

**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

**MOTION RECORD
(Returnable April 30, 2010)**

April 27, 2010

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

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IN THE MATTER OF THE *COMPANIES' CREDITORS
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INDEX

<u>TAB. NO.</u>		<u>PAGE NO.</u>
1	Notice of Motion returnable April 30, 2010	1 - 14
A	Draft Order of Justice Morawetz dated April 30, 2010	15 - 17
2	Affidavit of Russell York sworn April 26, 2010	19 - 21
A	Initial Order of this Honourable Court dated March 11, 2009	22 - 37
B	Order of the Honourable Mr. Justice Morawetz dated February 23, 2010	38 - 43
C	Affidavit of Russell York sworn February 17, 2010 (without Exhibits)	44 - 48

TAB 1

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Applicant

**NOTICE OF MOTION
(Returnable April 30, 2010)**

The Applicant will make a motion to a Judge presiding over the Commercial List on Friday, April 30, 2010, at 10:00 a.m., or as soon after that time as the motion can be heard, at the Court House, 330 University Avenue, 8th Floor, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

☐ in writing under subrule 37.12.1(1)

☐ in writing as an opposed motion under subrule 37.12.1(4);

☒ orally.

THE MOTION IS FOR an Order substantially in the form attached hereto as
Schedule “A”:

- (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 capitalized terms not otherwise defined in the draft Order have the same meaning as in the Monitor’s Eleventh Report (the “Eleventh Report”);
- (c) extending the Stay Period (as defined in the Initial Order of the Honourable Mr. Justice Morawetz dated March 11, 2009, and extended by further Orders of this Court) until June 30, 2010;
- (d) approving the Eleventh 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.

THE GROUNDS FOR THE MOTION ARE

- (a) the reasons described in the Eleventh Report and the Affidavit of Russell York sworn April 26, 2010 (the “York Affidavit”);
- (b) Section 11 of the CCAA; and
- (c) such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Eleventh Report and the York Affidavit; and
- (b) such other materials as counsel may advise and this Honourable Court permit.

April 27, 2010

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AND TO: MINISTRY OF NATURAL RESOURCES

Legal Services Branch
99 Wellesley Street West
Rm.3420
Toronto, ON M7A1W3

Stuart D. Davidson

Tel: 416-314-2004
Fax: 416-314-2030
Email: stuart.davidson@ontario.ca

AND TO: TURBOCARE CANADA, LTD.
4920 - 43 Street SE
Calgary, AB T2B 3N3

Hugh Gardner
Tel: (403) 720-7246
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Email: hgardner@turbocare.com

SCHEDULE "A"

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

ONTARIO
 SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST

THE HONOURABLE	)	FRIDAY, THE 30 TH
	)	
MR. JUSTICE MORAWETZ	)	DAY OF APRIL, 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) 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 Eleventh Report of Ernst & Young Inc. in its capacity as Monitor (the "Monitor") (the "Eleventh Report");
- (c) extending the Stay Period (as defined in the Initial Order of the Honourable Mr. Justice Morawetz dated March 11, 2009, and extended by further Orders of this Court) until June 30, 2010;

(d) approving the Eleventh 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 Eleventh Report and the Affidavit of Russell York sworn April 26, 2010, 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 Eleventh Report.
 3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until June 30, 2010.
 4. **THIS COURT ORDERS** that the Eleventh Report and the conduct and activities of the Monitor described therein be and are hereby approved.
-

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

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Lawyers for the Applicant

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE APRIL 30, 2010)**

BLAKE, CASSELS & GRAYDON LLP
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Toronto, Ontario M5L 1A9

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Lawyers for the Applicant

TAB 2

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 April 26th, 2010)

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

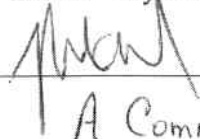
1. I am the Vice-President and Treasurer of the Applicant, Terrace Bay Pulp Inc. ("Terrace Bay"), and as such, have knowledge of the matters deposed to in this Affidavit. Where this Affidavit is not based on my personal knowledge, it is based on information and belief, the source of which I have identified and I verily believe such information to be true.
2. This Affidavit is sworn in support of Terrace Bay's motion returnable April 30, 2010 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 June 30, 2010.

3. The Stay Period has been extended from time to time since the issuance of the Initial Order and most recently until April 30, 2010, pursuant to the Order of the Honourable Mr. Justice Morawetz dated February 23, 2010 (the "February 23 Order"), a copy of which is attached hereto as **Exhibit "B"**. In support of the February 23 Order, Terrace Bay filed my Affidavit sworn February 17, 2010 (the "February 17 Affidavit"), a copy of which, without Exhibits, is attached hereto as **Exhibit "C"**.
4. As set out in the February 17 Affidavit, on or about November 19, 2009, Terrace Bay agreed to a term sheet (the "Term Sheet") with the Province of Ontario (the "Province") providing for the financing of a \$25 million term loan which would ultimately facilitate Terrace Bay's exit from these CCAA proceedings and the re-start of Terrace Bay's operations.
5. Terrace Bay's term loan from the Province is conditional upon, among other things, the sanctioning and implementation of a Plan of Arrangement in these CCAA proceedings (a "Plan") and a number of other matters.
6. By Order of the Honourable Mr. Justice Morawetz dated December 18, 2009, this Court approved a claims process (the "Claims Process") for Terrace Bay's creditors. The Claims Bar Date under the Claims Process was February 8, 2010. Terrace Bay and the Monitor continue to review claims which were filed pursuant to the terms of the Claims Process.
7. Terrace Bay and the Monitor have also identified and been working with potential equity investors with a view to raising capital in order to meet certain

requirements under the Term Sheet. These efforts are ongoing and Terrace Bay anticipates that it should be in a position by early May to determine how best to proceed.

8. Accordingly, in order to permit Terrace Bay to complete the steps required to meet the requirements of the Term Sheet and continue to work towards its exit from these CCAA Proceedings and re-start its operations, Terrace Bay requires an extension of the Stay Period until June 30, 2010. Terrace Bay, with the assistance of the Monitor, would utilize this extension to, among other things, complete financing, work to conclude its administration of the Claims Process, continue to work with potential equity investors, and negotiate and develop a Plan and facilitate creditor approval for a Plan.
9. Terrace Bay will return to Court in due course to report on, and obtain approval for, other necessary steps to move forward in these CCAA Proceedings, including a meetings order.
10. This Affidavit is therefore made in support of Terrace Bay's motion for, among other things, an extension of the Stay Period until June 30, 2010 and for no other or improper purpose.

SWORN BEFORE ME at the City of
Thunder Bay, in the Province of Ontario,
this 26th day of April, 2010


A Commissioner, etc.

N.A. MELCHIORRE

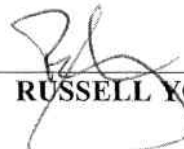

RUSSELL YORK

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.

- 2 -

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

- 3 -

- (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;

- 4 -

- (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:

- 5 -

- (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.

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 discontinuc, 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

- 7 -

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

- 8 -

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

- 9 -

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

- 10 -

- (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.

- 11 -

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).

- 12 -

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:

- 13 -

- (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.

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.ey.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.

- 15 -

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.

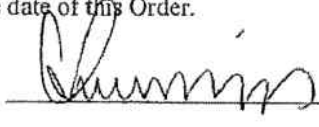
43. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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

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VER / 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-09-8062-00CL

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

INITIAL ORDER

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Lawyers for the Applicant

EXHIBIT “B”

Court File No. CV-09-8062-00C1.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	TUESDAY, THE 23 RD
	)	
MR. JUSTICE MORAWETZ	)	DAY OF FEBRUARY, 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) 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 Tenth Report of Ernst & Young Inc. in its capacity as Monitor (the "Monitor") (the "Tenth Report");
- (c) extending the Stay Period (as defined in the Initial Order of the Honourable Mr. Justice Morawetz dated March 11, 2009, and extended by further Orders of this Court) until April 30, 2010;
- (d) authorizing and directing the Applicant to take any and all actions necessary and appropriate to enter into a premium finance agreement with CAFO INC.

- 2 -

("CAFO") substantially in CAFO's standard form, as amended by the parties (the "Premium Finance Agreement") as described in and attached to the Affidavit of Russell York sworn February 17, 2010 (the "York Affidavit");

- (c) declaring that the Premium Finance Agreement constitutes a valid and binding obligation of the Applicant enforceable against it and any trustee in bankruptcy or other successor in interest to the Applicant in accordance with the terms thereof, and that the payments made pursuant thereto do not and will not be deemed to constitute fraudulent preferences or other challengeable or reviewable transactions under any applicable law;
- (f) declaring that the Premium Finance Agreement charging the unearned insurance premiums will constitute valid and binding obligations of the Applicant thereby creating a first-ranking security interest on such unearned insurance premiums, enforceable against it and any trustee in bankruptcy or successor in interest to the Applicant in accordance with the terms hereof, and that each charge so created does not and will not and every payment made or to be made pursuant to the Premium Finance Agreement is not and will not be deemed to constitute fraudulent preferences or other challengeable or reviewable transactions under applicable law;
- (g) directing that, notwithstanding the Stay Period, if the Applicant defaults under the terms of the Premium Finance Agreement, CAFO shall and is hereby authorized to:
 - (i) cancel the policies of insurance referred to in the Premium Finance Agreement and any renewal or replacement policies; and
 - (ii) apply for and receive all unearned insurance premiums, dividends and loss payments that reduce the unearned insurance premiums, referable to any such policies ("Unearned Premiums");

- 3 -

- (h) directing that in the event that a refund of Unearned Premiums occurs as a result of the cancellation or termination of any of all of the policies for any reason, CAFO will have absolute first-ranking priority to such Unearned Premiums, notwithstanding any other order of this Court to date or any claim to Unearned Premiums by any creditor of the Applicant, until all amounts owing to CAFO pursuant to the Premium Finance Agreement has been paid to CAFO in full;
- (i) approving the Tenth Report and the conduct and activities of the Monitor described therein; and
- (j) 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 Tenth Report and the York Affidavit, 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 Tenth Report.
3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until April 30, 2010.
4. **THIS COURT ORDERS** that the Applicant be and is hereby authorized to take any and all actions necessary and appropriate to enter into a premium finance agreement with

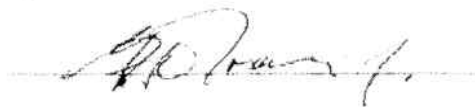
CAFO INC. ("CAFO") substantially in CAFO's standard form, as amended by the parties (the "Premium Finance Agreement") as described in and attached to the York Affidavit.

5. **THIS COURT ORDERS AND DECLARES** that the Premium Finance Agreement constitutes a valid and binding obligation of the Applicant enforceable against it and any trustee in bankruptcy or other successor in interest to the Applicant in accordance with the terms thereof, and that the payments made pursuant thereto do not and will not be deemed to constitute fraudulent preferences or other challengeable or reviewable transactions under any applicable law.
6. **THIS COURT ORDERS AND DECLARES** that the Premium Finance Agreement charging the unearned insurance premiums will constitute valid and binding obligations of the Applicant thereby creating a first-ranking security interest on such unearned insurance premiums, enforceable against it and any trustee in bankruptcy or successor in interest to the Applicant in accordance with the terms hereof, and that each charge so created does not and will not and every payment made or to be made pursuant to the Premium Finance Agreement is not and will not be deemed to constitute fraudulent preferences or other challengeable or reviewable transactions under applicable law.
7. **THIS COURT ORDERS** that, notwithstanding the Stay Period, if the Applicant defaults under the terms of the Premium Finance Agreement, CAFO shall and is hereby authorized to:
 - (a) cancel the policies of insurance referred to in the Premium Finance Agreement and any renewal or replacement policies; and
 - (b) apply for and receive all unearned insurance premiums, dividends and loss payments that reduce the unearned insurance premiums, referable to any such policies ("Unearned Premiums").
8. **THIS COURT ORDERS** that in the event that a refund of Unearned Premiums occurs as a result of the cancellation or termination of any of all of the policies for any reason,

- 5 -

CAFO will have absolute first-ranking priority to such Unearned Premiums, notwithstanding any other order of this Court to date or any claim to Unearned Premiums by any creditor of the Applicant, until all amounts owing to CAFO pursuant to the Premium Finance Agreement has been paid to CAFO in full.

9. **THIS COURT ORDERS** that the Tenth Report and the conduct and activities of the Monitor described therein be and are hereby approved.



Robert J. [unclear]
Registered Superior Court Judge

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-09-8662-00CL

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

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Lawyers for the Applicant

12361563.2

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 February 17, 2010)**

**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 February 23, 2010 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 April 30, 2010. This Affidavit is also in support of

Terrace Bay's request for authorization to enter into certain insurance premium financing arrangements.

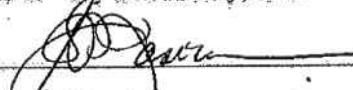
3. The Stay Period has been extended from time to time since the issuance of the Initial Order and most recently until February 26, 2010, pursuant to the Order of the Honourable Mr. Justice Morawetz dated November 20, 2009 (the "November 20 Order"), a copy of which is attached hereto as **Exhibit "B"**. In support of the November 20 Order, Terrace Bay filed the Affidavit of Taras Sawula sworn November 19, 2009 (the "Sawula Affidavit"), a copy of which, with Exhibits, is attached hereto as **Exhibit "C"**.
4. As set out in the Sawula Affidavit, on or about November 19, 2009, Terrace Bay agreed to a term sheet (the "Term Sheet") with the Province of Ontario (the "Province") providing for the financing of a \$25 million term loan which would ultimately facilitate Terrace Bay's exit from these CCAA proceedings and the re-start of Terrace Bay's operations.
5. Terrace Bay's term loan from the Province is conditional upon, among other things, the sanctioning and implementation of a Plan of Arrangement in these CCAA proceedings (a "Plan") and a number of other matters.
6. By Order of the Honourable Mr. Justice Morawetz dated December 18, 2009, a copy of which is attached hereto as **Exhibit "D"**, this Court approved a claims process (the "Claims Process") for Terrace Bay's creditors. The Claims Bar Date under the Claims Process was February 8, 2010. Terrace Bay and the Monitor are

in the process of reviewing claims which were filed pursuant to the terms of the Claims Process.

7. Accordingly, in order to permit Terrace Bay to complete the steps required to meet the requirements of the Term Sheet and continue to work towards its exit from these CCAA Proceedings, Terrace Bay requires an extension of the Stay Period until April 30, 2010. In particular, Terrace Bay, with the assistance of the Monitor, would utilize this extension to, among other things, complete financing, continue and conclude its administration of the Claims Process, negotiate and develop a Plan and facilitate creditor approval for a Plan and, ultimately, re-start its operations.
8. Terrace Bay will return to Court in due course to report on, and obtain approval for, other necessary steps moving forward.
9. Terrace Bay also seeks this Court's authorization to enter into a premium finance agreement with CAFO INC. ("CAFO") substantially in CAFO's standard form, as amended by the parties (the "Premium Finance Agreement"), a copy of which, with amendments agreed to by Terrace Bay, CAFO and the Monitor, is attached hereto as **Exhibit "E"**.
10. The Premium Finance Agreement would permit Terrace Bay to defer premium payments due on the renewal of its insurance policies, including property and general liability policies. The renewal of these policies is required in order to maintain and preserve the value of Terrace Bay's assets.

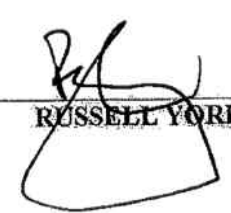
11. In particular, the Premium Financing Agreement would permit Terrace Bay to defer approximately 65 percent of the premiums due on renewal, which totals approximately \$2.2 million, with monthly installments of \$208,000 commencing in February 2010 and ending in August 2010.
12. CAFO has requested Court approval of the Premium Financing Agreement along with CAFO's first ranking priority interest in unpaid premiums and other relief that would permit CAFO to enforce its rights under the Premium Finance Agreement in the event of default.
13. This Affidavit is therefore made in support of Terrace Bay's motion for, among other things, an extension of the Stay Period until April 30, 2010 and authorization to enter into the Premium Financing Agreement and for no other or improper purpose.

SWORN BEFORE ME at the City of)
Thunder Bay, in the Province of Ontario)
this 17th day of February, 2010)



A Commissioner, etc.

B. PAUL JASIURA



RUSSELL YORK

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

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 February 17, 2010)

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Lawyers for the Applicant

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 April 26th, 2010)**

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD
(RETURNABLE APRIL 30, 2010)**

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