



No. S-120712
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

- AND -

**IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985, c. C-44**

- AND -

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57**

- AND -

**IN THE MATTER OF CATALYST PAPER CORPORATION AND THE
PETITIONERS LISTED IN SCHEDULE "A"**

PETITIONERS

NOTICE OF APPLICATION

Name of Applicants: Ronald Gary McCaig, Jeff Whittaker, Janice Young, Peter Flynn, Patricia Dwornik, and Francesca Pomeroy, acting on their own behalf and on behalf of the Catalyst Salaried Employees & Pensioners Group.

To: The Service List

TAKE NOTICE that an application will be made by the applicants to the presiding judge at the courthouse at 800 Smith Street, in the City of Vancouver, in the Province of British Columbia, on Tuesday, April 17, 2012 at 9:45 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. A declaration that the amount of \$115 million, representing the wind up deficiency owing by the Petitioners and/or any related party of the Petitioners (collectively "Catalyst") to the Catalyst Paper Corporation Retirement Plan for Salaried Employees, B.C. Reg. No. 85400-1 (the "Salaried Plan"), or such other amount as may be determined as the wind up deficiency, of the assets of Catalyst is subject to a deemed trust for the benefit of the beneficiaries of the Salaried Plan pursuant to section 43.1 of the *Pension Benefits Standards Act* R.S.B.C 1996 (the "PBSA");

2. An order directing that the amount of the wind up liability be paid to the fund of the Salaried Plan by Catalyst or from the assets of Catalyst, as the case may be, in priority to the claims of any other creditor of Catalyst, subject to the charges in paragraph 55 of the Amended and Restated Initial Order;

3. A declaration that the amount of the wind up deficiency that is subject to the deemed trust is not distributable to other creditors of Catalyst, subject to the charges in paragraph 55 of the Amended and Restated Initial Order, and that such declaration survive any bankruptcy or receivership of Catalyst;

4. If necessary, an Order amending the Amended and Restated Initial Order dated February 3, 2012, as amended from time to time, to provide for the relief in paragraphs 1 to 4 herein; and,

5. Such further and other relief as counsel may advise and this Honourable Court may accept.

Part 2: FACTUAL BASIS

1. The Applicants are current and retired employees of Catalyst or their predecessor companies who, through their employment service with Catalyst, are entitled to pension benefits for their lifetimes from Catalyst payable from the Salaried Plan.

2. Catalyst is the administrator of the Salaried Plan.

3. On January 31, 2012, Catalyst obtained an order pursuant to the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36 ("CCAA") granting it protection from their creditors (the "Stay Order").

4. The Salaried Plan has been severely underfunded by Catalyst. As of December 31, 2010, the Salaried Plan had a solvency deficiency valued at \$73.5 million, and held assets with a market value reported in the amount of \$285 million. The most recent estimate of the solvency deficiency in the Salaried Plan as publicly reported by the Chief Executive Officer of Catalyst is \$115 million.

5. If Catalyst fails to successfully emerge from CCAA protection through the approval of a Plan of Compromise, then the Salaried Plan will be wound up and, unless the amount of the wind up deficiency is paid into the fund of the Plan, the amount of pension benefits payable to the Salaried Plan beneficiaries will be significantly reduced.

Catalyst's proposed Plan of Compromise and Sale Process

6. The Stay Order was amended by several subsequent Orders, including on February 7, 2012, February 14, 2012, March 8, 2012 and March 9, 2012.

7. On March 22, 2012, this Honourable Court issued three Orders:

- (a) Establishing a claims procedure for creditors of Catalyst (the "Claims Procedure Order");
- (b) Establishing a Sale and Investor Solicitation Process in the event that the Plan of Compromise and Arrangement does not receive sufficient support by the creditors of Catalyst (the "SISP Order"); and,
- (c) Establishing a voting procedure in respect of the proposed Plan of Compromise and Arrangement (the "Meeting Order").

8. The Meeting Order established meeting dates of each Class of Creditors of April 23, 2012, at which time the Plan of Compromise will be considered and voted upon by the Creditors.

9. If the Plan is not approved by the required votes of creditors at the April 23, 2012 meetings, then the provisions of the SISP Order require that a bidding procedure be immediately activated to sell the assets of Catalyst in accordance with the terms of the Stalking Horse Purchase Agreement (the "Sale Agreement"), a draft form of which was attached as an exhibit to the SISP Order. The form of the Stalking Horse Purchase Agreement was approved by this Court on April 4th, 2012.

10. The Sale Agreement severely prejudices the beneficiaries of the underfunded Salaried Plan in the following ways:

- (a) the Salaried Plan is part of "Excluded Liabilities" as defined under the Sale Agreement and as such will not be assured by the purchaser;
- (b) the Agreement also expressly exempts the Salaried Plan from the definition of "Transferred Employee Plan", meaning that the purchaser of the assets of Catalyst will not assume the administration of the Salaried Plan; and,
- (c) The Sale Agreement includes a condition that on closing, the Canadian Court granting a Final Order shall discharge the Purchaser from any liabilities or obligations of Catalyst under any of Catalyst's Employee Plans, such as the Salaried Plan (other than Transferred Employee Plans).

11. As a result of the Sale Agreement, in the event that the Plan of Compromise is not approved, and if the relief requested herein is not granted, then the Salaried Plan will be wound up with the wind-up liability referred to above, and which will result in significant losses to the pension benefits payable to the beneficiaries of the Salaried Plan.

Part 3: LEGAL BASIS

1. Section 43.1 of the *Pension Benefits Standards Act*, R.S.B.C. 1996, c. 352; and,
2. Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36.
3. The equitable jurisdiction of this Honourable Court.

Part 4: MATERIAL TO BE RELIED ON

4. The Affidavit of Ronald Gary McCaig sworn April 13, 2012, with exhibits thereto;
5. The pleadings herein; and,
6. Such further and other material as counsel may advise and this Honourable Court accept.

The applicants estimate that the application will take: **2 hours**.

This matter is within the jurisdiction of the master.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect]

THIS APPLICATION INVOLVES THE FOLLOWING: *[Specify the application type(s) included in this application.]*

discovery: comply with demand for documents

discovery: production of additional documents

other matters concerning document discovery

extend oral discovery

other matter concerning oral discovery

amend pleadings

add/change parties

summary judgment

summary trial

service

mediation

adjournments

proceedings at trial

case plan orders: amend

case plan order: other

experts

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