

**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

**NOTICE OF MOTION
(Re: Stay of OHSA Proceedings, Disputed D&O Claim, Interim Distribution and
Scheduling of Construction Lien Motion)**

Terrace Bay Pulp Inc. (the "**Applicant**") will make a motion to a Judge presiding over the Commercial List on Wednesday, the 15th day of May, 2013 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, 8th Floor, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an Order substantially in the form attached:

- (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 Applicant 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);

and is therefore not a claim secured by the Directors' Charge (as defined at paragraph 17 of the Initial Order);

- (b) scheduling a motion in which the Applicant will seek an Order pursuant to section 47(1) of the *Construction Lien Act* (Ontario), among other things, authorizing and directing the Land Registry Office to discharge the Non-Mill Liens (as defined in the Gericke Affidavit) and vacating any and all registrations and claims for lien related to the Non-Mill Liens;
- (c) 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) (collectively, the "**Subordinate Claims**", which definition, for clarity, does not include any claims, liabilities or obligations secured by the Administration Charge) and permitting an interim distribution of the Sale Proceeds and Additional Cash on Hand, in amounts to be determined by this Court, to be paid to the Trustee without regard to and in priority to the Subordinate Claims; and
- (d) declaring that the proceeding known as *R. v. Terrace Bay Pulp Inc. & Gino Leblanc*, brought by the Ministry of Labour, Legal Services Branch against the

Applicant, commenced by Information sworn on January 10, 2012 in the Ontario Provincial Offences Court (Thunder Bay) (the “**First OHSA Proceeding**”), and the proceeding known as *R. v. Terrace Bay Pulp Inc., Venshore Mechanical Ltd., Joseph Mykietyn, Arthur Szczepaniak & Alain Zborowski*, brought by the Ministry of Labour, Legal Services Branch against the Applicant, commenced by Information sworn October 15, 2012 in the Ontario Provincial Offences Court (Thunder Bay) and subsequently transferred to Ontario Provincial Court (Thunder Bay) (the “**Second OHSA Proceeding**”, together with the First OHSA Proceeding, the “**OHSA Proceedings**”)), in connection with alleged violations under the *Occupational Health and Safety Act* (Ontario), are stayed, and, if required, granting an interim stay of the OHSA Proceedings pending the disposition of such motion;

- (e) 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; and
- (f) such further and other relief as the Applicant may request and this Court shall deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) the reasons described in the Gericke Affidavit;
- (b) the reasons described in the factum of the Applicant dated May 1, 2013 (the “**Factum**”)

- (c) the reasons described in the Further Amended and Restated Eighth Report;
- (d) sections 11, 11.02 & 11.1(4) of the CCAA;
- (e) section 100 of the *Courts of Justice Act*, R.S.O. 1990, C.C.43;
- (f) Rules 2.03, 3.02, and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (g) such further and other grounds as counsel may advise.

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

- (a) the Gericke Affidavit;
- (b) the Factum;
- (c) the Further Amended and Restated Eighth Report;
- (d) the pleadings and proceedings herein; and
- (e) such further and other materials as counsel may advise and this Court may permit.

Date: May 1, 2013

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**TO: THE SERVICE LIST AS ATTACHED
TO THE MOTION RECORD**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	WEDNESDAY, THE 15 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: Stay of OHSA Proceedings, 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 proceeding known as *R. v. Terrace Bay Pulp Inc. & Gino Leblanc*, brought by the Ministry of Labour, Legal Services Branch against the Company, commenced by Information sworn on January 10, 2012 in the Ontario Provincial Offences Court (Thunder Bay) (the "**First OHSA Proceeding**"), and the proceeding known as *R. v. Terrace Bay Pulp Inc., Venshore Mechanical Ltd., Joseph Mykietyn, Arthur Szczepaniak & Alain Zborowski*, brought by the Ministry of Labour, Legal Services Branch against the Company, commenced by Information sworn October 15, 2012 in the Ontario Provincial Offences Court (Thunder Bay) and subsequently transferred to Ontario Provincial Court (Thunder Bay) (the "**Second OHSA Proceeding**", together with the First OHSA Proceeding, the "**OHSA Proceedings**")), in

connection with alleged violations under the *Occupational Health and Safety Act* (Ontario), are stayed, and, if required, granting an interim stay of the OHS Proceedings pending the disposition of the within motion; (b) 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); (c) 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 amounts to be determined by this Court, to be paid to the Trustee; and (d) 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 and the Exhibits thereto, the factum of the Company dated May 1, 2013 and the Further Amended and Restated Eighth Report, and on

hearing the submissions of counsel for the Company, the Monitor and the Ontario Ministry of Labour (Legal Services Branch), 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.

OHSA PROCEEDINGS

3. **THIS COURT ORDERS AND DECLARES** that the OHSA Proceedings are hereby stayed as against the Company.

DISPUTED D&O CLAIM

4. **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

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

6. **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.

7. **THIS COURT ORDERS** that the Company and the Monitor are hereby authorized and directed to make an interim distribution of the Sale Proceeds and Additional Cash on Hand **[in the amount of •]**, to be paid to the Trustee.

APPROVAL OF MONITOR'S REPORT

8. **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.

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Proceeding commenced at Toronto

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