

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 15
	:	
CATALYST PAPER CORP., <u>et al.</u> ,	:	Case No. 12-10221 (PJW)
	:	
Debtors. ¹	:	Jointly Administered
	:	
	X	

**MEMORANDUM OF LAW IN SUPPORT OF: (I) AMENDED VERIFIED
PETITIONS UNDER CHAPTER 15; AND (II) AMENDED MOTION FOR
PROVISIONAL RELIEF AND FINAL RECOGNITION OF A FOREIGN PROCEEDING
PURSUANT TO 11 U.S.C. §§ 105(a), 1517, 1519, 1520, AND 1521**

¹ The last four digits of the United States Tax Identification Number or Canadian Business Number of the Debtors, as applicable, follow in parentheses: (i) 0606890 B.C. Ltd. (2214); (ii) Catalyst Paper Corporation (1171); (iii) Catalyst Paper Energy Holdings Inc. (3668); (iv) Catalyst Paper General Partnership (6288); (v) Catalyst Pulp and Paper Sales Inc. (2085); (vi) Catalyst Pulp Operations Ltd. (4565); (vii) Catalyst Pulp Sales Inc. (4021); (viii) Elk Falls Pulp and Paper Ltd. (9493); (ix) Pacifica Poplars Ltd. (6048); (x) Catalyst Paper Holdings Inc. (7177); (xi) Pacifica Papers U.S. Inc. (7595); (xii) Pacifica Poplars Inc. (9597); (xiii) Pacifica Papers Sales Inc. (7594); (xiv) Catalyst Paper (USA) Inc. (6890); (xv) Catalyst Paper (Recycling) Inc. (8358); (xvi) Catalyst Paper (Snowflake) Inc. (7015); (xvii) The Apache Railway Company (0017) (0606890 B.C. Ltd., Catalyst Paper Corporation, Catalyst Paper Energy Holdings Inc., Catalyst Paper General Partnership, Catalyst Pulp and Paper Sales Inc., Catalyst Pulp Operations Ltd., Catalyst Pulp Sales Inc., Elk Falls Pulp and Paper Ltd., and Pacifica Poplars Ltd., collectively, the “Canadian Debtors”) (Catalyst Paper Holdings Inc., Pacifica Papers U.S. Inc., Pacifica Poplars Inc., Pacifica Papers Sales Inc., Catalyst Paper (USA) Inc., Catalyst Paper (Recycling) Inc., Catalyst Paper (Snowflake) Inc. and The Apache Railway Company, collectively, the “U.S. Debtors”). The Debtors’ executive headquarters’ addresses are 2nd Floor, 3600 Lysander Lane, Richmond, BC V7B 1C3, Canada; 2101 Fourth Avenue, Suite 1950, Seattle, WA 98121; and Spur 277 N., Snowflake, AZ 85937.

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT	2
FACTUAL BACKGROUND.....	3
I. ARGUMENT	3
A. The CCAA Proceeding Is Entitled to Recognition as a Foreign Main Proceeding.	3
a. These Cases Are Proper Under Chapter 15.....	3
(i) The CCAA Proceeding Is a “Foreign Proceeding.”	3
(ii) CPC Is a Proper “Foreign Representative.”.....	4
(iii) CPC Filed Proper Documentation.	5
(iv) The Amended Petition For Recognition Is Consistent With the Purpose of Chapter 15.....	5
b. The CCAA Proceeding Is a “Foreign Main Proceeding” Under the Bankruptcy Code.	6
c. In the Alternative, the CCAA Proceeding Is a “Foreign Main Proceeding” Under the Bankruptcy Code With Respect to the Canadian Debtors, and a “Foreign Nonmain Proceeding” Under the Bankruptcy Code With Respect to the U.S. Debtors.	9
d. Recognizing the CCAA Proceeding as a Foreign Main Proceeding Is Consistent with the Purpose of Chapter 15 and Public Policy.	11
e. Specific Request for Relief Pursuant to Section 1521 of the Bankruptcy Code Is Warranted and Appropriate.	14
B. The Provisional Relief Requested by CPC Is Within the Scope of Section 1519 of the Bankruptcy Code and Appropriate Under the Circumstances.	15
a. The Relief Requested Is Authorized by Sections 1519(a)(1) – (a)(3), 1521(a)(7) and 105(a).	15
b. The Relief Requested Is Necessary and Appropriate to Prevent Irreparable Harm.	16
(i) Substantial Likelihood of Foreign Recognition.	17

(ii)	The Debtors Will Potentially Suffer Irreparable Injury if the Provisional Relief Order Is Not Entered.	18
(iii)	There Will Be No Harm To Others if the Relief Is Granted.	20
(iv)	Granting the Requested Relief Is Manifestly in Line With U.S. Public Policy.	20
CONCLUSION		22

TABLE OF AUTHORITIES

CASES

	Page(s)
<u>In re Banco Nacional de Obras y Servicios Publicos, S.N.C.</u> , 91 B.R. 661 (Bankr. S.D.N.Y. 1988).....	18
<u>In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.</u> , 374 B.R. 122 (Bankr. S.D.N.Y. 2007), <u>aff'd</u> , 389 B.R. 325 (S.D.N.Y. 2008)	5, 6, 8, 9, 21, 22
<u>Cornfeld v. Investors Overseas Services, Ltd.</u> , 471 F.Supp. 1255 (S.D.N.Y. 1979), <u>aff'd</u> , 614 F.2d 1286 (2d Cir. 1979)	11
<u>In re Gercke</u> , 122 B.R. 621 (Bankr. D.D.C. 1991).....	19
<u>In re Grand Prix Assoc.</u> , No. 09-16545 (DHS) 2009 WL 1410519 (Bankr. D.N.J. May 18, 2009)	6, 7
<u>In re Ionosphere Clubs, Inc.</u> , 922 F.2d 984 (2d Cir. 1990), <u>cert. denied</u> , <u>Airline Pilots Ass'n, Int'l v. Shugrue</u> , 502 U.S. 808 (1991)	11
<u>In re Innua Canada Ltd.</u> , No. 09-16362 (DHS), 2009 WL 1025090 (Bankr. D.N.J. Apr. 15, 2009)	7
<u>In re Lines</u> , 81 B.R. 267 (Bankr. S.D.N.Y. 1988).....	17, 18
<u>In re Tri-Continental Exchange Ltd.</u> , 349 B.R. 627 (Bankr. E.D. Cal. 2006).....	8
<u>In re SPhinX, Ltd.</u> , 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006), <u>aff'd</u> , 371 B.R. 10 (S.D.N.Y. July 5, 2007).....	6, 21
<u>U.S. v. Bell</u> , 414 F.3d 474 (3d Cir. 2005).....	17
<u>Victrix S.S. Co., S.A. v. Salen Dry Cargo, A.B.</u> , 825 F.2d 709 (2d Cir. 1987).....	18
<u>Walczak v. EPL Prolong, Inc.</u> , 198 F.3d 725 (9th Cir. 1999).....	17

DOCKETED CASES

<u>In re Angiotech Pharmaceuticals, Inc.,</u> Case No. 11-10269 (KG) (Bankr. D. Del. Jan. 31, 2011)	16
<u>In re Destinator Technologies Inc.,</u> Case No. 08-11003 (CSS) (Bankr. D. Del. May 23, 2008)	16
<u>In re KPMG Inc., Foreign Representative of Redcorp Ventures Ltd. And Redfern Resources Ltd.,</u> Case No. 09-12019 (Bankr. W.D. Wa. Mar. 9, 2009)	16
<u>In re MAAX Corp.,</u> Case No. 08-11443 (CSS) (Bankr. D. Del. July 14, 2008)	16
<u>In re Mega Brands Inc.,</u> Case No. 10-10485(CSS) (Bankr. D. Del. Mar. 23, 2010)	9
<u>In re Rock Well Petroleum (U.S.) Inc.,</u> Case No. 08-20797 (Bankr. D. Wyo. Feb. 27, 2009)	9

AUTHORITIES

11 U.S.C. § 101(23)	2, 3, 4
11 U.S.C. § 101(24)	2, 4
11 U.S.C. § 105(a)	1, 14, 15, 16
11 U.S.C. § 362.....	1, 14, 15, 16, 18
11 U.S.C. § 363.....	16
11 U.S.C. § 364.....	16
11 U.S.C. § 365.....	18
11 U.S.C. § 365(e)	1, 15, 16, 19, 20
11 U.S.C. § 1501.....	12, 13, 19, 20, 21
11 U.S.C. § 1501(a)(i)-(5)	21
11 U.S.C. § 1501(a)(3).....	5

11 U.S.C. § 1501(b)(1).....	3
11 U.S.C. § 1502.....	9, 10
11 U.S.C. § 1502(2)	10
11 U.S.C. § 1502(4)	6, 9
11 U.S.C. § 1502(5)	9
11 U.S.C. § 1504.....	5
11 U.S.C. § 1506.....	11
11 U.S.C. § 1509.....	5
11 U.S.C. § 1515.....	2, 9, 11
11 U.S.C. § 1515(a)	5
11 U.S.C. § 1515(b)	5
11 U.S.C. § 1515(c)	5
11 U.S.C. § 1516(c)	6
11 U.S.C. § 1517.....	1, 2, 9, 11
11 U.S.C. § 1517(a)	9, 11
11 U.S.C. § 1517(b)(1).....	6, 9
11 U.S.C. § 1517(b)(2).....	10
11 U.S.C. § 1519.....	1, 2, 16, 17
11 U.S.C. § 1519(a)	15, 16
11 U.S.C. § 1519(a)(1) – (a)(3)	1, 15, 18
11 U.S.C. § 1520.....	1, 2, 14, 20
11 U.S.C. § 1520(a)(1).....	14
11 U.S.C. § 1521.....	1, 2, 14, 20
11 U.S.C. § 1521(a)(6).....	15

11 U.S.C. § 1521(a)(7).....	1, 15, 16, 18
11 U.S.C. § 1525.....	21
UNCITRAL Model Law on Cross Border Insolvency	12

Catalyst Paper Corporation (“CPC”), as the authorized foreign representative for itself and its above-captioned affiliates (collectively, the “Debtors” and, together with their non-debtor affiliates, the “Company”) in a foreign proceeding (the “CCAA Proceeding”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) before the Supreme Court of British Columbia (the “Canadian Court”), commenced these chapter 15 cases (collectively, the “Chapter 15 Cases”) on January 17, 2012 and on the date hereof filed amended verified petitions (collectively, the “Amended Verified Petitions”) and the Amended Motion for Provisional and Final Relief for Recognition of a Foreign Proceeding Pursuant to 11 U.S.C. §§ 105(a), 1517, 1519, 1520, and 1521 (the “Amended Recognition Motion” and, together with the Amended Verified Petitions, the “Amended Petition for Recognition”), seeking:

(a) entry of an amended provisional order (the “Amended Provisional Relief Order”) applying sections 362 and 365(e) of title 11 of the United States Code (the “Bankruptcy Code”) on an interim basis in these chapter 15 cases pursuant to sections 105(a), 1519(a)(1) – (a)(3), 1521(a)(7) of the Bankruptcy Code; (b) entry of a final order (the “Recognition Order”) after notice and a hearing (i) granting the Amended Petition for Recognition in these cases and recognizing the CCAA Proceeding as a foreign proceeding under section 1517 of the Bankruptcy Code and (ii) giving full force and effect in the United States to any and all orders that have been or will be made or entered in the CCAA Proceeding, including, without limitation, the Initial CCAA Order (as defined below) and any forthcoming final order approving the restructuring transaction to be effected through the CCAA Proceeding (collectively, the “Canadian Orders”), including any extensions or amendments thereof authorized by the Canadian Court, and (c) granting such other and further relief as this Court deems just and proper. In support of the Amended Petition for Recognition, CPC relies upon and incorporates by reference the Second Declaration of Brian

Baarda (the “Second Baarda Declaration”) filed with the Court concurrently herewith. In further support of the Amended Petition for Recognition, CPC respectfully submits this Memorandum of Law.

PRELIMINARY STATEMENT

1. CPC seeks (a) entry of the Amended Provisional Order granting certain provisional relief to preserve the Debtors’ assets in the United States and protect against certain creditors’ exercise of remedies or contract termination and (b) entry of the Recognition Order granting recognition of the CCAA Proceeding as a foreign main proceeding.

2. In the alternative, with respect to recognition only, CPC seeks entry of the Recognition Order granting recognition of the CCAA Proceeding as a foreign main proceeding with respect to the Canadian Debtors and granting recognition of the CCAA Proceeding as a foreign nonmain proceeding with respect to the U.S. Debtors.

3. Absent the relief requested, the CCAA Proceeding will be undermined, the Debtors’ restructuring efforts will be jeopardized, and the Debtors, their creditors, and other parties in interest may suffer irreparable harm.

4. Chapter 15 of the Bankruptcy Code authorizes this Court to: (a) recognize a “foreign proceeding,” as defined by section 101(23) of the Bankruptcy Code, upon the proper commencement of a case under chapter 15 by a “foreign representative,” as defined by section 101(24) of the Bankruptcy Code; and (b) grant assistance in the United States to such foreign representative in connection with the foreign proceeding, including by granting injunctive and other relief pursuant to sections 1519, 1520 and 1521 of the Bankruptcy Code.

5. The Amended Petition for Recognition satisfies all of the requirements set forth in sections 1515, 1517, and 1519 of the Bankruptcy Code, as applicable. Moreover, the relief requested therein is necessary and appropriate under chapter 15 of the Bankruptcy Code. Finally,

granting recognition of the CCAA Proceeding and the related relief requested is consistent with the goals of international cooperation and assistance to foreign courts embodied in chapter 15 of the Bankruptcy Code.

FACTUAL BACKGROUND

6. The Court is respectfully referred to the Amended Petition for Recognition and the Second Baarda Declaration, which contain the relevant facts for the purposes of this Memorandum of Law, all of which are incorporated herein by reference.

I. ARGUMENT

A. The CCAA Proceeding Is Entitled to Recognition as a Foreign Main Proceeding.

a. These Cases Are Proper Under Chapter 15.

7. Chapter 15 of the Bankruptcy Code applies where a foreign representative seeks the assistance of a United States bankruptcy court in connection with a foreign proceeding. See 11 U.S.C. § 1501(b)(1). The Debtors' cases are proper under chapter 15 because (a) these cases concern a "foreign proceeding," (b) these cases were commenced by a duly authorized "foreign representative," (c) the Amended Petition for Recognition and all required supporting documentation were properly filed, and (d) the relief sought by the Amended Petition for Recognition is consistent with the objectives of chapter 15.

(i) The CCAA Proceeding Is a "Foreign Proceeding."

8. The CCAA Proceeding is a "foreign proceeding," as defined in the Bankruptcy Code. Section 101(23) of the Bankruptcy Code defines a "foreign proceeding" as:

a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23).

9. The CCAA Proceeding is an insolvency proceeding brought under the CCAA and supervised by the Canadian Court. The CCAA provides for a controlled reorganization procedure designed to enable financially distressed companies to avoid foreclosure or seizure of assets while maximizing the company's value as a going concern for the benefit of creditors and other parties in interest. Pursuant to the CCAA, the Debtors have obtained from the Canadian Court an initial order (the "Initial CCAA Order") officially commencing the CCAA Proceeding and granting certain relief. A copy of the Initial CCAA Order is attached to the Amended Verified Petitions. Accordingly, the CCAA Proceeding qualifies as a "foreign proceeding" under the Bankruptcy Code.

10. This Court's ultimate recognition of the CCAA arrangement, which, among other things, releases and discharges certain liens and claims against the Company and/or the Company's assets, will provide certainty and closure to the Company's reorganization.

11. Accordingly, the CCAA Proceeding qualifies as a "foreign proceeding" under the Bankruptcy Code.

(ii) CPC Is a Proper "Foreign Representative."

12. The Chapter 15 Cases were commenced by the duly-authorized, court-appointed "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code. That section provides as follows:

The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24). The Initial CCAA Order specifically contemplates that CPC will pursue these Chapter 15 Cases to assist the Debtors and the Canadian Court in the Debtors'

reorganization efforts, and CPC was duly appointed by the Canadian Court to act as foreign representative pursuant to paragraph 78 of the Initial CCAA Order which provides as follows:

[CPC] is hereby authorized and empowered ... to ... (ii) act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized and/or aided in a jurisdiction outside Canada, including, without limitation, acting as a foreign representative of the Petitioner Parties in connection with any Chapter 15 Relief.

See Initial CCAA Order ¶ 78. Accordingly, CPC is a proper “foreign representative” under the Bankruptcy Code.

(iii) CPC Filed Proper Documentation.

13. The Chapter 15 Cases were duly and properly commenced as required by sections 1504 and 1509 of the Bankruptcy Code by the filing of the original Petition for Recognition under section 1515(a) of the Bankruptcy Code, which was accompanied by all documents and information required by sections 1515(b) and (c). See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 374 B.R. 122, 127 (Bankr. S.D.N.Y. 2007) (“A case under chapter 15 is commenced by a foreign representative filing a petition for recognition of a foreign proceeding under section 1515 of the Bankruptcy Code.”), aff’d, 389 B.R. 325 (S.D.N.Y. 2008). The Amended Petition for Recognition was also properly filed under section 1515(a) of the Bankruptcy Code, and was also accompanied by all documents and information required by sections 1515(b) and (c). Because CPC has satisfied the requirements set forth in section 1515 of the Bankruptcy Code, the Chapter 15 Cases have been properly commenced.

(iv) The Amended Petition For Recognition Is Consistent With the Purpose of Chapter 15.

14. One of the stated objectives of chapter 15 is the “fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor.” 11 U.S.C. § 1501(a)(3). The Chapter 15 Cases have been

commenced for the purpose of obtaining the assistance of this Court to ensure the effective and economical administration of the CCAA Proceeding by, among other things, restricting the Debtors' creditors from taking certain actions in the United States that would undermine the unified, collective and equitable resolution of the Debtors' liabilities in the CCAA Proceeding before the Canadian Court. As such, the Amended Petition for Recognition is consistent with the purpose of chapter 15 and the cross-border coordination it promotes.

b. The CCAA Proceeding Is a “Foreign Main Proceeding” Under the Bankruptcy Code.

15. This Court should grant the CCAA Proceeding recognition as a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code. The Bankruptcy Code provides that a foreign proceeding is a “foreign main proceeding” if it is pending in the country where the debtor has its center of main interests. See 11 U.S.C. § 1517(b)(1). While the Bankruptcy Code does not define “center of main interests,” it does provide that, absent evidence to the contrary, the debtor’s registered office is presumed to be the center of the debtor’s main interests. 11 U.S.C. § 1516(c); see In re Bear Stearns, 374 B.R. at 127, 130 (noting that presumption that debtor’s center of main interests is the place of its registered office may be “rebutted by evidence to the contrary”). Additionally, in Bear Stearns, Judge Lifland suggested that:

[v]arious factors could be relevant to such a determination, including: the location of the debtor’s headquarters; the location of those who actually manage the debtor (which, conceivably could be the headquarters of a holding company); the location of the debtor’s primary assets; the location of the majority of the debtor’s creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes.

Id. at 128 (citing In re SPhinX, Ltd., 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006), aff’d, 371 B.R. 10 (S.D.N.Y. July 5, 2007)); see also In re Grand Prix Assoc., No. 09-16545 (DHS), 2009 WL

1410519, at *7 (Bankr. D.N.J. May 18, 2009); In re Innua Canada Ltd., No. 09-16362 (DHS), 2009 WL 1025090, at *6 (Bankr. D.N.J. Apr. 15, 2009).

16. The center of main interests for the Debtors' enterprise is clearly in British Columbia, Canada. Richmond, B.C., part of the Greater Vancouver Regional District, is the location of the Debtors' headquarters and is the nerve center of the Debtors' management, business, and operations. Three of the four mills operated by the Debtors are also located in the province of British Columbia. The Debtors and their non-debtor affiliates are operationally and functionally integrated in many respects, organized under centralized senior management, and are subject to combined cash management and accounting functions, all based in and overseen from Richmond. The following (non-exhaustive) critical functions are performed for the Debtors and their non-Debtor affiliates out of the Richmond office:

- a. the operations of the Company are directed from the Company's head office in Richmond, B.C.;
- b. all of the Debtors report to CPC, which is headquartered at the Company's head office in Richmond;
- c. corporate governance for the Company is directed from Canada;
- d. the directors and officers of the U.S. Debtors perform their duties in Richmond;²
- e. strategic and key operating decisions and key policy decisions for the Company are made by the Company's staff located in Richmond;
- f. the Company's tax, treasury, and cash management functions are managed from Richmond, and local plant finance staff report to senior finance management in Richmond;

² Only one member of the senior management team, the head of CPC's sales department, is stationed outside of Richmond, in Seattle, Washington.

- g. the Company's human resources functions are administered from Richmond, and all local human resources staff report into Richmond;
- h. the Company's information technology and systems are directed from Richmond;
- i. management and senior staff of the Company regularly attend meetings in Richmond;
- j. all public company reporting and investor relations are directed from Richmond;
- k. the Company's chief executive officer (the "CEO") is based in Richmond, and, in addition to the senior management referenced above, all sales, manufacturing, operations, and legal staff report to the CEO; and
- l. each of the Debtors has assets in Canada, and each of the U.S. Debtors owns and maintains a bank account at a Canadian chartered bank in Vancouver, British Columbia which maintains such funds on deposit.

17. Furthermore, the Initial CCAA Order contains an express finding that "the centre of main interests of the Petitioner Parties is located in British Columbia, Canada." Initial CCAA Order ¶ 79.

18. Thus, based on the facts presented in this instance, Richmond, British Columbia, Canada should be found to be the center of the Debtors' main interests. See In re Tri-Continental Exch. Ltd., 349 B.R. 627, 634 (Bankr. E.D. Cal. 2006) (noting that a debtor's center of main interests is the "place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties").

19. Further, at least one court has equated a company's principal place of business to its center of main interests. See id.; In re Bear Stearns, 374 B.R. at 127. As described above, nearly all of the Debtors' corporate business is conducted from Canada. As such, Canada is "ascertainable by third parties" as the Debtors' center of main interests. See In re Bear Stearns,

374 B.R. at 130. Accordingly, given that the CCAA Proceeding is pending in Vancouver, British Columbia, Canada, which is the Debtors' center of main interests, the CCAA Proceeding should be recognized as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

20. An order recognizing a foreign proceeding shall be entered if all of the requirements for recognition have been met. See 11 U.S.C. § 1517. As set forth above, the CCAA Proceeding is a "foreign main proceeding" within the meaning of section 1502 of the Bankruptcy Code, CPC qualifies as a foreign representative under the Bankruptcy Code, and the Amended Petition for Recognition meets the requirements of Bankruptcy Code section 1515. Accordingly, under section 1517(a) of the Bankruptcy Code, the Court should enter an order granting recognition to the CCAA Proceeding. See 11 U.S.C. § 1517 (an order recognizing a foreign proceeding "shall be entered" if all of the requirements for recognition have been met).

c. In the Alternative, the CCAA Proceeding Is a "Foreign Main Proceeding" Under the Bankruptcy Code With Respect to the Canadian Debtors, and a "Foreign Nonmain Proceeding" Under the Bankruptcy Code With Respect to the U.S. Debtors.

21. In the alternative, this Court should grant the CCAA Proceeding recognition as a "foreign main proceeding" as defined in section 1502(4) of the Bankruptcy Code with respect to the Canadian Debtors, and grant the CCAA Proceeding recognition as a "foreign nonmain proceeding" as defined in section 1502(5) of the Bankruptcy Code with respect to the U.S. Debtors. Other courts have granted dual recognition to a foreign proceeding as a main and nonmain proceeding, applying the separate forms of recognition to distinct groups of Debtors which are parties to a single foreign proceeding. See In re Mega Brands Inc., Case No. 10-10485 (CSS) (Bankr. D. Del. Mar. 23, 2010); In re Rock Well Petroleum (U.S.), Inc., Case No. 08-20797 (Bankr. D. Wyo. Feb. 27, 2009).

22. Even assuming that Canada is not the center of main interests for the U.S. Debtors, the CCAA Proceeding constitutes at least a “foreign nonmain proceeding” with respect to the U.S. Debtors as defined in section 1517(b)(2) of the Bankruptcy Code. Pursuant to the Bankruptcy Code, a “foreign nonmain proceeding” is defined as a “foreign proceeding” pending in a country where the debtor has an “establishment” within the meaning of § 1502. 11 U.S.C. § 1517(b)(2). “Establishment” is broadly defined in the Bankruptcy Code as “any place of operations where the debtor carries out a nontransitory economic activity.” 11 U.S.C. § 1502(2).

23. Each of the U.S. Debtors carries out nontransitory operational, managerial, financing, and other economic activities in Canada, as described in detail above. Each of the U.S. Debtors owns and maintains a bank account at a Canadian chartered bank in Vancouver, B.C., and a majority of the directors and officers of each of the U.S. Debtors permanently reside in Canada. The U.S. Debtors are operationally and functionally integrated with the Canadian debtors in many respects. The U.S. Debtors and the Canadian Debtors are organized under centralized senior management, and the U.S. Debtors are additionally subject to cash management and accounting functions, all based in and overseen from Richmond, B.C., Canada.

24. Given the nontransitory nature of the U.S. Debtors’ economic activities in Canada, each of the U.S. Debtors has an “establishment” in Canada within the meaning of section 1502(2) of the Bankruptcy Code. The CCAA Proceeding should therefore be recognized as a foreign nonmain proceeding pursuant to section 1517(b)(2) of the Bankruptcy Code with respect to the U.S. Debtors.

25. With respect to the U.S. Debtors, the CCAA Proceeding is a “foreign nonmain proceeding” within the meaning of section 1502 of the Bankruptcy Code, CPC qualifies as a foreign representative under the Bankruptcy Code, and the Amended Petition for Recognition

meets the requirement of Bankruptcy Code section 1515. Accordingly, under section 1517(a) of the Bankruptcy Code, the Court should enter an order granting recognition to the CCAA Proceeding as a foreign nonmain proceeding with respect to the U.S. Debtors. See 11 U.S.C. § 1517 (an order recognizing a foreign proceeding “shall be entered” if all of the requirements for recognition have been met).

d. Recognizing the CCAA Proceeding as a Foreign Main Proceeding Is Consistent with the Purpose of Chapter 15 and Public Policy.

26. Recognition of the CCAA Proceeding as a foreign main proceeding is also consistent with the provisions of section 1506 of the Bankruptcy Code. That section provides that nothing in chapter 15 shall prevent the court from refusing to take an action otherwise required by chapter 15 if such action would be manifestly contrary to the public policy of the United States. See 11 U.S.C. § 1506. The relief requested by CPC is not manifestly contrary to, but rather is consistent with, United States public policy.

27. It is well established that one of the fundamental goals of the Bankruptcy Code is the centralization of disputes involving the debtor. See, e.g., In re Ionosphere Clubs, Inc., 922 F.2d 984, 989 (2d Cir. 1990) (“The Bankruptcy Code ‘provides for centralized jurisdiction and administration of the debtor, its estate and its reorganization in the Bankruptcy Court . . .’”) (internal citations omitted), cert. denied, Airline Pilots Ass’n, Int’l v. Shugrue, 502 U.S. 808 (1991). Indeed, as one court has noted, “the firm policy of American courts is the staying of actions against a corporation which is the subject of a bankruptcy proceeding in another jurisdiction.” Cornfeld v. Investors Overseas Servs., Ltd., 471 F. Supp. 1255, 1259 (S.D.N.Y. 1979) (recognizing that Canadian liquidation proceeding would not violate laws or public policy of New York or the United States), aff’d, 614 F.2d 1286 (2d Cir. 1979).

28. The CCAA Proceeding is also similar to cases under chapter 11 of the Bankruptcy Code in that it provides for a centralized process: (a) to assert and resolve claims against an estate; and (b) that ultimately will result in distributions to creditors. Recognizing the CCAA Proceeding and enjoining certain actions or proceedings with respect to the Debtors and their assets will assist the orderly administration of the Debtors' assets. Such orderly administration is demonstrably consistent with the public policy of the United States, as embodied in the Bankruptcy Code. Absent the relief requested, there is a possibility that the assets of the Debtors in the United States would be subject to attachments and/or post-judgment enforcement proceedings brought by individual creditors that might flout any stay order issued by the Canadian Court, which could result in (a) unnecessary enforcement costs in a multiplicity of jurisdictions or (b) the piecemeal disposition of assets that would undermine the CCAA Proceeding and prevent the equal treatment of similarly-situated creditors that both the CCAA and the Bankruptcy Code seek to promote. Avoiding such an outcome through the recognition of the CCAA Proceeding and enforcement of the Canadian Orders in the United States is not just consistent with United States public policy, but in fact promotes the public policies embedded in the Bankruptcy Code.

29. Further, recognition of the CCAA Proceeding would be consistent with the purpose of chapter 15 and its predicate, the UNCITRAL Model Law on Cross Border Insolvency. Section 1501 of the Bankruptcy Code provides, in pertinent part that:

The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of –

(1) cooperation between –

* * *

(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

* * *

(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor; [and]

(4) protection and maximization of the value of the debtor's assets.

11 U.S.C. § 1501.

30. The relief requested by CPC is consistent with, and critical to effectuate, the objectives of chapter 15 for several reasons. First, recognition of the CCAA Proceeding would foster cooperation between courts in Canada and the United States in respect of the Debtors' restructuring. By granting recognition to the CCAA Proceeding and enforcing the Canadian Orders in the United States, this Court can effectively assist the Canadian Court in the orderly administration of the Debtors' assets. The Debtors' creditors would generally be enjoined from commencing or continuing actions against the Debtors and the assets of the Debtors, thereby assisting in the uniform resolution of claims against the Debtors.

31. Second, recognition of the CCAA Proceeding would promote the fair and efficient administration of a cross-border reorganization procedure that protects the interests of all creditors and interested entities. By recognizing the CCAA Proceeding and granting the relief requested, the process of resolving claims against the Debtors would be centralized in Canada. Claims would be treated in accordance with a plan of arrangement that comports with Canadian law, which is substantially similar and not repugnant to comparable United States laws, and any disputes would be subject to the uniform jurisdiction of one tribunal, the Canadian Court. If creditors' actions with respect to the Debtors' United States assets are not effectively stayed, the

uniform and orderly voluntary administration of the Debtors in the CCAA Proceeding will be jeopardized.

32. Finally, the relief requested would protect the Debtors' assets located in the United States. Absent such relief, significant assets of the Debtors may be depleted and available resources may be expended unnecessarily to defend collection and other actions brought in the United States. Accordingly, the relief requested would further the objectives of chapter 15 by assisting the orderly voluntary administration of the Debtors in the CCAA Proceeding.

33. This relief is consistent with the relief afforded under chapter 11 of the Bankruptcy Code and/or otherwise granted by the bankruptcy court applying its broad equitable powers under section 105(a) of the Bankruptcy Code, and is not manifestly contrary to the public policy of the United States. Further, such relief is routinely granted in cases under chapter 15 involving proceedings under the CCAA.

e. Specific Request for Relief Pursuant to Section 1521 of the Bankruptcy Code Is Warranted and Appropriate.

34. In addition to the relief automatically provided by section 1520 of the Bankruptcy Code upon recognition of a foreign main proceeding,³ CPC requests, in the event recognition of the CCAA Proceeding is granted, additional relief under section 1521 of the Bankruptcy Code to

³ Upon recognition of the CCAA Proceeding as a foreign main proceeding, certain relief is automatically granted as a matter of right, including a stay that enjoins actions against the Debtors and otherwise protects the Debtors. See 11 U.S.C. § 1520. In particular, upon the Court's recognition of the CCAA Proceeding as a foreign main proceeding, section 1520(a)(1) of the Bankruptcy Code triggers the automatic stay provisions of section 362 of the Bankruptcy Code with respect to the Debtors. In the alternative, upon recognition of the CCAA Proceedings as a foreign main proceeding and a foreign nonmain proceeding, CPC requests the implementation of relief under section 1520 of the Bankruptcy Code to the Debtors, to the extent not already applicable, through the operation of section 1521 of the Bankruptcy Code.

assist in the orderly administration of the Debtors' assets, including the extension of provisional relief under section 1521(a)(6).

B. The Provisional Relief Requested by CPC Is Within the Scope of Section 1519 of the Bankruptcy Code and Appropriate Under the Circumstances.

35. Pursuant to the Amended Recognition Motion, CPC also seeks entry of an order making sections 362 and 365(e) of the Bankruptcy Code applicable in these Chapter 15 Cases on a provisional basis pursuant to sections 1519(a)(1) – (a)(3), 1521(a)(7) and 105(a) of the Bankruptcy Code. CPC believes that application of these provisions in these cases is crucial to prevent irreparable injury to the value of the Debtors' assets by not subjecting them to diminution in value resulting from the collection or enforcement of efforts of creditors or contract termination prior to the disposition of the Amended Petition for Recognition. Accordingly, CPC seeks the provisional application of sections 362 and 365(e) of the Bankruptcy Code in the Chapter 15 Cases pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code until the disposition of the Amended Verified Petitions.

a. The Relief Requested Is Authorized by Sections 1519(a)(1) – (a)(3), 1521(a)(7) and 105(a).

36. Section 1519(a) of the Bankruptcy Code authorizes the Court to grant, on a provisional basis, any relief available under section 1521(a)(7). Section 1521(a)(7) in turn provides for any relief available to a trustee, subject to certain statutory exceptions not relevant here. See 11 U.S.C. § 1521(a)(7). The automatic stay in section 362 of the Bankruptcy Code is an essential feature of U.S. bankruptcy law and is replicated, sometimes automatically and sometimes as a matter of discretion, in jurisdictions that share common law restructuring principles, such as Canada and the United Kingdom. Similarly, section 365(e) of the Bankruptcy Code, providing the invaluable protection to Debtors from the termination of contracts based solely on the filing for bankruptcy-related protection, is also similar to relief often provided in

CCAA Proceedings. Under chapter 15, though such relief is not automatic upon filing, the Court has discretion to grant such relief on a provisional basis pursuant to sections 1519(a) and 1521(a)(7) of the Bankruptcy Code. In addition, section 105(a) of the Bankruptcy Code further allows the Court to “issue any order . . . necessary or appropriate to carry out the provisions of [title 11].” 11 U.S.C. § 105(a).

37. The provisional application of sections 362 and 365(e) of the Bankruptcy Code, among others, has been approved in several cases, both within and outside of this jurisdiction. See, e.g., In re Angiotech Pharms., Inc., Case No. 11-10269 (KG) (Bankr. D. Del. Jan. 31, 2011) (applying, pursuant to section 1519 of the Bankruptcy Code, sections 362 and 365(e) of the Bankruptcy Code on a provisional basis); In re KPMG Inc., Foreign Representative of Redcorp Ventures Ltd. and Redfern Res. Ltd., Case No. 09-12019 (Bankr. W.D. Wa. Mar. 9, 2009) (applying, pursuant to section 1519 of the Bankruptcy Code, section 362 of the Bankruptcy Code on a provisional basis to the actions of all creditors against the petitioners and their property located within the U.S.); In re MAAX Corp., Case No. 08-11443 (CSS) (Bankr. D. Del. July 14, 2008) (applying, pursuant to section 1519 of the Bankruptcy Code, section 365(e) of the Bankruptcy Code to protect against contract termination); In re Destinator Techs. Inc., Case No. 08-11003 (CSS) (Bankr. D. Del. May 23, 2008) (incorporating sections 363 and 364 in the interim period). As further set forth below, provisional application of sections 362 and 365(e) of the Bankruptcy Code is appropriate here, and in the best interests of the Debtors and their creditors.

b. The Relief Requested Is Necessary and Appropriate to Prevent Irreparable Harm.

38. Relief under section 1519 of the Bankruptcy Code is available where the foreign representative can satisfy the standard for injunctive relief. In the Third Circuit, the four factors

considered for such standard are “(1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.” U.S. v. Bell, 414 F.3d 474, 478 n.4 (3d Cir. 2005) (citing ACLU of N.J. v. Black Horse Pike Reg’l Bd. Of Educ., 84 F.3d 1471, 1477 n. 2 (3d Cir. 1996) (en banc)).

39. These alternatives represent “extremes of a single continuum,” rather than separate tests. Walczak v. EPL Prolong, Inc., 198 F.3d 725, 731 (9th Cir. 1999). Thus, the greater the relative hardship to the party seeking the preliminary injunction, the less probability of success must be shown. In the cross-border restructuring context, courts have consistently recognized that “the premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury.” In re Lines, 81 B.R. 267, 270 (Bankr. S.D.N.Y 1988). CPC submits that this standard is satisfied here and that it is therefore entitled to the requested provisional relief pursuant to section 1519 of the Bankruptcy Code, including the entry of the Provisional Relief Order.

(i) Substantial Likelihood of Foreign Recognition.

40. As set forth above, CPC has provided a solid basis for recognition of the CCAA Proceeding, and has thereby amply demonstrated a reasonable probability that such proceeding will be recognized as a foreign main proceeding. Based on the facts that (a) the CCAA Proceeding is pending in Canada, the location of the Debtors’ center of main interest, (b) all proper supporting documentation was filed contemporaneously with the Amended Verified Petitions, and (c) the Chapter 15 Cases were properly commenced by a duly appointed foreign representative, there is an extremely high likelihood that recognition of the CCAA Proceeding as a foreign main proceeding will be granted.

(ii) The Debtors Will Potentially Suffer Irreparable Injury if the Provisional Relief Order Is Not Entered.

41. CPC believes that application of provisional relief under sections 1519(a)(1) – (a)(3), 1521(a)(7) of the Bankruptcy Code as well as under sections 362 and 365 of the Bankruptcy Code in the Chapter 15 Cases is critical to the prevention of irreparable damage to the value of the Debtors’ assets and business. The Amended Petition for Recognition has been submitted for the purpose of obtaining the assistance of this Court in respect of the CCAA Proceeding and to give effect in the United States to the Canadian Orders. Unless the Amended Provisional Order is entered, the Debtors face the real possibility of immediate and irreparable harm from (a) individual creditors’ collection and enforcement actions, (b) the termination of certain valuable contracts as a result of the filing of the Chapter 15 Cases and the CCAA Proceeding, and (c) prejudice that could result from decentralized administration of the Debtors’ assets.

42. With respect to the potential for collection activity by creditors, a number of courts have recognized the need for provisional relief to prevent individual creditors from taking extrajudicial advantage of the recognition process. See Victrix S.S. Co., S.A. v. Salen Dry Cargo, A.B., 825 F.2d 709, 713-14 (2d Cir. 1987) (harm to an estate exists where the orderly determination of claims and the fair distribution of assets are disrupted); In re Banco Nacional de Obras y Servicios Publicos, S.N.C., 91 B.R. 661, 664 (Bankr. S.D.N.Y. 1988) (stating that injunctive relief is necessary “to prevent individual American creditors from arrogating to themselves property belonging to the creditors as a group”); In re Lines, 81 B.R. 267, 270 (Bankr. S.D.N.Y. 1988) (stating that “the premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury”).

43. Finally, irreparable harm has been found where allowing litigation to go forward would (a) threaten the assets of a foreign estate, (b) subject a foreign representative to a default judgment, and (c) divert funds needed for the purpose of maximizing value for the estate's creditors. In re Gercke, 122 B.R. 621, 626 (Bankr. D.D.C. 1991). Here, each of these criteria is satisfied. If all creditors are not enjoined, the assets of the Debtors located in the United States may be prematurely "pieced out" and "the orderly determination of claims and the fair distribution of assets" in the foreign proceeding will be severely disrupted.

44. If creditors, and in particular the 2014 Noteholders and 2016 Noteholders (each as defined in the Second Baarda Declaration) who have not yet consented to the arrangement, or any person acting on their behalf, are allowed to pursue unilaterally collection or enforcement efforts, contract termination, or application of setoff, it could diminish the value of the Debtors' assets and cause significant delay and disruption to the Debtors' restructuring process. Further, certain of the Debtors are parties to agreements containing provisions allowing the parties to terminate such agreements upon the filing of a bankruptcy or similar reorganization proceeding. Without the protections afforded by section 365(e) of the Bankruptcy Code, should such contracts be terminated, the Debtors would lose important rights and benefits thereunder, to the detriment of the Debtors' businesses and, in turn, their creditors. Thus, absent the provisional relief requested, the Debtors and their creditors may suffer irreparable harm.

45. Without the certainty that the automatic stay and section 365(e) protection can provide, the Debtors would be at risk of facing collection proceedings, termination of valuable contracts, and other harmful actions by creditors, potentially causing major disruption to the Debtors' reorganization taking place in the CCAA Proceeding. The purpose of chapter 15 is to prevent such harm. See 11 U.S.C. § 1501.

(iii) There Will Be No Harm To Others if the Relief Is Granted.

46. In contrast to the hardships described above, preservation of the status quo and application of section 365(e) of the Bankruptcy Code while the Debtors undertake the reorganization process will not significantly prejudice creditors. The relief requested in the Amended Recognition Motion is intended to be temporary, extending only through the disposition of the Amended Petition for Recognition. If recognition of the CCAA Proceeding is granted, some of the same relief (e.g., the automatic stay provisions) being requested on a provisional basis will come into effect automatically.⁴ Moreover, it is CPC's understanding that the Debtors intend to continue satisfying their obligations in the ordinary course of business. Thus, the Amended Provisional Order would provide only a few weeks of relief during which creditors should not generally be affected at all. Accordingly, the balance of the hardships tips decidedly in favor of the Debtors, as there will be negligible, if any, harm to others if the relief is granted.

(iv) Granting the Requested Relief Is Manifestly in Line With U.S. Public Policy.

47. Granting the provisional relief requested in the Amended Recognition Motion will help advance the purposes of chapter 15 expressly set forth in section 1501 of the Bankruptcy Code. Unique to the Bankruptcy Code, chapter 15 contains a statement of purpose: "[t]he purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency," with the express objectives of cooperation between United States courts, trustees, examiners, debtors and

⁴ In the event that CCAA Proceeding is recognized as a foreign nonmain proceeding with respect to the U.S. Debtors, CPC is alternatively seeking relief under section 1521 of the Bankruptcy Code that would implement section 1520 of the Bankruptcy Code with respect to the estates of the U.S. Debtors. Therefore, the Debtors will be seeking relief under section 1520 of the Bankruptcy Code, to the extent that such relief is not automatically conferred upon certain of the Debtors.

debtors in possession, and the courts and other competent authorities of foreign countries; greater legal certainty for trade and investment; fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor; the protection and maximization of the debtor's assets; and the facilitation of the rescue of financially troubled businesses. 11 U.S.C. § 1501(a)(1)-(5); In re SPhinX, Ltd., 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006), aff'd, 371 B.R. 10 (S.D.N.Y. 2007); In re Bear Stearns, 374 B.R. at 126. If the provisional relief sought herein is not granted, the Debtors will be exposed to various risks posed by creditors, as discussed in detail above. Such actions on the part of creditors, and in particular the 2014 Noteholders and 2016 Noteholders who have not yet consented to the arrangement, or any person acting on their behalf, would violate the stay provisions of the Initial CCAA Order and thereby interfere with the orderly administration of the CCAA Proceeding, which is exactly the type of harm chapter 15 is intended to prevent. See 11 U.S.C. § 1501. Accordingly, the provisional relief requested is consistent with the public policy of chapter 15 of the Bankruptcy Code.

48. In addition, and as set forth above with respect to final recognition of the CCAA Proceeding, the provisional relief promotes cooperation between foreign jurisdictions and comity among tribunals. By its Initial CCAA Order, the Canadian Court has requested the assistance of this Court to effectuate its orders in the United States. See Initial CCAA Order ¶ 77. Accordingly, providing the requested assistance would effectuate the public policy considerations underpinning section 1525 of the Bankruptcy Code which mandates cooperation “to the maximum extent possible” between this Court and a foreign court. See 11 U.S.C. § 1525.

CONCLUSION

WHEREFORE, CPC respectfully requests that this Court grant the relief requested in the Amended Petition for Recognition, and such other and further relief as may be just and proper.

Dated: January 31, 2012
Los Angeles, CA

/s/ Van C. Durrer, II
Van C. Durrer, II (I.D. No. 3827)
SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP
300 South Grand Avenue
Los Angeles, California 90071
(213) 687-5000

Counsel for Catalyst Paper Corporation

Miscellaneous:12-10221-PJW Catalyst Paper Corporation

Type: bk

Chapter: 15 v

Office: 1 (Delaware)

Assets: y

Judge: PJW

Case Flag: MEGA, LEAD

U.S. Bankruptcy Court**District of Delaware**

Notice of Electronic Filing

The following transaction was received from Van C. Durrer entered on 1/31/2012 at 9:03 PM EST and filed on 1/31/2012

Case Name: Catalyst Paper Corporation**Case Number:** 12-10221-PJW**Document Number:** 40**Docket Text:**

Memorandum of Law *In Support Of: (I) Amended Verified Petitions Under Chapter 15; and (II) Amended Motion For Provisional Relief and Final Recognition of a Foreign Proceeding Pursuant To 11 U.S.C. Sections 105(A), 1517, 1519, 1520, and 1521* (related document(s)[38]) Filed by Catalyst Paper Corporation. (Durrer, Van)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**H:\temp\convert\MEMO OF LAW - FILING VERSION.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=983460418 [Date=1/31/2012] [FileNumber=10487745-0]
] [3048a4a22a30cac7e986851fc49a476723508252863e9862817f2fc1f0bb8ff4c59
6d12ad6f978c9b8c6876a02525c756bf9d3a25047a0d1a67fbf1b836cb634]]

12-10221-PJW Notice will be electronically mailed to:

Van C. Durrer on behalf of Debtor 0606890 B.C. Ltd.

van.durrer@skadden.com,

debank@skadden.com;christopher.heaney@skadden.com;wendy.lamanna@skadden.com;annie.li@skad

Albert Kass on behalf of Interested Party Kurtzman Carson Consultants LLC

ECFpleadings@kccllc.com, ecfpleadings@kccllc.com

Susan E. Kaufman on behalf of Interested Party The United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union ("United Steelworkers")

skaufman@coochtaylor.com

Kurtzman Carson Consultants LLC

akass@kccllc.com