

**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 October 28, 2013)
(Re: Stay Extension)**

October 23, 2013

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SUPERIOR COURT OF JUSTICE
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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 October 28, 2013)
(Re: Stay Extension)**

I N D E X

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TAB 1

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
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OF TERRACE BAY PULP INC.

Applicant

**NOTICE OF MOTION
(STAY EXTENSION)**

Terrace Bay Pulp Inc. (the "**Applicant**") will make a motion to a Judge presiding over the Commercial List on Monday, the 28th day of October, 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 as **Tab 3** to the Applicant's Motion Record:

- (a) abridging the time for service of the Notice of Motion, the Motion Record and the Tenth Report of the Monitor, Ernst & Young Inc. (the "**Monitor**") and declaring that the motion is properly returnable on October 28, 2013;
- (b) approving an extension of the stay of proceedings (the "**Stay Period**"), provided for at paragraph 10 of the Order of the Honourable Mr. Justice Morawetz dated January 25, 2012 (as amended and restated, the "**Initial Order**") to April 30, 2014;

- (c) approving the Ninth Report of the Monitor dated May 14, 2013 (the “**Ninth Report**”), the Tenth Report, and the conduct and activities of the Monitor as described therein; and
- (d) 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 Affidavit of Wolfgang Gericke sworn October 23 2013 (the “**Gericke Affidavit**”);
- (b) the reasons described in the Ninth Report and the Tenth Report;
- (c) the Applicant has been and continues to operate in good faith and with due diligence, with a view to completing the sale of the Non-Mill Property in accordance with the Refreshed Sale Process (as these terms are defined in the Gericke Affidavit);
- (d) sections 11 & 11.02 of the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36;
- (e) section 101 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 Ninth Report and the Tenth Report;

- (c) the pleadings and proceedings herein; and
- (d) such further and other materials as counsel may advise and this Honourable Court may permit.

Date: October 23, 2013

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Lawyers for the Applicant

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

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

**NOTICE OF MOTION
(STAY EXTENSION)**

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TAB 2

**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 WOLFGANG GERICKE
(Sworn October 23, 2013)**

I, Wolfgang Gericke, of the City of Thunder Bay, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:

Introduction

1. I am the President and sole director of Terrace Bay Pulp Inc. ("**Terrace Bay**" or the "**Company**") and, as such, have knowledge of the matters deposed to in this affidavit. Where this affidavit is not based on my direct personal knowledge, it is based on information and belief and I verily believe such information to be true.

Overview of Relief Sought

2. This affidavit is sworn in support of the Company's motion for an order:

- (a) abridging the time for service of the Notice of Motion, the Motion Record and the Tenth Report of the Monitor, Ernst & Young Inc. (the “**Monitor**”) (the “**Tenth Report**”) and declaring that the motion is properly returnable on October 28, 2013;
 - (b) approving an extension of the stay of proceedings (the “**Stay Period**”), provided for at paragraph 10 of the Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 25, 2012 (as amended and restated, the “**Initial Order**”) to April 30, 2014;
 - (c) approving the Ninth Report of the Monitor dated May 14, 2013, the Tenth Report, and the conduct and activities of the Monitor as described therein; and
 - (d) such further and other relief as the Company may request and this Court shall deem just.
3. The purpose of this affidavit is to provide the Court with the Company and the Monitor’s next steps for the sale of the Non-Mill Property (defined below), and to support the extension of the Stay Period in order to complete this sales process.

Background

4. On January 25, 2012, Terrace Bay sought and obtained protection from its creditors under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”),

pursuant to the Initial Order. In accordance with the Initial Order, Ernst & Young Inc. was appointed Monitor of the Company.

5. Pursuant to the Initial Order, Terrace Bay was authorized to conduct a sales process to solicit offers for a sale of all or substantially all of the assets and properties of the Company used in connection with the pulp manufacturing business (the “**Mill Property**”).
6. On July 5, 2012, the Company entered into an asset purchase agreement with AV Terrace Bay Inc. for the sale of the Mill Property, and this agreement was approved by the Court in a decision released by the Honourable Mr. Justice Morawetz on July 19, 2012 (the “**Mill Property Purchase Agreement**”). The transaction contemplated by the Mill Property Purchase Agreement closed on July 23, 2012.
7. In addition to the sale of the Mill Property, the Initial Order also authorized the Company, with the assistance of the Monitor, to market for sale certain ancillary assets not used in connection with the Company’s business (as further detailed below, the “**Non-Mill Property**”).
8. As set out in greater detail in the further amended and restated Eighth Report of the Monitor dated April 19, 2013, the Monitor undertook various activities with respect to implementing a sale of the Non-Mill Property, including:
 - (a) preparing an information memorandum;
 - (b) preparing marketing materials including a professional video;

- (c) arranging for advertising in the National Edition of the *Globe and Mail*, the *Thunder Bay Chronicle-Journal*, and the *Terrace Bay/Schrieber News*;
 - (d) preparing a form letter of intent; and
 - (e) providing information to prospective bidders.
9. As set out in greater detail in the Tenth Report, the Monitor received letters of intent from a number of parties, which ultimately led to an executed purchase agreement on May 22, 2013 (the “**Non-Mill Property Purchase Agreement**”).
10. I am advised by Kristina Desimini of Blake, Cassels & Graydon LLP, lawyers for Terrace Bay (“**Company Counsel**”), that the Non-Mill Property Purchase Agreement provided, among other terms, that completion of the sale was conditional on the purchaser satisfying itself regarding certain due diligence items by an agreed upon date (the “**Due Diligence Date**”). Pursuant to the Non-Mill Property Purchase Agreement, the purchaser was entitled to act in its sole discretion in deciding whether or not to waive its due diligence condition (the “**Due Diligence Condition**”).
11. I am advised by Company Counsel that, at the purchaser’s request, the Due Diligence Date was extended on two occasions. Subsequently, on September 24, 2013, the purchaser, through its legal counsel, informed Terrace Bay that its due diligence investigations had not been satisfied, it did not wish to proceed with waiving the Due Diligence Condition, and as a result the Non-Mill Property Purchase Agreement was automatically terminated.

Next Steps in the Sale of the Non-Mill Property

12. The Non-Mill Property includes, but is not limited to, the following:
- (a) a 9-hole golf course (the “**Golf Course**”) located in the Township of Terrace Bay (the “**Township**”). The Golf Course is adjacent to the Aguasabon River and Lake Superior and is located in the developed centre of the Township. Next to the Golf Course are lands that could be subdivided for residential use;
 - (b) an airstrip (the “**Airstrip**”) that is currently being leased to the Township. The Airstrip, which is approximately 199 acres in area, is north of the centre of the Township and abuts the mill site;
 - (c) approximately 800 acres of vacant lands with approximately 5km lakefront exposure (the “**Eastern Lands**”). These lands are located to the south and east of the centre of the Township and are located directly on Lake Superior; and
 - (d) lands, totaling approximately 3,600 acres to the south and west of the mill site (the “**Western Lands**”).
13. As a result of the termination of the Non-Mill Property Purchase Agreement, the Company and the Monitor consider it worthwhile to conduct a limited re-canvassing of the market for the Non-Mill Property. To this end, the Company and the Monitor will undertake the following activities:

- (a) contacting each party that previously submitted a letter of intent to determine their interest in relation to the Non-Mill Property and inviting them to confirm their interest in proceeding under the letter of intent as submitted or to deliver a new letter of intent;
- (b) contacting parties who signed non-disclosure agreements to let them know that the Non-Mill Property is still available for sale, to determine if they have an interest in the Non-Mill Property and to invite them to submit a letter of intent;
- (c) as appropriate, contacting other parties that have approached the Monitor in respect of purchasing the Non-Mill Property;
- (d) informing all of the foregoing parties that the deadline for submitting, or, if applicable, confirming, a letter of intent is December 13, 2013; and
- (e) placing an advertisement in the National Edition of the *Globe & Mail* advising potentially interested parties of the December 13, 2013 deadline for the submission of a letter of intent to purchase the Non-Mill Property

(all actions referred to above shall hereafter be referred to collectively as the **“Refreshed Sale Process”**).

14. The Company and the Monitor believe that the Refreshed Sale Process will allow Terrace Bay to refresh its canvassing of the market and better position it to select a purchaser for the Non-Mill Property and maximize recoveries to the Company's creditors.

Revised Cash Flow

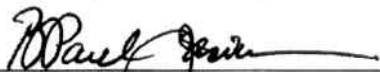
15. Attached as Appendix "B" to the Tenth Report is Terrace Bay's revised cash flow forecast through to May 3, 2014 (the "**Revised Cash Flow Forecast**"). As set out in the Revised Cash Flow Forecast, Terrace Bay is projected to have approximately \$498,000 on hand at May 3, 2014, excluding trust funds held by the Monitor.
16. The Company has sufficient resources to continue the sale of the Non-Mill Property in accordance with the Refreshed Sale Process, and seeks an extension of the Stay Period until April 30, 2014. The Company will return to Court before that date for approval of a transaction or some alternative relief, which would require arrangements for an additional cash infusion.

Good Faith & Due Diligence

17. For the reasons described above, Terrace Bay is requesting an extension of the Stay Period to and including April 30, 2014. Terrace Bay has been and continues to operate in good faith and with due diligence, with a view to completing the sale of the Non-Mill Property.
18. The extension of the Stay Period is necessary to provide the stability needed to continue the activities which have been ongoing following the granting of the Initial Order. Such stability is required while the Company works to conclude a transaction for the Non-Mill Property.

19. This affidavit is made in support of the Company's motion for an order, *inter alia*, extending the Stay Period and for no other purpose.

SWORN BEFORE ME at the City of
Thunder Bay, in the Province of Ontario
this 23rd day of October, 2013



A Commissioner etc.

B. PAUL JASIURA



WOLFGANG GERICKE

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
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Proceeding commenced at Toronto

**AFFIDAVIT OF WOLFGANG GERICKE
(Sworn October 23, 2013)**

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	MONDAY, THE 28 th
	)	
JUSTICE MORAWETZ	)	DAY OF OCTOBER, 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
(STAY EXTENSION)

THIS MOTION, made by Terrace Bay Pulp Inc. (the "**Company**"), for an order (a) approving an extension of the stay of proceedings (the "**Stay Period**"), provided for at paragraph 10 of the Order of the Honourable Mr. Justice Morawetz dated January 25, 2012 (as amended and restated, the "**Initial Order**") to April 30, 2014 and (b) approving the Ninth Report of the Monitor, Ernst & Young Inc. (the "**Monitor**") dated May 14, 2013 (the "**Ninth Report**"), the Tenth Report of the Monitor (the "**Tenth 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 Affidavit of Wolfgang Gericke sworn October 23, 2013 (the "**Gericke Affidavit**") and the Exhibits thereto, the Ninth Report, the Tenth Report, and on hearing the submissions of counsel for the Company and the Monitor, 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, Motion Record and the Tenth Report is hereby abridged so that this Motion is properly returnable today and that any requirement for service of the Notice of Motion, Motion Record and the Tenth Report on any parties other than the parties actually served with the Notice of Motion, Motion Record and Tenth Report is hereby dispensed with and that service in the manner effected by the Applicant is validated in all respects.

STAY EXTENSION

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until April 30, 2014.

APPROVAL OF MONITOR'S REPORT

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

ONTARIO
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**ORDER
(STAY EXTENSION)**

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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

**MOTION RECORD
(RETURNABLE OCTOBER 28, 2013)
(RE: STAY EXTENSION)**

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