

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	THURSDAY, THE 16 th
	)	
JUSTICE MORAWETZ	)	DAY OF MAY, 2013

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

ORDER
(Re: Disputed D&O Claim, Interim Distribution and
Scheduling of Construction Lien Motion)

THIS MOTION, made by Terrace Bay Pulp Inc. (the “**Company**”), for an order

(a) declaring that the Disputed D&O Claim (as defined in the affidavit of Wolfgang Gericke sworn April 18, 2013 (the “**Gericke Affidavit**”)) is not a claim in respect of an obligation or liability incurred by a director or officer of the Company within the meaning of paragraph 16 of the Order of the Honourable Mr. Justice Morawetz dated January 25, 2012, as amended and restated (the “**Initial Order**”) and is therefore not a claim secured by the Directors’ Charge (as defined at paragraph 17 of the Initial Order);

(b) fully and finally discharging the Directors’ Charge and declaring that, other than in relation to and subject to the priority of the Administration Charge and the claims secured by the Administration Charge (as such term is defined at paragraph 28 of the Initial Order), the security held by the Trustee (as defined in the Gericke Affidavit) has priority

over all other claims and security, liens and encumbrances of any kinds against the Sale Proceeds and the Additional Cash on Hand (as such terms are defined in the Gericke Affidavit), including, without limitation, the Mill Property Lien Claims (as defined in the Gericke Affidavit) and permitting an interim distribution of the Sale Proceeds and Additional Cash on Hand, in the amount of \$1,825,000, to be paid to the Trustee; and (c) approving the Further Amended and Restated Report of the Monitor, Ernst & Young Inc. (the “**Monitor**”) dated April 19, 2013 (the “**Further Amended and Restated Eighth Report**”), and the conduct and activities of the Monitor as described therein; was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Gericke Affidavit, the Supplementary affidavit of Wolfgang Gericke sworn May 10, 2013, the Second Supplementary affidavit of Wolfgang Gericke sworn May 14, 2013 and the Exhibits thereto, the factum of the Company dated May 1, 2013, the factum of the Her Majesty the Queen in right of Ontario as represented by the Ministry of Labour (the “**Crown**”) dated May 8, 2013, the Further Amended and Restated Eighth Report, the Ninth Report of the Monitor dated May 14, 2013 and the Order of this Court made on July 19, 2012 (the “**AVTB Sale Approval Order**”), and on hearing the submissions of counsel for the Company, the Monitor, and the Crown, no one appearing for any other person on the service list although properly served.

DEFINED TERMS

1. **THIS COURT ORDERS** that all terms not otherwise defined herein have the same meaning as in the Gericke Affidavit.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Further Amended and Restated Eighth Report is hereby abridged so that this Motion is properly returnable today and that any requirement for service of the Notice of Motion, the Motion Record and the Further Amended and Restated Eighth Report on any parties other

than the parties actually served with the Notice of Motion, Motion Record and the Further Amended and Restated Eighth Report is hereby dispensed with and that service in the manner effected by the Company is validated in all respects.

DISPUTED D&O CLAIM

3. **THIS COURT ORDERS AND DECLARES** that the Disputed D&O Claim is not a claim in respect of an obligation or liability incurred by a director or officer of the Company within the meaning of paragraph 16 of the Initial Order and is therefore not a claim secured by the Directors' Charge.

INTERIM DISTRIBUTION

4. **THIS COURT ORDERS AND DECLARES** that the Directors' Charge be and is fully and finally discharged.

5. **THIS COURT ORDERS AND DECLARES** that, other than in relation to and subject to the priority of the Administration Charge and the claims secured by the Administration Charge, the security held by the Trustee has priority over all other claims and security, liens and encumbrances of any kinds against the Sale Proceeds and the Additional Cash on Hand, including, without limitation, the Mill Property Lien Claims.

6. **THIS COURT ORDERS** that the Monitor be and is hereby authorized and directed to release to the Company from the Net Proceeds (as defined in the AVTB Sales Approval Order) held by the Monitor pursuant to the AVTB Sales Approval Order, and the Company be and is hereby authorized and directed to pay, the sum of \$1,825,000 (the "**Interim Distribution**") as an interim distribution on account of the obligations of the Company under the Plan Note (as defined in the Indenture (as defined below)), which amount shall be paid, held and disbursed by the Company as follows:

- (a) the sum of \$1,632,020.11 to the Trustee pursuant to the Note Indenture dated as of September 15, 2012 (the "**Indenture**"), in trust for the Beneficiaries (as defined therein), for distribution as soon as practicable by the Trustee to Beneficiaries under the Plan Note or on a pro rata basis in accordance with the Plan Note, the Plan (as defined in the Indenture) and the Indenture; and

- (b) the sum of \$192,979.89 (the “**Disputed Claim Distribution Amount**”) being the pro rata share of the Interim Distribution referable to the Disputed Claim of John Claes S.A. (“**Claes**”), shall be held by the Monitor, in a separate trust account, in trust for Claes and/or the Beneficiaries, as applicable, pending the final determination of the Disputed Claim of Claes in accordance with the Plan and the Claims Process (each as defined in the Indenture), and, following the final determination of such Disputed Claim, the Monitor is empowered, authorized and directed to release the Disputed Claim Distribution Amount to the Company and the Company is authorized and directed to pay the Disputed Claim Distribution Amount shall be released by the Monitor to the Company and paid by the Company to the Trustee, in trust, for distribution to Claes, to the extent it is entitled to receive a further distribution on account of its New Proven Claim (as defined in the Indenture), if any, and, if applicable, (ii) the other Beneficiaries in accordance with the Plan Note, the Plan and the Indenture.

APPROVAL OF MONITOR’S REPORT

7. **THIS COURT ORDERS** that the Further Amended and Restated Eighth Report and the conduct and activities of the Monitor as described therein be and are hereby approved.

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



MAY 16 2013



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.

Court File No. CV-12-9566-00CL

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

(Re: Disputed D&O Claim, Interim Distribution and
Scheduling of Construction Lien Motion)

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