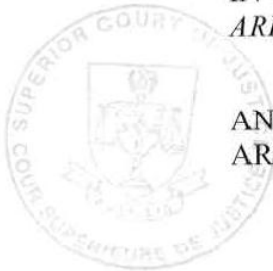


ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	MONDAY, THE 29 TH
	)	
JUSTICE MORAWETZ	)	DAY OF OCTOBER, 2012

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: Approval of D&O Claims Procedure and Stay Extension)

THIS MOTION, made by Terrace Bay Pulp Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order (a) approving a procedure for the identification, resolution and barring of certain claims against its directors and officers, and authorizing and directing Ernst & Young Inc., in its capacity as court-appointed monitor of the Applicant (the "**Monitor**"), to administer the claims procedure in accordance with its terms, (b) approving an extension of the stay of proceedings, provided for at paragraph 10 of the Order of this Court dated January 25, 2012, as amended and restated (the "**Initial Order**") from October 31, 2012 to April 30, 2013, (c) setting aside the dismissals of the Dismissed Construction Lien Actions (as that term is defined in the affidavit of Wolfgang Gericke sworn October 23, 2012) and directing and authorizing the registrar of the court office in Thunder Bay, Ontario, to take such steps, or to refrain from taking any such steps,

so as to preserve the status of the Dismissed Construction Lien Actions and to cause such Dismissed Construction Lien Actions not to be dismissed, subject to the terms of the stay of proceedings in this CCAA proceeding, and (d) approving the Sixth Report of the Monitor dated July 12, 2012 (the “**Sixth Report**”), the Supplemental Sixth Report of the Monitor dated July 16, 2012 (the “**Supplemental Sixth 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 Notice of Motion, the Affidavit of Wolfgang Gericke sworn October 23, 2012 (the “**Gericke Affidavit**”), and the Exhibits thereto, and the Seventh Report of the Monitor dated October 23, 2012 (the “**Seventh Report**”), and on hearing the submissions of counsel for the Applicant and counsel for the Monitor, no other parties appearing though properly served.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Seventh 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 Seventh Report on any parties other than the parties actually served with the Notice of Motion, Motion Record and the Seventh Report is hereby dispensed with and that service in the manner effected by the Applicant is validated in all respects.

DEFINITIONS

2. **THIS COURT ORDERS** that for the purposes of this Order, the following terms shall have the following meanings:

- (a) “**Administration Charge**” means the Administration Charge as defined in the Initial Order;
- (b) “**Business Day**” means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (c) “**CCAA Proceeding**” means this CCAA proceeding commenced by the Applicant pursuant to the Initial Order;

- (d) **“Claimant”** means a Person wishing to assert a D&O Claim;
- (e) **“Claims Bar Date”** means 5:00 p.m. (Toronto time) on December 10, 2012, or any later date ordered by the Court;
- (f) **“Claims Officer”** means any individual as may be appointed to act as a Claims Officer pursuant to paragraph 11 of this Order for the purposes of the Claims Procedure;
- (g) **“Claims Package”** means a package of information to be provided to Notice Parties by the Monitor, which package shall include a copy of this Order, without attachments, an Instruction Letter and a Proof of D&O Claim;
- (h) **“Claims Procedure”** means the procedure outlined in this Order for the determination of D&O Claims, including the schedules to this Order;
- (i) **“D&O Claims Procedure Order”** means this Order;
- (j) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (k) **“D&O Claim”** means any existing or future right or claim of any Person against one or more of the Directors and/or Officers of the Applicant in respect of any obligations and liabilities which have arisen or may arise or was or may be incurred, in his or her capacity as Director or Officer, after the commencement of the CCAA Proceeding, and which have been indemnified by the Applicant pursuant to paragraph 16 of the Initial Order (including in respect of any environmental condition that arose or environmental damage that occurred after January 25, 2012, and excluding, for greater certainty, in respect of any environmental condition that arose or environmental damage that occurred prior to January 25, 2012), except to the extent that, with respect to any Officer and/or Director, such right or claim arose or arises or was or may be incurred as a result of such Director and/or Officer’s gross negligence or wilful misconduct;
- (l) **“Dispute Package”** means, with respect to any D&O Claim, a copy of the related Proof of D&O Claim, Notice of Revision or Disallowance and Notice of Dispute;

- (m) **“Director”** means anyone who was or is (or is deemed to be or have been) director of the Applicant;
- (n) **“Filing Date”** means January 25, 2012;
- (o) **“Instruction Letter”** means a letter to Claimants regarding the Claims Procedure containing instructions regarding the completion and return of a Proof of D&O Claim, substantially in the form attached as **Schedule “C”** hereto;
- (p) **“Monitor’s Website”** means www.ey.com/ca/terracebay;
- (q) **“Notice Party”** means each Person:
 - i. listed in the accounts payable register of the Applicant as being a creditor of such Applicant as at the Filing Date;
 - ii. included in the definition of Non-Transferred Employees (as that term is defined in the Gericke Affidavit);
 - iii. which is a governmental agency listed in **Schedule “A”** attached hereto;
 - iv. included in the service list for this motion; and
 - v. who has notified the Monitor in writing prior to the Claims Bar Date that such Person has or wishes to assert a D&O Claim;in each case, as identified by the Applicant to the Monitor on a written schedule to be provided by the Applicant to the Monitor as provided for in paragraph 5 of this Order.
- (r) **“Notice of Dispute”** means a notice delivered to the Monitor by a Claimant disputing a Notice of Revision or Disallowance, which notice shall be substantially in the form attached hereto as **Schedule “F”** and shall set out the reasons for the dispute;
- (s) **“Notice of Revision or Disallowance”** means a notice informing a Claimant that the Monitor has revised or disallowed all or any part of such Claimant’s D&O Claim, which notice shall be substantially in the form attached hereto as **Schedule “E”** and shall set out the reasons for such revision and/or disallowance;

- (t) **“Notice to Creditors”** means the notice publicizing this Claims Procedure to be published in accordance with this Order, substantially in the form of the notice attached as **Schedule “B”**;
- (u) **“Officer”** means anyone who was or is (or is deemed to be or have been) an officer of the Applicant;
- (v) **“Person”** means any individual, general or limited partnership, firm, association, joint venture, trust, entity, corporation, limited or unlimited liability company, unincorporated organization, trade union, pension plan administrator, pension plan regulator, governmental authority or agency, employee or other association, or any other juridical entity howsoever designated or constituted;
- (w) **“Proof of D&O Claim”** means the form to be completed and filed by a Claimant setting forth its purported D&O Claim, substantially in the form attached as **Schedule “D”**;
- (x) **“Proven D&O Claim”** means the amount and classification of any Claimant’s D&O Claim as finally determined in accordance with this Claims Procedure; and
- (y) **“Unasserted D&O Claim”** means a D&O Claim for which a Proof of D&O Claim was not delivered to the Monitor by the Claims Bar Date.

PUBLICATION AND NOTICE TO CREDITORS

3. **THIS COURT ORDERS** that the Notice to Creditors is hereby approved.
4. **THIS COURT ORDERS** that the Monitor shall take all reasonable steps to cause the Notice to Creditors to be published in each of the Globe and Mail (national edition) and the Chronicle-Journal by November 12, 2012, or as soon as practicable thereafter.
5. **THIS COURT ORDERS** that on or before 5:00 p.m. (Toronto time) on November 2, 2012, the Applicant shall provide to the Monitor, for use by the Monitor in communicating with Notice Parties pursuant to this Order, a written schedule of the Notice Parties in a form satisfactory to the Monitor, which schedule shall include the most current address information of

such Persons possessed by the Applicant and, where possible, the email address information for such Persons.

6. **THIS COURT ORDERS** that the Monitor shall send a copy of the Claims Package to any Person identified by the Applicant as a Notice Party by either ordinary mail to the last known address of such Person as shown by the books and records of the Applicant, or, where an email address for such Person has been provided to the Monitor or is included on the service list in this proceeding, by email transmission, and that the Monitor shall be entitled to rely on the schedules, records and other information provided to it by the Applicant regarding the address of the Notice Parties entitled to receive a Claims Package and the Monitor shall have or be under no personal liability for its reliance on such information or for its failure to send a Claims Package to any Person.

7. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Creditors, Instruction Letter and Proof of D&O Claim to be posted on the Monitor's Website from on or around November 6, 2012 until the Claims Bar Date.

CLAIMS BAR PROCESS

8. **THIS COURT ORDERS** that a Claimant wishing to assert a D&O Claim shall deliver to the Monitor a completed and signed Proof of D&O Claim, together with all relevant supporting documentation in respect of such D&O Claim, so that the Proof of D&O Claim is received by the Monitor on or before the Claims Bar Date.

9. **THIS COURT ORDERS** that the D&O Claims of all Persons who do not deliver to the Monitor a Proof of D&O Claim so that the Proof of D&O Claim is received by the Monitor on or before the Claims Bar Date shall be forever extinguished and barred from and after the Claims Bar Date and all such Persons shall be deemed to have fully and finally released and discharged any and all of such D&O Claims.

10. **THIS COURT ORDERS** that the Directors and Officers shall be released and discharged from any and all Unasserted D&O Claims, including, without limitation, any and all demands, claims, actions, causes of actions, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, charges and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any

Claimant may have been entitled to assert as a D&O Claim and including, without limitation, any and all D&O Claims in respect of potential statutory liabilities, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction or dealing or other occurrence existing or taking place prior to the Claims Bar Date.

CLAIMS OFFICER

11. **THIS COURT ORDERS** that the Monitor be and is hereby authorized to either (a) appoint one or more individuals, or (b) apply to this Court for an order seeking the appointment of one or more individuals, in each instance, in its discretion, to act as a Claims Officer to determine the validity, classification and amount of disputed D&O Claims in accordance with the Claims Procedure and that any Claims Officer shall be entitled to the benefits of and rely upon the Administration Charge as security for his or her reasonable professional fees and disbursements in connection with such appointment as Claims Officer.

12. **THIS COURT ORDERS** that the Claims Officer shall be entitled to reasonable compensation for the performance of its responsibilities as set forth in this Order, and such other orders as may be made by this Court in relation to the Claims Procedure, on terms customarily charged by a claims officer in performing comparable functions, such terms as agreed to between the Monitor and the Claims Officer, or as ordered by this Court, which compensation may be calculated on the basis of an agreed upon hourly rate and/or daily or half daily fee basis and shall include the reasonable disbursements incurred by the Claims Officer. Subject to the approval of the Monitor, the fees and disbursements of the Claims Officer shall be paid by the Applicant forthwith upon receipt of each invoice tendered by the Claims Officer.

13. **THIS COURT ORDERS** that subject to any further order of this Court, the Claims Officer shall determine the manner, if any, in which evidence may be brought before the Claims Officer in determining the validity, classification and amount of any D&O Claim, as well as any other procedural matters that may arise in respect of the Claims Officer's determination of the validity, classification and amount of any D&O Claim.

CLAIMS RESOLUTION PROCESS

14. **THIS COURT ORDERS** that following delivery of one or more Proofs of D&O Claim to the Monitor on or prior to the Claims Bar Date, unless this Court orders otherwise, the following provisions shall apply to each Proof of D&O Claim and related D&O Claim:

- (a) The Monitor shall review each Proof of D&O Claim received by the Claims Bar Date and may accept, revise or disallow all or any part or parts of the D&O Claim. At any time, the Monitor may request additional information with respect to and conduct investigations regarding any D&O Claim;
- (b) The Monitor may attempt to consensually resolve the validity, classification and amount of any D&O Claim with the Claimant prior to accepting, revising or disallowing such D&O Claim;
- (c) If the Monitor determines to revise or disallow a D&O Claim the Monitor shall send a Notice of Revision or Disallowance to the Claimant. The failure by the Monitor to send the Claimant a Notice of Revision or Disallowance shall not result in any D&O Claim being accepted or being deemed to be accepted;
- (d) If a Claimant disputes the classification or amount of a D&O Claim as set forth in a Notice of Revision or Disallowance and such Claimant intends to contest the Notice of Revision or Disallowance, then such Claimant shall deliver a Notice of Dispute so that such Notice of Dispute is received by the Monitor by no later than 5:00 p.m. (Toronto time) on the day which is fourteen days (14) after the date of the Notice of Revision or Disallowance, or such later date as the Monitor may agree in writing or the Court may order. The Notice of Dispute shall contain the particulars of the dispute; and
- (e) Any Claimant who fails to deliver a Notice of Dispute to the Monitor by the deadline set forth in paragraph 14(d) shall be deemed to accept the validity, classification and amount of its D&O Claim as set out in the Notice of Revision or Disallowance and the D&O Claim as set out in the Notice of Revision or Disallowance shall constitute a Proven D&O Claim.

15. **THIS COURT ORDERS** that upon receipt of a Notice of Dispute, the Monitor may, in its discretion:

- (a) Investigate the D&O Claim and the reasons for the dispute, including, without limitation, by communication with the Claimant, the Applicant and the applicable Directors and Officers;
- (b) Attempt to consensually resolve the classification and amount of the D&O Claim with the Claimant;
- (c) Deliver a Dispute Package to the Claims Officer together with instructions regarding the issues to be determined by the Claims Officer in relation to the D&O Claim; and/or
- (d) Schedule a 9:30 a.m. appointment with the Court for the purpose of scheduling a motion to resolve or determine the D&O Claim or any issues relating to the D&O Claim. In relation to any such motion the Claimant shall be deemed to be the applicant and the Monitor shall be deemed to be the respondent.

16. **THIS COURT ORDERS** that upon receipt of a Dispute Package, the Claims Officer shall establish a process to determine the issues that the Monitor has requested be determined by the Claims Officer in relation to the validity, classification and/or amount of the D&O Claim, which may include the scheduling of one or more hearings, and the Claims Officer, as soon as practicable, shall notify the Monitor, Applicant, the Claimant and any affected Directors and/or Officers of his or her determination of such D&O Claim. The Claims Officer shall determine the parties, if any, in addition to the Applicant, Monitor and Claimant, who shall be entitled to participate in any hearing(s) scheduled by the Claims Officer.

17. **THIS COURT ORDERS** that within ten (10) days of receiving notification of the Claims Officer's determination of a Claimant's D&O Claim, any of the Monitor, the affected Directors and/or Officers, and/or the Claimant may appeal the Claims Officer's determination to this Court by serving upon the Monitor, and/or the Claimant and/or the affected Directors and/or Officers as applicable, and filing with this Court, a notice of motion returnable on a date to be fixed by this Court seeking to appeal the determination of the Claims Officer. If an appeal is not

filed within such period then the Claims Officer's determination shall be deemed to be final and binding and shall be a Proven D&O Claim.

NOTICES AND COMMUNICATIONS

18. **THIS COURT ORDERS** that any notice or other communication (including, without limitation, a Proof of D&O Claim) to be given under this Order by a Claimant to the Monitor or the Applicant shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if given by ordinary mail, courier, personal delivery or by e-mail or facsimile transmission addressed to:

The Monitor

Ernst & Young Inc., as Monitor of Terrace Bay Pulp Inc.
222 Bay Street, 24th floor
Toronto-Dominion Centre
P.O. Box 251
Toronto, ON M5K 1J7

Attention: Naomi Lieberman
Facsimile: 416-943-3300
Email: naomi.r.lieberman@ca.ey.com

With a copy to:

McMillan LLP
Brookfield Place, Box 747
4400-181 Bay Street
Toronto, ON M5J 2T7

Attention: Sheryl E. Seigel
Facsimile: 416-865-7048
Email: sheryl.seigel@mcmillan.ca

The Applicant

Blake, Cassels & Graydon LLP
Suite 4000, Commerce Court West
199 Bay Street
Toronto, ON M5L 1A9

Attention: Kristina Desimini
Facsimile: 416-863-2653
Email: kristina.desimini@blakes.com

19. **THIS COURT ORDERS** that the Monitor may send any document pursuant to this Order by electronic (email) transmission, ordinary mail, registered mail, courier or fax transmission. A Claimant shall be deemed to have received any document sent by the Monitor pursuant to this Order two (2) Business Days after the document is sent by any method of mail and one (1) Business Day after the document is sent by courier, email or fax transmission provided that any courier delivery or ordinary mail or any electronic or facsimile transmission is sent prior to 5:00 p.m. (Toronto time) on such Business Day. Documents shall not be sent by ordinary or registered mail during a postal strike or work stoppage of general application.

AID AND ASSISTANCE OF OTHER COURTS

20. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

GENERAL PROVISIONS

21. **THIS COURT ORDERS** that the Claims Procedure shall govern the identification, resolution and barring of D&O Claims and shall be administered by the Monitor.

22. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to take such actions and fulfill such roles as are contemplated by this Order.

23. **THIS COURT ORDERS** that the Monitor shall use reasonable discretion as to the adequacy of completion and execution of any document completed and executed pursuant to this Order and, where the Monitor is satisfied that any matter to be proven under this Order has been adequately proven, the Monitor may waive strict compliance with the requirements of this Order as to the completion and execution of documents.

24. **THIS COURT ORDERS** that the Monitor may apply to this Court for advice and directions in connection with the discharge or variation of its powers and duties under this Order or in relation to the Claims Procedure.
25. **THIS COURT ORDERS** that reference to the singular includes the plural, to the plural includes the singular, and to any gender includes the other gender.
26. **THIS COURT ORDERS** that the Claims Procedure shall in no way prejudice the rights and remedies of the Officers and Directors under any existing Directors and Officers insurance policy.
27. **THIS COURT ORDERS** that for the purposes of this Order, all D&O Claims which are denominated in a currency other than Canadian dollars shall be converted to and constitute obligations in Canadian dollars, such calculation to be done by the Monitor, using the Bank of Canada noon spot rate of exchange for exchanging the currency to Canadian dollars on the Filing Date.
28. **THIS COURT ORDERS** that the Monitor shall be permitted to provide copies of the Proofs of D&O Claim it has received, as well as other information concerning the nature and particulars of the D&O Claims asserted, to the Applicant and to any Director or Officer in respect of whom a D&O Claim was made, and their respective counsel.
29. **THIS COURT ORDERS** that the provisions of this Order concerning D&O Claims including, without limitation, the provisions concerning the Claims Bar Date and its effect, and the determinations of the Monitor, the Claims Officer and this Court in respect of any D&O Claims, shall survive the bankruptcy of the Applicant and shall be binding on any trustee in bankruptcy appointed in respect of the Applicant.
30. **THIS COURT ORDERS** that in the event that the day on which any notice or communication required to be delivered pursuant to the Claims Procedure is not a Business Day then such notice or communication shall be required to be delivered on the next Business Day.

CONSTRUCTION LIEN ACTIONS

31. **THIS COURT ORDERS** and directs that the dismissals of the Dismissed Construction Lien Actions and the lien action of FRP Systems Inc. ("FRP") are hereby set aside.

32. **THIS COURT HEREBY DIRECTS** and authorizes the registrar of the court office in Thunder Bay, Ontario, to take such steps, or to refrain from taking any such steps, so as to preserve the status of the Dismissed Construction Lien Actions and the lien actions of FRP and Vector Construction Ltd. ("Vector") and to cause such Dismissed Construction Lien Actions and the lien actions of FRP and Vector not to be dismissed, subject to the terms of the stay of proceedings in this CCAA proceeding.

APPROVAL OF MONITOR'S REPORTS AND STAY EXTENSION

33. **THIS COURT ORDERS** that the Sixth Report and the Supplemental Sixth Report, and the conduct and activities of the Monitor as described therein are hereby approved.

34. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order) is hereby extended until and including April 30, 2013.

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



OCT 29 2012


A. Anissimova
Registrar