

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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.

Applicant

AFFIDAVIT OF RUSSELL YORK
(Sworn October 13, 2009)

I, **RUSSELL YORK**, of the City of Thunder Bay, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:

1. I am the Vice President and Treasurer of the Applicant, Terrace Bay Pulp Inc. ("Terrace Bay"), and as such have knowledge of the matters deposed to in this Affidavit. Where this Affidavit is not based on my personal knowledge, it is based on information and belief, the source of which I have identified and I verily believe such information to be true.
2. This Affidavit is sworn in support of Terrace Bay's motion returnable October 16, 2009 for, among other things, an order extending the stay of proceedings (the "Stay Period") pursuant to the Initial Order of this Honourable Court dated March 11, 2009 (the "Initial Order"), a copy of which is attached hereto as **Exhibit "A"**, until November 2, 2009.

3. The Stay Period has been extended from time to time since the issuance of the Initial Order and most recently until October 19, 2009 pursuant to the Order of the Honourable Madam Justice Hoy dated September 29, 2009 (the "September 29 Order"), a copy of which is attached hereto as **Exhibit "B"**. In support of the September 29 Order, Terrace Bay filed my Affidavit sworn September 25, 2009 (the "September 25 Affidavit"), a copy of which, without Exhibits, is attached hereto as **Exhibit "C"**.
4. As described in greater detail in the September 25 Affidavit, Terrace Bay operates a pulp mill (the "Mill"). When these CCAA proceedings (the "CCAA Proceedings") were commenced, Terrace Bay was the dominant employer for the Town of Terrace Bay, Ontario, and the nearby community of Schreiber, Ontario. A study conducted by Terrace Bay has estimated that when Terrace Bay and its supporting mills are operational, it supports economic development and stability in 14 communities and 16 First Nations and it is responsible for the creation of 8,000 jobs in Northern Ontario.
5. During the CCAA Proceedings, Terrace Bay has sold and shipped its existing finished pulp inventory and taken steps to preserve and maintain the Mill and related machinery and equipment in order to preserve and protect these assets from any damage which could affect its value to a potential purchaser.
6. Further, Terrace Bay and the Monitor have held discussions with parties who have expressed an interest in purchasing and/or financing Terrace Bay with a view to restarting the Mill. However, the depressed state of the forestry and pulp

industries during the CCAA Proceedings has made these efforts more challenging than in more normalized circumstances. This has been worsened by global economic conditions which have limited Terrace Bay's access to credit markets.

7. Accordingly, to date, Terrace Bay has been unable, to secure financing or a purchaser which would allow the Mill to restart and to facilitate Terrace Bay's exit from the CCAA Proceedings.
8. As described in the September 25 Affidavit, Terrace Bay believes that the Mill is a viable operation in more normalized and stable market conditions and that an immediate liquidation of its operations would not be optimal for obtaining value for all stakeholders. In light of the significant consequences for the Town and the region, and all stakeholders, Terrace Bay believes that it is prudent that it continue to work together with the Monitor to continue to explore its options with a view to preserving Terrace Bay as a viable ongoing concern. Significant recent improvement in pulp markets may assist the ongoing efforts to secure the necessary financing to restart the Mill.
9. As described in the September 25 Affidavit, Terrace Bay has recently been engaged in discussions with a potential non-traditional term loan lender. These discussions have continued since the granting of the September 29 Order and are being conducted with a view to restarting the Mill and avoiding a potential liquidation and permanent shut-down of Terrace Bay's operations. These discussions have not yet resulted in a commitment to provide financing and the

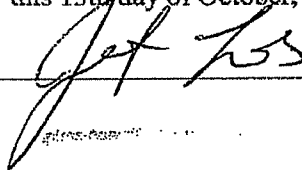
potential lender has requested additional time for discussion and exchange of information.

10. Accordingly, in order to determine if there are any viable options, particularly with respect to the potential term lender which would facilitate a restart and/or sale of the Mill, Terrace Bay requires an extension of the Stay Period until November 2, 2009. Terrace Bay believes that if this extension is granted, it will be in a better position to advise the Court of potential options moving forward regarding the Mill, including any possibilities with the term lender, and if necessary, a liquidation or permanent shut-down of the Mill.
11. On this motion, Terrace Bay also seeks the Court's authorization and direction for Terrace Bay and the Monitor to consent to an extension for the period for certain First Nations (the "Judicial Review Applicants") to perfect their Application to Divisional Court for Judicial Review (the "Judicial Review Application"), a copy of which is attached hereto as **Exhibit "D"**. The Judicial Review Application is an ongoing matter related to the Sustainable Forest License held by Terrace Bay with respect to the Kenogami Forest.
12. The Judicial Review Applicants are required to perfect the Judicial Review Application by December 31, 2009. In light of these ongoing CCAA Proceedings, Terrace Bay is prepared to consent to the request by the Judicial Review Applicants to extend the time period for perfection until December 31, 2010 and to lift the stay of proceedings, if necessary, for the purposes of perfection of the Judicial Review Application only. The Judicial Review

Applicants would continue to be prohibited from otherwise proceeding with the Judicial Review Application.

13. This Affidavit is therefore made in support of Terrace Bay's motion for, among other things, an extension of the Stay Period until November 2, 2009 and for no other or improper purpose.

SWORN BEFORE ME at the City of
Thunder Bay, in the Province of Ontario
this 13th day of October, 2009



Jennifer Marie Lohula, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires August 12, 2012.



 RUSSELL YORK

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985 c. C-36
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TERRACE BAY PULP INC.

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF RUSSELL YORK
(Sworn October 13, 2009)**

BLAKE, CASSELS & GRAYDON LLP
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

Pamela Huff LSUC# 27344V
Tel: (416) 863-2958
Fax: (416) 863-2653

Katherine McEachern LSUC#: 38345M
Tel: (416) 863-2566
Fax: (416) 863-2653

Michael McGraw LSUC#46679C
Tel: (416) 863-4247
Fax: (416) 863-2653

Lawyers for the Applicant

Exhibit “A”

Court File No. CV-09-8062-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

WEDNESDAY, THE 11TH

)

JUSTICE MORAWETZ

)

DAY OF MARCH, 2009



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.

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Russell York sworn March 10, 2009 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and counsel for Nexcap Finance Corporation ("Nexcap"), and on reading the consent of Ernst & Young Inc. to act as the Monitor (the "Monitor"),

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

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APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan") between, *inter alia*, the Applicant and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, and expenses payable on or after the date of this Order, but not severance and termination pay, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges; and

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- (c) monthly interest to Nexcap on the outstanding indebtedness at the rate of 7.6% as prescribed by the Credit Agreement dated July 26, 2007 along with all reasonable costs and fees at standard rates and charges permitted thereunder;

provided that unless specifically contemplated by this paragraph, the Applicant shall only be entitled (but not required) to pay costs and expenses that were incurred before the date of this Order to the extent that such costs and expenses are deemed necessary for the preservation of the Property and/or the Business by the Applicant, the Monitor and Nexcap, or upon further order in these proceedings.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

7. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

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- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date, except that the Applicant is entitled to pay to Nexcap any surplus amounts in permanent reduction of outstanding principal after estimated operating costs; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; (c) to not grant credit or incur liabilities except in the ordinary course of the Business; (d) to pay to Nexcap the amount of \$3,300,000 currently in treasury bills pledged to providers of utilities upon release from such pledges and maturity of the treasury bills; and (e) to maintain \$1,700,000 in a separate segregated interest bearing account.

9. THIS COURT ORDERS that the Applicant shall not cease to provide water supply services to the Town of Terrace Bay other than with court approval on 2 weeks notice to the Town of Terrace Bay.

RESTRUCTURING

10. THIS COURT ORDERS that the Applicant shall, subject to the terms of this Order, have the right to:

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- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicant deems appropriate and with the consent of the Monitor; and
- (d) pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or part, in accordance with the Solicitation Process approved herein at paragraph 35, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),
- (e) proceed with an orderly liquidation of such Property as the Applicant deems necessary or appropriate, including retaining any liquidator or advisor in connection therewith;
- (f) sell, convey, transfer, assign, lease, or in any other manner dispose of the Property, or any part or parts thereof in the ordinary course of business without the specific approval of this Court;

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

11. THIS COURT ORDERS that until and including April 10, 2009, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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NO EXERCISE OF RIGHTS OR REMEDIES

12. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities, including warehousemen, storers or bailees (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or re-perfect an existing security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

13. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, and the Applicant shall be entitled to possession of its Property, wherever situate, without any interference of any kind from any Person except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

14. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices

or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicant shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

17. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicant, after the date hereof, to make payments of the nature referred to in subparagraphs 5(a), 7(a), 7(b) and 7(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicant except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

18. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the

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Property, which charge shall not exceed an aggregate amount of \$2,500,000 as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority set out in paragraphs 29 and 31 herein.

19. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 17 of this Order.

APPOINTMENT OF MONITOR

20. THIS COURT ORDERS that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements and report on a weekly basis to Nexcap;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to Nexcap (and its financial advisor, PricewaterhouseCoopers Inc. ("PwC")) and to Lucky Star Holdings Inc. (the "Secured Creditors") and their counsel on a periodic basis (and no less than weekly) of financial and other information as

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agreed to between the Applicant and the Secured Creditors which may be used in these proceedings including reporting on a basis to be agreed with the Secured Creditors;

- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the Secured Creditors, which information shall be reviewed with the Monitor and delivered to the Secured Creditors and their counsel on a periodic basis (and no less than weekly) as agreed to by the Secured Creditors;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the books, records and management, employees and advisors of the Applicant and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including being at liberty to retain and utilize the services of entities related to the Monitor as may be necessary to perform its duties hereunder;
- (i) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan;
- (j) advise and assist the Applicant as requested in its negotiations and discussions with suppliers, customers, creditors and other stakeholders;
- (k) assist the Applicant in the conduct of any solicitation process or processes as the Applicant may consider necessary or advisable to sell the Property and Business or any part thereof, including pursuant to the Solicitation Process approved herein;
- (l) perform such other duties as are required by this Order or by this Court from time to time; and

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- (m) facilitate access by PwC to the pulp mill site to conduct a field examination for Nexcap.

22. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

23. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

24. THIS COURT ORDERS that that the Monitor shall provide the Secured Creditors and any other creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

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25. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

26. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis.

27. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

28. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 29 and 31 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

29. THIS COURT ORDERS that the priorities of the Directors' Charge, and the Administration Charge, as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$750,000); and

Second - Directors' Charge (to the maximum amount of \$2,500,000).

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30. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge and the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

31. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, with the exception that the Directors' Charge shall rank subordinate to the valid security interests of Nexcap.

32. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Directors' Charge or the Administration Charge, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

33. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the Bankruptcy and Insolvency Act ("BIA"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement.

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- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents or agreements in respect thereof shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, or the execution, delivery or performance of any agreements or obligations in respect thereof; and
- (c) the granting of the Charges do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

APPROVAL OF AGREEMENT WITH BUCHANAN FOREST PRODUCTS LTD.

34. THIS COURT ORDERS that the Applicant be and is hereby entitled to enter into such arrangements for the purchase of log and chip inventory owned by Buchanan Forest Products Ltd. and stored by the Applicant, provided that the purchase and processing of the log and chip inventory is approved by the Monitor and Nexcap, or, failing which, is approved by the Court.

APPROVAL OF SOLICITATION PROCESS

35. THIS COURT ORDERS that the Monitor and the Applicant are hereby authorized to conduct a process for the solicitation of offers for a financing or a sale of the Property (the "Solicitation Process"); and are authorized to take such steps as are necessary or advisable in carrying out the Solicitation Process in accordance with the following timetable, with such modifications, amendments or extensions of time as the Applicant and the Monitor may deem appropriate in the circumstances:

- (a) Preparation of Confidential Information Memorandum and identification of potential offerors: by March 23, 2009;
- (b) Dissemination of Confidential Information Memorandum to interested parties on execution of confidentiality agreements: by April 6, 2009; and
- (c) Deadline for expressions of interest: by April 24, 2009.

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36. THIS COURT ORDERS that the Applicant and the Monitor may obtain advice and directions from the Court with respect to the Solicitation Process.

SERVICE AND NOTICE

37. THIS COURT ORDERS that the Monitor shall, within ten (10) business days of the date of entry of this Order, send notice of this Order to the known creditors of the Applicant, other than employees and creditors to which the Applicant owes less than \$250, at their addresses as they appear on the Applicant's records, advising that such creditor may obtain a copy of this Order on the internet at the website of the Monitor, www.cy.com/ca/terracebay, (the "Website") and if such creditor is unable to obtain it by that means, such creditor may request a copy from the Monitor. The Monitor shall promptly send a copy of this Order to any interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

38. THIS COURT ORDERS that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

39. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on the Website.

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GENERAL

40. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

41. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

42. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

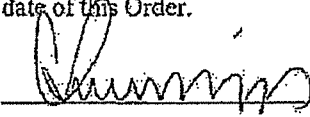
43. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

44. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

45. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Savings Time on the date of this Order.

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

MAR 11 2009


Christina Irwin
Registrar, Superior Court of Justice

12280369.6
DOCSTOR: 11704-RRR / PAR: 

IN THE MATTER OF THE COMPANIES CREDITORS ARRANGEMENT ACT, R.S.C., 1985 c. C-36
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TERRACE BAY PULP INC.

Court File No. CV-09-8062-09CL

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

INITIAL ORDER

BLAKE, CASSELLS & GRAYDON LLP
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9
Pamela Huff LSUC#: 27344V
Tel: (416) 863-2958
Katherine McEachern LSUC#: 38345M
Tel: (416) 863-2566
Fax: (416) 863-2653

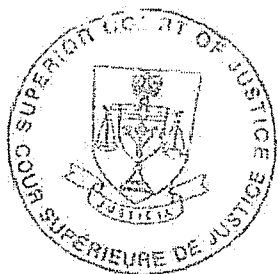
Lawyers for the Applicant

Exhibit “B”

Court File No. CV-09-8062-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	TUESDAY, THE 29 TH
	)	
MADAM JUSTICE HOY	)	DAY OF SEPTEMBER, 2009



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

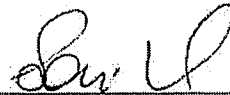
THIS Motion, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order:

- (a) abridging the time for service of the Notice of Motion and Motion Record herein, validating the service of such motion material and dispensing with the service of such motion material on interested parties not served;
- (b) directing that all capitalized terms not otherwise defined herein have the same meaning as in the Fifth Report of Ernst & Young Inc. in its capacity as Monitor (the "Monitor") dated September 25, 2009 (the "Fifth Report");
- (c) extending the Stay Period until October 19, 2009;
- (d) approving the Fifth Report and the conduct and activities of the Monitor described therein; and
- (e) such further and other relief as this Honourable Court may deem just;

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

ON READING the Fifth Report and the Affidavit of Russell York sworn September 25, 2009, all filed, and on hearing the submissions of counsel for the Applicant and counsel for the Monitor,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today and that any requirement for service of the Motion and the Motion Record on any parties other than the parties actually served with the Notice of Motion and the Motion Record is hereby dispensed with.
2. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein have the same meaning as in the Fifth Report.
3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until October 19, 2009.
4. **THIS COURT ORDERS** that the Fifth Report and the conduct and activities of the Monitor described therein be and are hereby approved.



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

SEP 29 2009

PER / PAR:

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

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

ORDER

Blake, Cassels & Graydon LLP
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

Pamela Huff LSUC#: 27344V
Tel: (416) 863-2958

Katherine McEachern LSUC#: 38345M
Tel: (416) 863-2566
Fax: (416) 863-2653

Michael McGraw LSUC#46679C
Tel: (416) 863-4247
Fax: (416) 863-2653

Lawyers for the Applicant

Exhibit “C”

Court File No. CV-09-8062-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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.

Applicant

AFFIDAVIT OF RUSSELL YORK
(Sworn September 25, 2009)

I, **RUSSELL YORK**, of the City of Thunder Bay, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:

1. I am the Vice President and Treasurer of the Applicant, Terrace Bay Pulp Inc. ("Terrace Bay"), and as such have knowledge of the matters deposed to in this Affidavit. Where this Affidavit is not based on my personal knowledge, it is based on information and belief, the source of which I have identified and I verily believe such information to be true.
2. This Affidavit is sworn in support of Terrace Bay's motion returnable September 29, 2009 for, among other things, an order extending the stay of proceedings (the "Stay Period") pursuant to the Initial Order of this Honourable Court dated March 11, 2009 (the "Initial Order"), a copy of which is attached hereto as **Exhibit "A"**, until October 19, 2009.

3. The Stay Period has been extended from time to time since the issuance of the Initial Order and most recently until September 30, 2009, pursuant to the Order of the Honourable Mr. Justice Morawetz dated June 19, 2009, a copy of which is attached hereto as **Exhibit "B"**.
4. Terrace Bay operates a pulp mill (the "Mill") in the Town of Terrace Bay, Ontario. When these CCAA proceedings (the "CCAA Proceedings") were commenced, Terrace Bay was the dominant employer for the Town and the nearby community of Schreiber, Ontario. A study conducted by Terrace Bay has estimated that when Terrace Bay and its supporting mills are operational, it supports economic development and stability in 14 communities and 16 First Nations and it is responsible for the creation of 8,000 jobs in Northern Ontario.
5. Prior to commencing the CCAA Proceedings, Terrace Bay idled the mill on February 23, 2009.
6. During the CCAA Proceedings, Terrace Bay has sold and shipped 61,000 tons of existing finished pulp inventory. Terrace Bay has also taken steps to preserve and maintain the Mill and related machinery and equipment and its water pumphouse in order to preserve and protect its assets from any damage which could decrease the likelihood of a buyer or financier expressing an interest in Terrace Bay and ultimately restarting the Mill.
7. Since the commencement of the CCAA Proceedings, and pursuant to paragraph 35 of the Initial Order, Terrace Bay, with the assistance of the Monitor, has held discussions with parties who have expressed an interest in purchasing

and/or financing Terrace Bay with a view to restarting the Mill. However, the depressed state of the forestry and pulp industries during the CCAA Proceedings has made the process of securing a purchaser and/or financier more challenging than in more normalized circumstances. This has been exacerbated by global economic conditions which have limited Terrace Bay's access to credit markets.

8. Accordingly, to date, Terrace Bay has been unable, to secure financing or a purchaser which would allow the Mill to restart and facilitate Terrace Bay's exit from the CCAA Proceedings.
9. Terrace Bay continues to believe that the Mill is a viable operation in more normalized and stable market conditions and that an immediate liquidation of its operations would not be the best method to obtain value for the benefit of all stakeholders. In particular, due to the significant consequences for the Town and the region, the forest products industry in Northern Ontario and the stakeholders in the CCAA Proceedings, Terrace Bay believes it is prudent that it to continue to work together with the Monitor to fully explore its options with a view to preserving Terrace Bay as a viable ongoing concern. This is particularly true in light of the significant improvement in pulp markets in recent weeks which may provide a better environment to secure the necessary financing to restart the Mill.
10. Terrace Bay is also facing time pressures related to the impending arrival of colder weather, particularly related to the requirement to heat the Mill to preserve the operational integrity of its machinery and equipment for a possible sale, restart or liquidation of the Mill. Accordingly, if a viable solution cannot be brought

forward within a reasonable period of time, it will be necessary for Terrace Bay to begin exploring alternatives for a liquidation and/or permanent shut-down of the Mill.

11. In light of this possibility, Terrace Bay has recently been engaged in discussions with a possible term loan lender. These discussions are ongoing and being conducted with a view to restarting the Mill and avoiding a potential liquidation and permanent shut-down of Terrace Bay's operations.
12. Accordingly, in order to determine if there are any viable options which would facilitate a restart and/or sale of the Mill, Terrace Bay requires an extension of the Stay Period until October 19, 2009. If granted, Terrace Bay would report back to this Honourable Court prior to this date, at which time it will be in a better position to advise the Court of potential options moving forward regarding the Mill, including, if necessary, a liquidation.
13. This Affidavit is therefore made in support of Terrace Bay's motion for an extension of the Stay Period until October 19, 2009 and for no other or improper purpose.

SWORN BEFORE ME at the City of
Thunder Bay, in the Province of Ontario
this 25th day of September, 2009

A Commissioner, etc.

RUSSELL YORK

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985 c. C-36
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TERRACE BAY PULP INC.
Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF RUSSELL YORK
(Sworn September 25, 2009)**

BLAKE, CASSELS & GRAYDON LLP
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

Pamela Huff LSUC# 27344V
Tel: (416) 863-2958
Fax: (416) 863-2653

Katherine McEachern LSUC#: 38345M
Tel: (416) 863-2566
Fax: (416) 863-2653

Michael McGraw LSUC#46679C
Tel: (416) 863-4247
Fax: (416) 863-2653

Lawyers for the Applicant

Exhibit “D”

Court File No. 96/07

ONTARIO SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N:

**AROLAND FIRST NATION, CONSTANCE LAKE FIRST NATION, EABAMETOONG
FIRST NATION, GINOOGAMING FIRST NATION, LONG LAKE #58 FIRST NATION,
MARTEN FALLS FIRST NATION, NESKANTAGA FIRST NATION, NIBINAMIK
FIRST NATION, and WEBEQUIE FIRST NATION**

Applicants

- and -

**THE MINISTER OF NATURAL RESOURCES, THE DIRECTOR OF INDUSTRY
RELATIONS OF THE MINISTRY OF NATURAL RESOURCES, TERRACE BAY
PULP INC., and NEENAH PAPER COMPANY OF CANADA**

Respondents

**AMENDED NOTICE OF APPLICATION TO DIVISIONAL COURT
FOR JUDICIAL REVIEW**

To The Respondents

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar at the place of hearing requested by the applicant. The applicant requests this application to be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

- 2 -

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or no later than 2 p.m. on the day before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN 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: _____
 (Registrar)

Ontario Superior Court of Justice
 Divisional Court
 130 Queen Street West
 Toronto, Ontario
 M5H 2N5

TO: Director of Industry Relations
 Ministry of Natural Resources
 Industrial Relations Branch
 Roberta Bondar Place, Suite 400
 70 Foster Drive
 Sault Ste. Marie ON, P6A 6V5

AND TO: The Minister of Natural Resources
 Whitney Block
 6th Floor, Room 6630
 99 Wellesley Street West
 Toronto, ON M7A 1W3

AND TO: Terrace Bay Pulp Inc.
 P.O. Box 29037
 233 South Court Street
 Thunder Bay ON P7B 6P9

AND TO: Neenah Paper Company of Canada
 1601 Lower Water Street, 6th Floor
 Halifax, NS B3J 2V1

AND TO: Ministry of the Attorney General
Crown Law Office (Civil)
8th Floor, 720 Bay Street
Toronto, Ontario
M5G 2K1

APPLICATION

1. The applicant makes application for:

Sustainable Forest Licence

- (a) An order setting aside the amendment or renewal of the Sustainable Forest Licence No. 542256 (the "SFL") by the Minister of Natural Resources (the "Minister"), as approved by Order-in-Council No. 593/2006 dated March 1, 2006, which changed the SFL's term to run from April 1, 2002 to March 31, 2022;
- (b) An order setting aside the transfer of the SFL from Neenah Paper Company of Canada ("NP") a wholly owned subsidiary of Neenah Paper Inc., to Terrace Bay Pulp Inc. ("TBP"), on or about August 31, 2006., by the Minister and/or the Director of the Industry Relations Branch (the "Director") of the Ministry of Natural Resources (the "MNR");

Requirements for More Equal Participation by Aboriginal Peoples

- (c) An order requiring the Minister to implement or ensure the implementation of, in accordance with its spirit and intent and the Honour of the Crown, Term and Condition No. 34 of the Declaration Order MNR-71 made under the *Environmental Assessment Act*, R.S.O. 1990. c.E.18 ("EAA"), being an order to the MNR under the Class Environmental Assessment Approval for Forest Management on Crown Lands in Ontario ("Term and Condition 34");
- (d) An order requiring the Minister to enforce the implementation of, in a purposive way, Term and Condition 20.1 of the SFL ("s. 20.1") by the licensee;

- (e) A declaration that all the Applicants are Aboriginal peoples or local Aboriginal communities entitled to participate in the negotiations or work which are the subject of Term and Condition 34 and s. 20.1 in respect of the Kenogami Forest management unit;

Other

- (f) An order prohibiting the Minister from issuing or transferring any SFL in respect of the Kenogami Forest management unit until the above relief is substantially executed, unless the Applicants otherwise agree;
- (g) Costs on a substantial indemnity basis; and
- (h) Such other relief as counsel may advise and which the Court considers appropriate.

2. The grounds for the application are:

The Parties and the Context

- (a) The Applicant First Nations are political bodies of “aboriginal peoples” within the meaning of section 35 of the *Constitution Act, 1982*, and have the capacity of Bands pursuant to the *Indian Act* R.S.C. 1985 c. I-5, as amended (the “*Indian Act*”). All but one are beneficiaries of Treaty 9; Long Lake #58 is not a beneficiary of any treaty but instead has claims to unextinguished aboriginal title and aboriginal rights, including harvesting rights, to at least a portion of the Kenogami Forest management unit. All Applicant First Nations are members of

the Matawa Tribal Council as operated by Matawa First Nations Management Inc., being a corporation incorporated under the laws of Canada.

- (b) All Applicant First Nations but Long Lake #58 First Nation, have treaty rights, including harvesting rights to hunt, fish and trap in respect of the territory covered by the Kenogami Forest, and thus have the right to consultation and accommodation in respect of decisions or actions contemplated by the Minister or anyone else who acts on behalf of the MNR that might adversely affect such treaty rights. Long Lake #58 First Nation has a claim before the Ontario Superior Court of Justice for unextinguished aboriginal title and aboriginal rights, including harvesting rights, to at least a portion of the Kenogami Forest, and thus it has the right to consultation and accommodation in respect of decisions or actions contemplated by the Minister or anyone else who acts on behalf of the MNR that might adversely affect such asserted rights. In addition, the Aroland, Ginoogaming and Long Lake #58 First Nations have reserves in the Kenogami Forest, and Constance Lake, Eabametoong and Marten Falls First Nations have reserves adjacent to the Kenogami Forest.
- (c) The Minister and Director and MNR have statutory duties pursuant to the *Crown Forest Sustainability Act, 1994*, S.O. 1994 ch. 25 ("CFSA") and its related regulations, manuals, policies and guidelines. The Minister and the MNR have duties pursuant to Term and Condition 34, such Declaration Order deriving from or being a statutory obligation, pursuant to the EAA.

- 7 -

- (d) The Respondents NP and TBP were licencees to which the SFL was issued or transferred. TBP is the current licencee.
- (e) The Minister, the Director and the MNR failed to consult with and accommodate the Applicants in respect of the issuance, transfers and amendments or renewals of the SFL.
- (f) The Minister and the MNR have failed to implement Term and Condition 34, in accordance with its spirit and intent or in a purposive way in keeping with the Honour of the Crown.
- (g) The Minister and the MNR have failed to enforce the implementation of s. 20.1 of the SFL by the Respondent licencees, in its spirit and intent or in a purposive way in keeping with the Honour of the Crown.
- (h) The respondent licencees failed to implement s. 20.1 of the SFL in a purposive way.

Issuance, Transfer of and Amendment to or Renewal of the SFL

- (i) The SFL at issue here permits the licencee to harvest all species of forest resources and to undertake other forestry-related activities in the Kenogami Forest, which is a Forest Management Unit pursuant to section 7 of the CFSA.
- (j) The Minister, with the approval of the Lieutenant Governor in Council, has the statutory authority to issue SFLs pursuant to s. 26 of the CFSA.

- (k) The SFL at issue here was approved by Order-in-Council No. 893/97 on or about April 24, 1997 and issued to Kimberly Clark Inc. ("KC").
- (l) The Minister has the statutory authority to amend SFLs pursuant to s. 34 of the CFSA, and to renew SFLs with the approval of the Lieutenant Governor in Council, for five-year terms pursuant to s. 26 of the CFSA.
- (m) In addition to other previous amendments, the SFL was amended or renewed on or about March 1, 2006, by Order-in-Council No. 539/2006 which included an extension of the term of the licence to March 31, 2022. The SFL was then transferred from NP to TBP on or about August 31, 2006.
- (n) The Minister has the statutory authority to approve or consent to all dispositions of the SFL, including transfers and assignments, pursuant to s. 35 of the CFSA. Without the Minister's consent, such dispositions are not valid.
- (o) The SFL was assigned or transferred from KC to NP in or around November of 2004 (NP was created as a spin-off of KC on or about this date). It was then transferred from NP to TBP on or about August 31, 2006. The Director, and not the Minister, approved the transfer of the SFL from NP to TBP.
- (p) The Minister and/or Director made decisions to transfer and amend or renew the SFL, all without consultation with or accommodation of the Applicants, in violation of the Applicants' constitutionally protected rights to consultation and accommodation, the Honour of the Crown, s. 6 of the CFSA, and Term and Condition 34.

Failure to Implement Term and Condition 34

(q) The Declaration Order, of which Term and Condition 34 is a part, was issued under the *Environmental Assessment Act* ("EAA") by the Minister of the Environment on or about June 25, 2003, extending and amending the EAA approval of the "Class Environmental Assessment by the Ministry of Natural Resources for Timber Management on Crown Lands in Ontario", as approved by the Environmental Assessment Board in its decision of April 5, 1994. Term and Condition 34 of the Declaration Order is in substance virtually identical to Term and Condition 77 of the original Class EA Order. Thus, this term and condition has been in place for 13 years.

(r) Term and Condition 34 states:

During the term of this approval, MNR District Managers shall conduct negotiations at the local level with Aboriginal peoples whose communities are situated in a management unit, in order to identify and implement ways of achieving a more equal participation by Aboriginal peoples in the benefits provided through forest management planning. These negotiations will include but are not limited to the following matters:

- (a) providing job opportunities and income associated with forest and mill operations in the vicinity of Aboriginal communities;
- (b) supplying wood to wood processing facilities such as sawmills in Aboriginal communities;
- (c) facilitation of Aboriginal third-party licence negotiations with existing licensees where opportunities exist;
- (d) providing forest resource licences to Aboriginal people where unallocated Crown timber exists close to reserves;
- (e) development of programs to provide jobs, training and income for Aboriginal people in forest management operations through joint projects with Indian and Northern Affairs Canada; and

- (f) other forest resources that may be affected by forest management or which can be addressed in the forest management planning process.

MNR shall report on the progress of these on-going negotiations district-by-district in the provincial Annual Report on Forest Management that will be submitted to the Legislature.

- (s) The Minister has a duty to implement or ensure that the MNR implements Term and Condition 34, implicit in this being an Order pursuant to the EAA, and pursuant to sections 3, 4, 13(3) and 38 of the EAA.
- (t) The Minister has substantially failed to implement or ensure the MNR implements Term and Condition 34 in accordance with the Honour of the Crown, despite repeated calls from and recommendations by various bodies established by the Minister or the MNR, including the Minister's Council on Forest Sector Competitiveness and the Forest Process Streamlining Task Force, to implement the substance of Term and Condition 34 in its spirit and intent.
- (u) The Applicants repeatedly asked the Minister to implement Term and Condition 34. The Minister made a decision to not implement Term and Condition 34, at least in respect of the Applicants, by his non-response to a number of requests from the Applicants, including the letter dated March 22, 2006 from the Matawa Chiefs to the Minister, which requests in this respect were never answered.

Failure to Enforce and Implement s. 20.1 of the SFL

- (v) Section 20.1 of the SFL states: "The company shall work cooperatively with the Minister and local Aboriginal communities in order to identify and implement

ways of achieving a more equal participation by Aboriginal communities in the benefits provided through forest management planning.”

- (w) The Minister has a duty to enforce s. 201. of the SFL by ensuring that Respondent licencees implement it pursuant to sections 6, 26 and 28 of the CFSA and the requirements of Term and Condition 34. The Minister has failed to so ensure, in violation of the above and the Honour of the Crown.
- (x) The Respondent licencees were/are bound by the terms and conditions in the SFL pursuant to s. 28 of the CFSA.
- (y) The Respondent licencees substantially failed to implement s. 20.1 of the SFL, in a purposive way.
- (z) The Applicants rely on Rules 17.02 and 17.04 of the Rules of Civil Procedure , and in particular on subsections (a), (c), (n), (o) and (p) of Rule 17.02 in respect of service to NP out of the Province of Ontario.

3. Documentary Evidence

The following documentary evidence will be used at the hearing of the application:

- (a) The affidavit of Veronica Waboose, Chief of Long Lake #58 First Nation;
- (b) The affidavit of Sam Kashkeesh, Chief of Aroland First Nation;
- (c) The affidavit of Paul Capon, political advisor to the Chiefs Council of the Matawa First Nations Management Inc.;

- (d) The affidavit of Terry Wilson;
- (e) Such further and other evidence as this Honourable Court may deem necessary and just.

Dated: March 1, 2007

Amended: January 7, 2008;

Further Amended: June 3, 2008

OLTHUIS, KLEER, TOWNSHEND
Barristers and Solicitors
229 College Street, Suite 312
Toronto, Ontario
M5T 1R4

N. Kate Kempton

Tel : 416.981.9330
Fax : 416.981.9350

Solicitors for the Applicant

AROLAND FIRST NATION ET AL. and MINISTER OF NATURAL
Applicants RESOURCES ET AL.
Respondents

Court File No:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

AMENDED NOTICE OF APPLICATION

Olthuis, Kleer, Townshend
Barristers & Solicitors
229 College St., Suite 312
Toronto, ON M5T 1R4

Kate Kempton, 44588L

Tel: 416.981.9330

Fax: 416.981.9350

Solicitors for the Applicants

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD
(RETURNABLE OCTOBER 16, 2009)**

BLAKE, CASSELS & GRAYDON LLP
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

Pamela Huff LSUC#: 27344V
Tel: (416) 863-2958

Katherine McEachern LSUC#: 38345M
Tel: (416) 863-2566
Fax: (416) 863-2653

Michael McGraw LSUC#46679C
Tel: (416) 863-4247
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Lawyers for the Applicant