintiff will make a complete recovery from his injuries, but arthritic and functional changes to his left shoulder and left rotator cuff are expected to occur.

19. The male Plaintiff states that as a result of the injuries sustained in the above-noted incident, he lost the opportunity for employment cutting railroad right-of-way for the "Ring of Fire" mining project, north of Geraldton, for Stares Contracting of

Thunder Bay. As of the date of the within Statement of Claim, the male Plaintiff remains disabled and unemployable and will so remain into the foreseeable future.

20. The female Plaintiff states that she is employed as an Education Assistant at St. Joseph's Catholic School in Geraldton, and as a result of the male Plaintiff being totally incapacitated for the first 3 weeks following the incident described in the within Statement of Claim, she lost approximately 3 weeks' wages from her employment to stay home and take care of the male Plaintiff. Full details of the female Plaintiff's claim for loss of employment income will be presented well in advance of the trial.

21. The male Plaintiff states that he has incurred medical and out-of-pocket expenses including, but not limited, to travelling to and from Thunder Bay to consult with Dr. Peter Clark, the purchase of assistive devices, medications, and future physiotherapy costs. Full particulars of such expenses will be provided when available, and in any event, well prior to the trial of this action.

22. The injuries as described above have caused the male Plaintiff to experience severe and ongoing pain, tenderness, and restricted use of his left shoulder and arm. The male Plaintiff may suffer indefinitely from a reduced range of motion and reduced strength to his left shoulder and arm. Such injuries have severely curtailed the male Plaintiff's general activities and his enjoyment of life has been significantly diminished as a result of the incident described in Paragraph 17.

23. The Plaintiffs state that the Defendant, its servants, agents and employees negligently created or permitted an obstruction on a roadway which they knew was

used as a snowmobile access trail in the winter during the snowmobiling season. The actions of the Defendant, its servants, agents and employees in placing or creating the 2 obstructions in the middle of the roadway/snowmobile trail created a situation of peril for users of the roadway who were not intimately familiar with the area.

24. The actions of the Defendant, its servants, agents and employees in obstructing the roadway as occurred in this case, negligently created a situation of foreseeable danger to users of the roadway, including the male Plaintiff, which could not have been anticipated or avoided by use of reasonable diligence or powers of observation.

25. After creating or permitting the obstructions on the roadway as hereinbefore described, the Defendant, its servants, agents and employees negligently;

- i) failed to post signage warning of the danger created by the presence of obstructions on the roadway; and
- ii) failed to place "No Trespassing" signage or "Private Property No Trespassing" signage to prevent or discourage people from using the roadway to traverse the Defendant's property.

26. The Plaintiffs plead and rely upon the provisions of the *Occupiers Liability Act*, R.S.O. 1990, Chapter O.2, the *Negligence Act*, R.S.O. 1990, Chapter N.1., and any

amendments thereto, and the *Family Law Act*, R.S.O. 1990, c.F-3, as amended, and in particular Section 61 thereof.

ERICKSON & PARTNERS

Barristers and Solicitors
291 South Court Street
Thunder Bay, ON P7B 2Y1
(807) 345-1213 (telephone)
(807) 345-2526 (fax)

ROBERT E. SOMERLEIGH (17144L)

Solicitor for the Plaintiffs

BETWEEN: MARK ANTHONY LEWIS et. al. Plaintiffs - and - TERRACE BAY PUMP INC. Defendant	Court File No. SUPERIOR COURT OF JUSTICE PROCEEDING COMMENCED AT THUNDER BAY, ONTARIO STATEMENT OF CLAIM ERICKSON & PARTNERS Barristers & Solicitors 291 South Court Street Thunder Bay, Ontario P7B 2Y1 Telephone: (807) 345-1213 Facsimile: (807) 345-2526 ROBERT E. SOMERLEIGH (17144L) Solicitor for the Plaintiffs
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Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

ORDER

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