

**VANCOUVER**  
**MAY 15 2012**  
**COURT OF APPEAL**  
**REGISTRY**

Court of Appeal File No. CA39754

COURT OF APPEAL

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"

**AFFIDAVIT**

I, Peter Rubin, Barrister and Solicitor, of 2600 – 595 Burrard Street, Vancouver, British Columbia MAKE OATH AND SAY THAT:

1. I am a Partner of Blake, Cassels & Graydon LLP, counsel for Catalyst Paper Corporation and the Petitioners listed in Schedule "A", and as such have personal knowledge of the matters deposed to in this Affidavit except where I depose to a matter based on information from an informant I identify in which case I believe that both the information from the informant and the resulting statement are true.

2. On March 6, 2012, a group of individuals referred to as the Catalyst Salaried Employees and Pensioners Group (the "CSEP") filed a Notice of Application for Leave to Appeal in this proceeding.

3. On March 9, 2012, the Petitioners and the CSEP Steering Committee entered into a Memorandum of Agreement (“MOA”). Attached to this my Affidavit and marked as **Exhibit “A”** is a copy of the MOA.

4. Given the significant impact that the appeal proceedings had on the CCAA proceeding, the MOA contained the following provision:

9. The CSE&P Steering Committee will make all reasonable efforts to expedite their leave to appeal application in relation to the matters that they are still permitted to appeal as referenced above.

5. On March 30, 2012, the CSEP filed a second Amended Notice of Application for Leave to Appeal.

6. The CSEP sought leave to appeal the orders of Mr. Justice Sewell in the proceedings below, dated February 14, 2012 and March 9, 2012. Attached to this my Affidavit and marked as **Exhibit “B”** is a copy of the Oral Reasons for Judgment of Mr. Justice Sewell dated March 9, 2012. Attached to this my Affidavit and marked as **Exhibit “C”** is a copy of the Order of the British Columbia Supreme Court dated March 9, 2012.

7. On April 5, 2012, 30 days after the March 6, 2012 Notice of Application for Leave to Appeal was filed, the CSEP filed their Notice of Motion for Leave to Appeal and Motion Record for Leave to Appeal.

8. The Petitioners, supported by secured and unsecured creditors of the Petitioners, several of the Petitioners’ critical suppliers, and the Court-appointed Monitor, opposed the granting of leave to appeal. In particular, the Petitioners, and others, raised significant concerns with the uncertainty created by the appeal and the fact that it would be highly disruptive of the CCAA restructuring process. Attached to this my Affidavit and marked as **Exhibit “D”** is a copy of the Memorandum of Argument included in the Petitioners’ Reply Book for Leave to Appeal.

9. On April 19, 2012, Mr. Justice Hall of this Court dismissed the CSEP’s Application for Leave to Appeal. Attached to this my Affidavit and marked as **Exhibit “E”** is a

copy of the Oral Reasons for Judgment of Mr. Justice Hall dated April 19, 2012 (the “Reasons”).

The Reasons provide the following at paragraph 11:

Having reflected on the submissions and the facts, I must say that I have grave reservations about the potential merit of the appeal. I would be very dubious that a division of this Court could be persuaded to grant the relief sought on behalf of the applicants. I also consider that any appeal would have a most deleterious effect on the proceedings in the court of first instance by causing delay and uncertainty. It will be no easy task to save for operation this financially distressed corporation and an appeal would be a highly negative factor in this process. [Emphasis added]

10. On April 24, 2012, the CSEP filed a Notice of Application to Vary an Order of a Justice.

11. On May 1, 2012, in light of the timing concerns and impact of the application to vary on the CCAA proceedings, I wrote to counsel for the CSEP and stated:

We write further to the Notice of Application attached and sent via email on Tuesday April 24, 2012. As you are aware, the agreement reached with Catalyst requires your clients to proceed on an expedited basis in respect of the appeal matters. As you are also aware, our clients took issue with the prior delay in filing the leave application. That issue is in the past but we respectfully remind you of your clients obligations in this regard. This is a matter of some importance to our client given the continued impact on liquidity. Our clients require that your clients file and serve their motion book this week.

We will be seeking an expedited hearing date and will contact the Registry once we have your motion book.

Attached to this my Affidavit and marked as **Exhibit “F”** is my e-mail to Ari N. Kaplan, James Harnum and Demetrios Yiokaris, counsel to the CSEP, dated May 1, 2012.

12. On May 9, 2012, the CSEP filed the current motion to extend the time period to file their Motion Book.

13. I have reviewed the Affidavit of Michael J. Prokosh made May 9, 2012. At paragraph 6 of that Affidavit, Mr. Prokosh swears “I am informed by James Harnum of Koskie

Minsky LLP and verily believe that last week their firm contacted counsel for the Company, in an effort to resolve the within appeal. The parties are currently in settlement discussions”.

14. Mr. Prokosh may overstate matters when he states that the parties are “currently in settlement discussions.” On Friday, May 4, 2012, counsel for the CSEP advised me by telephone that the CSEP would be making a written offer to settle this appeal. On Tuesday, May 8, 2012, counsel for the CSEP made a settlement offer to the Company and other parties by way of letter (the “**Proposal Letter**”).

15. The settlement offer as set out in the Proposal Letter would require the agreement of more than 35 separate persons, including the key employee retention program participants, the directors of the Petitioners, the officers of the Petitioners, the financial advisor to the Petitioners and certain third party suppliers of the Petitioners. A resolution as proposed by the CSEP is beyond the control of the Petitioners.

16. The Petitioners have not otherwise agreed to the terms set out in the Proposal Letter.

17. At no time have the Petitioners consented either to any delay in the appeal proceedings or to any late filing of materials by the CSEP.

18. Attached to this my Affidavit and marked as **Exhibit “G”** is an excerpt from the Court-appointed Monitor’s Tenth Report dated April 18, 2012. Attached to this my Affidavit and marked as **Exhibit “H”** is an excerpt from the Court-appointed Monitor’s Thirteenth Report dated May 9, 2012.

SWORN BEFORE ME at Vancouver, )  
British Columbia, this 15th of May, 2012 )  
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)  
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)  
\_\_\_\_\_  
A Commissioner for taking Affidavits in )  
the Province of British Columbia )

**Anthony Purgas**  
*Barrister & Solicitor*  
Blake, Cassels & Graydon LLP  
Suite 2600, Three Bentall Centre  
50807198.5 595 Burrard St., P.O. Box 49314  
Vancouver, B.C. V7X 1L3  
(604) 631-4280

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\_\_\_\_\_  
**Peter Rubin**

**SCHEDULE "A"**

**LIST OF ADDITIONAL PETITIONERS**

Catalyst Pulp Operations Limited  
Catalyst Pulp Sales Inc.  
Pacifica Poplars Ltd.  
Catalyst Pulp and Paper Sales Inc.  
Elk Falls Pulp and Paper Limited  
Catalyst Paper Energy Holdings Inc.  
0606890 B.C. Ltd.  
Catalyst Paper Recycling Inc.  
Catalyst Paper (Snowflake) Inc.  
Catalyst Paper Holdings Inc.  
Pacifica Papers U.S. Inc.  
Pacifica Poplars Inc.  
Pacifica Papers Sales Inc.  
Catalyst Paper (USA) Inc.  
The Apache Railway Company

affidavit of A Peter Rubin  
sworn before me at Vancouver  
this 15 day of May 2012  
[Signature]  
Commissioner for taking Affidavits  
for British Columbia

**MEMORANDUM OF AGREEMENT**

**BETWEEN:**

**CATALYST PAPER CORPORATION and THE PETITIONERS  
IN SUPREME COURT OF BRITISH COLUMBIA ACTION NO. S-120712**

**("The Petitioners")**

**- and -**

**CATALYST SALARIED EMPLOYEES  
AND PENSIONERS STEERING COMMITTEE**

**("CSE&P Steering Committee")**

**WHEREAS** the CSE&P Steering Committee has filed a Notice of Application for Leave to Appeal on March 6, 2012 ("Notice of Application for Leave to Appeal") in respect to certain orders made by the Court in the ongoing CCAA proceedings;

**AND WHEREAS** the parties wish to resolve matters concerning certain of the issues raised in the Notice Application for Leave to Appeal the Parties agree as follows:

1. Koskie Minsky LLP and Blake, Cassels & Graydon LLP, as counsel for the Parties, will jointly draft language which makes clear that the Amended and Restated Initial Order of February 3, 2012 as subsequently amended ("Amended and Restated Initial Order") does not provide a priority for the 2016 Notes Security over any of the three potential employees/pensioner claims referenced in paragraph 55 of said order (i.e. past and future breaches of fiduciary duty, statutory deemed trusts, and BIA ss. 81.5 and 81.6).
2. The Order of March 8, 2012, as drafted by Koskie Minsky LLP and Blakes, will be issued by the CCAA Court.
3. Employee/pensioner claims under 81.5 and 81.6 of the BIA, for unpaid normal cost payments, will not be primed by the DIP Lenders' Charge. Language will be drafted to be inserted to the Amended and Restated Initial Order.
4. \$25,000 of the legal costs incurred by the CSE&P Steering Committee to date, in relation to general CCAA advice and not the application related to the representation of the salaried employees and pensioners (the "Representation Application"), will be paid by the Petitioners.
5. Up to \$30,000 plus reasonable disbursements will be paid each month for the legal costs of the CSE&P Steering Committee, starting in March 2012, with such an amount to be a rolling amount such that if less than the \$30,000 amount is billed in any given month the shortfall can be credited as against another month. Such amounts to be paid by the Petitioner Parties in accordance with normal practice in this proceeding.

6. The CSE&P Steering Committee and their lawyers shall amend the Notice of Application for Leave to Appeal to clarify that the leave to appeal does not advance any claim, make any argument or advance any appeal which could provide for a pension claim priority over the DIP Lenders' Charge or the Administration Charge. The CSE&P Steering Committee shall serve an amended Notice of Application for Leave to Appeal to the service list of the CCAA proceeding forthwith and use best efforts to file such amended Notice of Application for Leave to Appeal with the Court of Appeal by the end of the day on March 9, 2012 and no later than the end of the day on March 12, 2012.

7. Subject to paragraph 8 below, the CSE&P Steering Committee may proceed with its leave to appeal in respect to the matters referred to in the amended Notice of Application for Leave to Appeal including: leave to appeal application in relation to the D&O Charge and the Critical Suppliers' Charge priming claims under the BIA and for past and future breaches of fiduciary duty and its leave to appeal application in relation to the denial of their Representation Application brought on February 23, 2012.

8. With the exception of claims under ss. 81.5 and 81.6 of the BIA, for unpaid normal cost payments the CSE&P Steering Committee (including any person it represents) and their lawyers will not bring any claim, make any argument, or advance any appeal which would serve to give any pension claim priority over the DIP Lenders' Charge in respect of DIP Lenders' First Lien Collateral.

9. The CSE&P Steering Committee will make all reasonable efforts to expedite their leave to appeal application in relation to the matters that they are still permitted to appeal as referenced above.

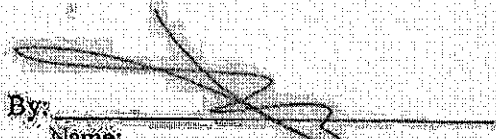
10. CSE&P Steering Committee (including any person it represents) and their lawyers will not bring any claim, make any argument, or advance any appeal which would serve to give any pension claim priority over the Administrative Charge.

11. CSE&P Steering Committee (including any person it represents) and their lawyers acknowledge and agree that notwithstanding the granting of any order to give effect to this agreement that amends the Amended and Restated Initial Order, the provisions of the Amended and Restated Initial Order that relate to the DIP Documents and the DIP Lenders' Charge remain a final order as at February 14, 2012 as ordered pursuant to paragraph 7 of the Order issued on February 14, 2012 confirming that paragraph 80 (comeback clause) of the Amended and Restated Initial Order shall not be operative in favour of any Served Party to seek to vary the provisions of the Amended and Restated Initial Order relating to the DIP Facility or the DIP Lenders' Charge, without prior consent of the DIP Agent.

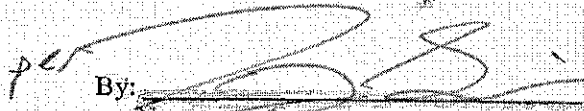
12. Parties to this Agreement confirm and acknowledge that the terms and conditions of this Agreement and orders contemplated to be issued by the court in this Agreement are relied upon by the DIP Lenders in respect to the administration of the DIP Credit Agreement.

DATED at \_\_\_\_\_, this 9<sup>th</sup> day of March, 2012.

**THE PETITIONERS**

By:   
Name: \_\_\_\_\_  
Title: David L. Adderley  
Vice President and General Counsel

**CSE&P STEERING COMMITTEE**

per   
By: \_\_\_\_\_  
Name: Anthony Guindon  
Title: Kosak Minsky LLP

**COPY**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Date: 20120308  
Docket: S120712  
Registry: Vancouver

*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

Before: The Honourable Mr. Justice Sewell

**Oral Reasons for Judgment**

In Chambers

Counsel for Petitioners

W.C. Kaplan, Q.C.  
P.L. Rubin  
A. Purgas

Counsel for Monitor

J. Grieve  
K.M. Jackson

Counsel for A Representative Group of 2016  
Noteholders

J.R. Sandrelli  
S. Kukulowicz

Counsel for Powell River Energy Inc.,  
Quadrant Investments Ltd. and TimberWest  
Forest Corp.

M. Buttery

This is Exhibit "B" referred to in the  
affidavit of Peter Rubin  
sworn before me at Vancouver  
this 15 day of May 2012  
*[Signature]*  
A Commissioner for taking Affidavits  
for British Columbia

***Catalyst Paper Corporation (Re)******Page 2***

Counsel for Wilmington Trust FSB	B. La Borie
Counsel for CEP Unions	D. Bobert
Counsel for United Steelworkers International and USW Local 2688	S. Quelch
Counsel for Ad Hoc Committee of 2014 Noteholders	D. McKinnon
Counsel for Wells Fargo Bank NA	V. Sinha
Counsel for Board of Directors of Catalyst	H. Ferris
Counsel for Ronald Gary McCaig and Certain Other Non-Union Employees and Retirees	D. Yiokaris
Place and Date of Trial/Hearing:	Vancouver, B.C. March 9, 2012
Place and Date of Judgment	Vancouver, B.C. March 9, 2012

[1] **THE COURT:** This is an application for approval of a Key Employee Retention Plan ("KERP"), and a letter agreement described in affidavits No. 1 and 2 of Mr. William Dickson which were before me on this application. This is also the application to create a charge to secure the petitioner's obligations under such KERP.

[2] The purpose of the KERP is to provide an assurance of payment to key employees during the period of the **CCAA** reorganization and an assurance to those employees that whatever rights that they would otherwise have had on severance will be respected.

[3] The evidence before me is that the retention of the key employees referred to in the application and in the fourth report of the Monitor, dated March 12<sup>th</sup>, 2012, together with the continuity of the management of the petitioner that retention of those employees represents, is and has been of central importance to the petitioner's restructuring efforts.

[4] The KERP program, which I am asked to approve, was recommended by the management consultants firm of Towers Watson to the company in 2011.

[5] The history and background of the establishment of the KERP is outlined in s. 7 of the Monitor's fourth report, and I need not repeat what the Monitor has said in that report in these reasons. However, I do adopt into these reasons the history of the KERP set out in the Monitor's report.

[6] Of central importance in my view is that by the summer of 2011, the petitioner was aware that there was considerable pressure on senior management of the petitioner to secure their own financial futures by seeking employment elsewhere.

[7] In August 2011, the petitioner's vice-president and treasurer was recruited by a competitor and therefore his services were lost to the company.

[8] In that same time period, senior management of the petitioner also recognized that there was a significant possibility and indeed perhaps almost an

inevitability that the petitioner would be required to reorganize its affairs through a recapitalization that would likely result in a change in control of the petitioner, creating further uncertainty for the key employees of the petitioner.

[9] In response, the petitioner established a Key Employee Retention Program in November of 2011 after such a program was approved by the board in October 2011. The terms of that program are described in the fourth affidavit of William Dickson and in the Monitor's fourth report.

[10] In December 2011, the company secured its obligations under the KERP by providing two letters of credit in the aggregate amount of \$8,260,000. These two letters of credit were issued to secure the company's obligations under what were referred to in the submissions to me as the change in control circumstances and for retention amounts. Given the terms of the petitioner's operating facility, this amount, that is the \$8,260,000, became unavailable to the petitioner to finance its everyday operations.

[11] Since the outset of these proceedings, the company has been negotiating towards accomplishing the twin goals of obtaining access to these operating funds while continuing to maintain an effective KERP to meet the objects of retention of key employees and continuity of management.

[12] No party opposes the approval of the KERP. In my view, the provisions of the KERP are an essential component of the petitioner's restructuring efforts. In this case the petitioner has only a short window left to restructure its capital and continue in business in its present form. The loss of key employees at this critical time would cause irreparable damage to the company's reorganization in my view. In this regard I adopt the reasoning of Justice Pepall in *Canwest Publishing* at paras. 60 to 61, which I need not read.

[13] The KERP agreements are therefore approved in the terms set out in paras. 3 to 6 of the draft order provided to me.

[14] I turn now to a consideration of the KERP charge sought by the company.

[15] The company applies for an order creating a charge on its fixed assets to secure its KERP obligations. The real controversy on this application is over the question of what priority that charge should have and in particular what priority that charge should have relative to the petitioner's pension obligations to its current and retired employees.

[16] Counsel for an ad hoc group of salaried employees and pensioners submits that this court has no jurisdiction to create a charge ranking in priority to statutory duties and remedies under claims for breach of fiduciary duty in respect of those statutory remedies owed to employees and pensioners.

[17] This controversy revisits the question of the priority granted to charges in para. 55 of the Restated and Amended Initial Order as further modified on February 14<sup>th</sup>, 2012. The relevant portions of that paragraph in the order are as follows:

All of the charges [which included the charges in question] are paramount to and shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise, whether existing as of the date hereof or arising in the future, including any and all deemed trusts (provincial or otherwise) including under the PBSA [Pension Benefits Standards Act], all claims in respect of breach of fiduciary duties and any future charges which may arise under s. 81.5 and 81.6 of the Bankruptcy and Insolvency Act (collectively, the "Encumbrances") in favour of any person.

[18] The ad hoc committee submits that there is no jurisdiction to grant such a sweeping priority over the pension and employment claims of its members and, alternatively, if I find that there is such jurisdiction, no case has been made out before me to exercise it.

[19] Turning to the question of jurisdiction. I am satisfied that I have the jurisdiction to grant the KERP charge as applied for. There is no specific provision in the **Companies' Creditors Arrangement Act** authorizing the creation of a charge to support the company's KERP obligations. I must therefore find such jurisdictions in the provisions of s. 11 as interpreted by the case law.

[20] Section 11 of the Act states:

11. Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[21] In my view, the scope of the jurisdiction under s. 11 is very broad, subject of course to that jurisdiction being exercised to promote the purposes and objects of the **CCAA**. I note in particular in this regard that s. 11 permits the making of an order notwithstanding the provisions of the ***Bankruptcy and Insolvency Act***.

[22] In this case I adopt the reasoning of the Ontario Court of Appeal and respectfully follow that reasoning, in the ***ATB Financial*** decision, which is the asset-backed paper decision, reported at 2008 ONCA 587 at paras. 48 to 51. I do not propose to read all of those paragraphs; however, I will read paras. 50 and 51 as I consider those paragraphs to be particularly applicable to the facts of this case:

[50] The remedial purpose of the CCAA – as its title affirms – is to facilitate compromises or arrangements between an insolvent debtor company and its creditors. In ***Chef Ready Foods Ltd. v. Hongkong Bank of Canada*** (1990), 4 C.B.R. (3d) 311 at 318 (B.C.C.A.), Gibbs J.A. summarized very concisely the purpose, object and scheme of the Act:

Almost inevitably, liquidation destroyed the shareholders' investment, yielded little by way of recovery to the creditors, and exacerbated the social evil of devastating levels of unemployment. The government of the day sought, through the C.C.A.A., to create a regime whereby the principals of the company and the creditors could be brought together under the supervision of the court to attempt a reorganization or compromise or arrangement under which the company could continue in business.

[51] The CCAA was enacted in 1933 and was necessary – as the then Secretary of State noted in introducing the Bill on First Reading—“because of the prevailing commercial and industrial depression” and the need to alleviate the effects of business bankruptcies in that context: see the statement of the Hon. C.H. Cahan, Secretary of State, *House of Commons Debates (Hansard)* (April 20, 1933) at 4091. One of the greatest effects of that Depression was what Gibbs J.A. described as “the social evil of devastating levels of unemployment”. Since then, courts have recognized that the Act has a broader dimension than simply the direct relations between the debtor company and its creditors and that this broader public dimension must be weighed in the balance together with the interests of those most directly

affected: see, for example, *Elan Corp. v. Comiskey (Trustee of)*, (1990), 1 O.R. (3d) 289 (C.A.), per Doherty J.A. in dissent; *Re Skydome Corp.* (1998), 16 C.B.R. (4th) 125 (Ont. Gen. Div.); *Re Anvil Range Mining Corp.* (1998), 7 C.B.R. (4th) 51 (Ont. Gen. Div.).

[52] In this respect, I agree with the following statement of Doherty J.A. in *Elan, supra*, at pp. 306-307:

. . . [T]he Act was designed to serve a "broad constituency of investors, creditors and employees".[3] Because of that "broad constituency" the court must, when considering applications brought under the Act, *have regard not only to the individuals and organizations directly affected by the application, but also to the wider public interest.* [Emphasis added.]

[23] In the asset-backed paper case, of course, the issue in question was whether the **CCAA** permitted the making of an order depriving one solvent person from suing another solvent person for civil wrongs which were within the exclusive jurisdiction of the provinces. The Court of Appeal upheld the decision of Mr. Justice Campbell of the Ontario Superior Court that such jurisdiction did exist and should be exercised on the particular facts in that case.

[24] On the basis of these authorities and others which I have considered, I am satisfied that I do have jurisdiction under s. 11 of the **CCAA** to make an order granting the priority sought on this application. Of course, that requires me to turn to a consideration of whether I should make such an order in the particular circumstances of this case.

[25] In this case I think the critical question is whether I should exercise the jurisdiction that I have found that I have. In addressing that question, I must consider whether the order sought promotes the object of the statute, that is, is the order necessary to promote a successful reorganization of the debtor's affairs, and secondly, I think I should consider whether the order sought would unduly prejudice the rights of parties affected by it.

[26] In this case I have concluded that the order sought clearly promotes the objects of the statute. I have found that retention of key employees is an important, indeed vital, element in the company's reorganization efforts.

[27] Given the company's financial uncertainties, approval of a KERP without adequate security would be of little benefit to the key employees and provide little or no incentive for them to remain with the company.

[28] Another question on this application is whether the interests of the pensioners and salaried employees who oppose the application would be unduly prejudiced by the order sought. I have concluded that they are not. The salaried plan is a defined benefit plan. The company is obligated to make considerable payments towards the plan's solvency deficiencies over the next seven years. If the company is successful in reorganizing itself, it will be in a better position to make those payments. Further, current employees will of course benefit from continued employment and from the benefit of those payments to the pension plan of which they are currently members.

[29] With respect in particular to the KERP, I also fail to see how the proposed order causes any real prejudice to the employees and pensioners. The pensioners group which opposes the application has already agreed to an order granting the DIP financing priority over pension claims. In this case the LCs already in place if drawn upon will increase the amount outstanding under the DIP facility. If the order is not granted, the \$8.26 million in LCs will, for all practical purposes, rank in priority to the pension claims in any event. I therefore can see no prejudice in the arrangements which are proposed with respect to the KERP, that is, converting the existing security in the form of letters of credit into a charge on the fixed assets of the company.

[30] In this case I also note that the authorized representative of pension beneficiaries, that is RSEA, supports the application, as I understand it, because it considers the application to be in the best interests of its constituency.

[31] In this case and in considering this particular issue, I am also satisfied that the circumstances justify invoking the doctrine of paramountcy. I think that the comments of Mr. Justice Morawetz at p. 48 to 50 of the *Timminco* decision are applicable to the facts of this case. In the interests of time, I do not think it necessary

to read those comments into the record. However, I will include a quote from paras. 48 to 50 if anyone seeks a copy of these reasons:

[48] Counsel submits that the general paramountcy of the CCAA over provincial legislation was confirmed in *ATB Financial v. Metcalf & Mansfield Alternative Investment II Corp.*, (2008), 45 C.B.R. (5th) 163 (Ont. C.A.) at para. 104. In addition, in *Nortel Networks Corporation (Re)*, the Court of Appeal held that the doctrine of paramountcy applies either where a provincial and a federal statutory position are in conflict and cannot both be complied with, or where complying with the provincial law will have the effect of frustrating the purpose of the federal law and therefore the intent of Parliament. See *Nortel Networks Corporation (Re)*, (2009), 59 C.B.R. (5th) 23 (Ont. C.A.).

[49] It has long been stated that the purpose of the CCAA is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors, with the purpose of allowing the business to continue. As the Court of Appeal for Ontario stated in *Stelco Inc., (Re)* (2005), 75 O.R. (3d) 5, at para. 36:

In the CCAA context, Parliament has provided a statutory framework to extend protection to a company while it holds its creditors at bay and attempts to negotiate a compromised plan of arrangement that will enable it to emerge and continue as a viable economic entity, thus benefiting society and the company in the long run, along with the company's creditors, shareholders, employees and other stakeholders. The s. 11 discretion is the engine that drives this broad and flexible statutory scheme...

[50] Further, as I indicated in *Nortel Networks Corporation (Re)* (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J.), this purpose continues to exist regardless of whether a company is actually restructuring or is continuing operations during a sales process in order to maintain maximum value and achieve the highest price for the benefit of all stakeholders. Based on this reasoning, the fact that Timminco has not provided any plan for restructuring at this time does not change the analysis.

[32] In my view, the considerations set out in Mr. Justice Morawetz's decision apply with even greater force in this case given the vital importance to the survival of the petitioner's operations and the fact that the petitioner has continued to operate. I say that because in the *Timminco* case there was little or no prospect of there actually being a successful reorganization as opposed to a liquidation.

[33] For these reasons, I grant the order sought with respect to the charge and the priority sought for the charge for the KERF.

[34] I turn now to a consideration of the approval of the letter agreement with the financial advisors. In my view, similar considerations and issues are raised with respect to the financial advisor agreement as were raised under the KERP.

[35] The first issue is whether I should approve the engagement letter with Perella Weinberg Partners. Again, there seems to be little controversy about whether I should approve the engagement letter. It is quite clear that this is a complex restructuring requiring the assistance of sophisticated and experienced financial advisors.

[36] I am satisfied on the material before me and in particular on the basis of the analysis and comments of the Monitor that Perella Weinberg has the capability to deliver these services and has in fact delivered such valuable services and assistance to date.

[37] The Monitor has reviewed the commercial terms of the engagement letter and finds them to be reasonable. Management of the petitioner is also of the view that the terms are reasonable.

[38] I adopt the basis for concluding that the terms are reasonable on the evidence that I have heard and also on the analysis set out in para. 8.5 of the Monitor's report. I therefore approve the terms of the engagement letter.

[39] Turning to the question of whether I should create a charge with the priority sought, I note that with respect to the financial advisor's fees, there is clear statutory authority found in s. 11.52(1)(b) of the ***Companies' Creditors Arrangement Act***.

[40] Counsel for the petitioner submitted to me that the claims of the pensioners as described in para. 55 of the amended order are claims of secured creditors. I do not find it necessary to decide that issue. In my view, the analysis that I have gone through with respect to the jurisdiction to grant a KERP charge applies to the question of the priority to be given to the financial advisor's charge. However, again, with respect to the financial advisor's charge, the critical issue is whether I should exercise the jurisdiction that I do have to grant a charge with the priority sought.

[41] I have concluded that I should grant the charge with the priority sought by the applicant. In addressing this question, I think I must approach it from a practical and functional point of view. Under the terms of the engagement letter, the financial advisor's fees are payable monthly in advance. The charge in this case will help to ensure that the financial advisors are secure in providing services and do not find it necessary to withdraw their services or insist on payment in advance. More fundamentally, however, I consider it reasonable that those entities providing services to the company post filing to assist with its reorganization, which services are vital components of a restructuring, should have reasonable security for their fees for such services.

[42] If the priority for those fees is postponed to potential pension claims and claims for breach of fiduciary duty in respect of such pension claims, such security may well prove to be illusory or, at a minimum, not recoverable until after the conclusion of lengthy litigation.

[43] In reaching the conclusion to grant the priority, I have attempted to balance the interests of the petitioner and its stakeholders in effecting a restructuring against the possible prejudice to a particular group that may be affected by the order sought, in this case the employees and pensioners.

[44] In this case I am of the view that the position of those entitled to pension benefits will be best served by a successful restructuring. Such a restructuring will provide future employment and continued funding for the salaried plan. This reality was expressed by Mr. Justice Morawetz in the *Timminco* case at paras. 66 to 67 as follows:

[66] In my view, in the absence of the court granting the requested super priority and protection, the objectives of the CCAA would be frustrated. It is not reasonable to expect that professionals will take the risk of not being paid for their services, and that directors and officers will remain if placed in a compromised position should the Timminco Entities continue CCAA proceedings without the requested protection. The outcome of the failure to provide these respective groups with the requested protection would, in my view, result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings.

[67] If bankruptcy results, the outcome for employees and pensioners is certain. This alternative will not provide a better result for the employees and pensioners. The lack of a desirable alternative to the relief requested only serves to strengthen my view that the objectives of the CCAA would be frustrated if the relief requested was not granted.


[45] In considering this quotation, I think it is important to remember that in ***Timminco*** the order which was sought was in fact a suspension of contributions to the pension plan, which contributions were of course contractually and statutorily required. In this case no such draconian remedy is sought with respect to the pensioners. I therefore think that the considerations set out by Mr. Justice Morawetz apply with even greater force to a consideration of the balancing of prejudice and benefit with respect to this aspect of the application.

[46] In this regard I note that the difficulty that would be faced by any charge holder whose claims ranked subsequent to the claims of pension beneficiaries. Their security would be precarious and problematic at best. This is because even on the situation as it now exists there is a very substantial potential claim on the part of those pension beneficiaries and it may well take lengthy and uncertain litigation to resolve that issue. These considerations, of course, I have addressed previously and have led me to the conclusion that postponing the charges in question to those claims would in a very real sense render the efficacy of those charges illusory.

[47] In my view, I also think that the orders sought in this case must be viewed as part of the overall attempt of the company to restructure its affairs. They must not be viewed as a series of individual applications or one-offs but as part of the overall restructuring process. Thus, while in theory it might be possible to suggest other arrangements for each individual step taken, such as other arrangements which might have been negotiated with the financial advisors or other arrangements which might have been negotiated with the key employees, such an approach and the efforts involved in negotiating better terms would frustrate the overall objectives of an expeditious, efficient restructuring process.

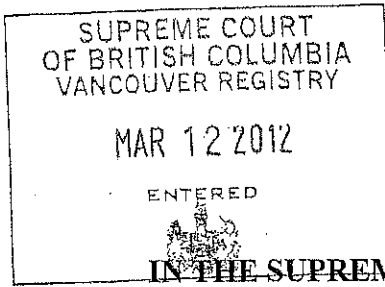
[48] As I have already indicated, I am satisfied that the retention of key employees and access to skilled professionals are essential to an effective restructuring effort in this case. I am also satisfied that the charges sought are reasonable and necessary to provide effective security to the key employees and the professionals.

[49] Accordingly, both applications are granted in the terms sought in the draft order that was submitted to me.



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The Honourable Mr. Justice Sewell



No. S120712  
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

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE  
MR. JUSTICE SEWELL

)  
)  
)

9/March/2012

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 8<sup>th</sup> and 9<sup>th</sup> days of March, 2012; AND ON HEARING, Bill Kaplan, Q.C., Peter Rubin, and Anthony Purgas, counsel for the Petitioners, John Grieve and Kibben Jackson, counsel for the Monitor PricewaterhouseCoopers Inc., and those other counsel listed in Schedule "B" hereto; AND UPON READING the material filed;

This is Exhibit "C" referred to in the  
affidavit of Peter Rubin  
sworn before me at Vancouver  
this 15 day of May 2012  
*[Signature]*  
A Commissioner by taking Affid's. for  
the British Columbia

THIS COURT ORDERS AND DECLARES THAT:

**KEY EMPLOYEE RETENTION PROGRAM**

1. The letter agreements (collectively, the "**KERP Agreements**") pursuant to which the Petitioner Catalyst Paper Corporation ("**CPC**") agreed to provide compensation to key employees (collectively, the "**Key Employees**") in accordance with a key employee retention program ("**KERP**"), as described in the Affidavit #1 of William Dickson, affirmed February 10, 2012 and as amended as described in the Affidavit #2 of William Dickson, affirmed March 2, 2012, are hereby approved.
2. The Petitioners and Catalyst Paper General Partnership (collectively, the "**Petitioner Parties**") (and any other person that may be appointed to act on behalf of the Petitioner Parties, including without limitation, any trustee, liquidator, receiver, interim receiver, receiver and manager or other person acting on behalf of any such person) is authorized and directed to perform the obligations under the KERP Agreements and the KERP provided sufficient funds are available for such purposes.
3. The Petitioner Parties are hereby authorized to execute and deliver such additional documents as may be necessary to give effect to the KERP Agreements, subject to prior approval of such documents by the Monitor or as may be ordered by this Court.
4. Notwithstanding any other provision of the Amended and Restated Initial Order, the Petitioner Parties shall make all payments to the Key Employees of amounts due and owing under the KERP Agreements at the time specified and in accordance with the terms of the KERP Agreements.

**KERP CHARGE**

5. The Petitioner Parties are hereby authorized to execute and deliver such additional documents as may be necessary to cancel or terminate any letters of credit and any underlying trust agreements or related documentation relating to the KERP Agreements and the KERP. The Petitioner Parties shall, in cooperation with the Key Employees, cancel the letters of credit referenced above upon all appeal periods with respect to this Order having expired with no

notice of application for leave to appeal, notice of appeal or motion to vary, amend, stay, reverse or otherwise affecting any of the Orders having been filed and pending.

6. Upon the cancellation or termination of the letters of credit referenced in paragraph 5 above, the Key Employees are hereby granted a charge (the "**KERP Charge**") on the Notes First Lien Collateral (as defined in the Amended and Restated Initial Order) as security for the obligations of the Petitioner Parties to the Key Employees under the KERP Agreements and the KERP in the aggregate amount of \$8 million. The KERP Charge shall have the priority set out in paragraph 52 of the Amended and Restated Initial Order, as amended by paragraph 15, below.

7. This Court declares that the Key Employees shall not be prejudiced by the conversion of the letters of credit securing the KERP to the KERP Charge. For clarity, the Court declares that the KERP Charge shall have the priority relative to the other Charges and other security interests as provided in paragraph 52 of the Amended and Restated Initial Order. However, in the event that any other party, including any secured creditor, statutory or otherwise, shall at anytime, contest either the validity of the security of the KERP Charge or its priority relative to such party, the Court shall, in the adjudication of that matter, treat the KERP Charge security as though it were a letter of credit issued on December 11, 2011 in the amount of \$8.262 million dollars that remains outstanding at the time of the hearing of the challenge to the KERP Charge.

#### **FINANCIAL ADVISOR**

8. Notwithstanding any other provision of the Amended and Restated Initial Order, the engagement of Perella Weinberg Partners LP as financial advisor to the Petitioner Parties (the "**Financial Advisor**") pursuant to the engagement letter dated October 23, 2011 between the Financial Advisor and CPC (the "**Engagement Letter**") attached as Exhibit "A" to the affidavit #5 of B. Baarda, made March 1, 2012 and filed herein, is hereby approved. CPC is authorized to carry out and perform its obligations thereunder (including payment of amounts due to be paid pursuant to the terms of the Engagement Letter, including but not limited to any fee under the Engagement Letter to be paid upon a Sale or Restructuring as defined in the Engagement Letter) and the Engagement Letter shall be binding on the Petitioner Parties.

9. All claims of the Financial Advisor pursuant to the Engagement Letter are not claims that may be compromised pursuant to any plan of compromise or arrangement under the *Companies Creditors Arrangement Act*, any proposal under the *Bankruptcy and Insolvency Act* or any other restructuring and no such plan, proposal or restructuring shall be approved that does not provide for the payment of all amounts due to the Financial Advisor pursuant to the terms of the Engagement Letter.

10. Notwithstanding any order in these proceedings, the Petitioner Parties are authorized to make all payments required by the Engagement Letter, including all fees and expenses, when due.

11. The Financial Advisor, its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of either its engagement by CPC as Financial Advisor or any matter referred to in the Engagement Letter except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Financial Advisor in performing its obligations under the Engagement Letter.

#### **FINANCIAL ADVISOR CHARGE**

12. The Financial Advisor is hereby granted a charge (the "**Financial Advisor Charge**") on the Notes First Lien Collateral which charge shall be security for all amounts due to be paid to the Financial Advisor pursuant to the terms of the Engagement Letter, but shall not secure any indemnity for any fees or expenses incurred by the Financial Advisor in connection with any right of indemnity included in the Engagement Letter. The Financial Advisor Charge shall have the priority set out in paragraph 52 of the Amended and Restated Initial Order, as amended by paragraph 15, below.

#### **AMENDED AND RESTATED INITIAL ORDER**

13. Subparagraph 8(a) of the Amended and Restated Initial Order shall be deleted in its entirety and replaced with the following:

(a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance and termination pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "Wages");

14. Subparagraph 8(c) of the Amended and Restated Initial Order shall be deleted in its entirety and replaced with the following:

(c) the fees and disbursements of any Assistants (which term for the purposes herein shall be as defined in paragraph 5) retained or employed by the Petitioner Parties, including counsel for Wilmington Trust, National Association in its capacity as Trustee under the Indentures dated as of March 10, 2010 and May 19, 2010, which are related to the Petitioner Parties' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioner Parties and the Directors, whenever and wherever incurred, in respect of:

- (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioner Parties or any subsidiaries or affiliated companies of the Petitioner Parties are domiciled;
- (ii) any litigation in which the Petitioners are named as a party or are otherwise involved, whether commenced before or after the Order Date; and
- (iii) any related corporate matters;

15. Paragraph 52 of the Amended and Restated Initial Order shall be deleted in its entirety and replaced with the following:

52. In respect of the Charged Property which constitutes Notes First Lien Collateral, the priority of the Charges, the 2016 Notes Security, the ABL Facility Security, as among themselves, shall be as follows:

First - the Administration Charge

- Second - any Critical Suppliers' Charge, if ordered by the Court
- Third - the KERP Charge
- Fourth - the D&O Charge
- Fifth - the Financial Advisor Charge
- Sixth - the 2016 Notes Security
- Seventh - the DIP Lenders' Charge
- Eighth - the ABL Facility Security

16. Paragraph 54 of the Amended and Restated Initial Order shall be deleted in its entirety and replaced with the following:

54. Notwithstanding paragraph 55 of this Order, subject to further order of the Court, the Administration Charge, any Critical Suppliers' Charge, if ordered by the Court, the KERP Charge, the D&O Charge and the Financial Advisor Charge and, shall be subordinate to the Permitted Priority Claims (but only to the extent, in each case, that those Permitted Priority Claims are not subordinate to claims over which the DIP Lenders' Charge has priority).

17. Paragraph 57 of the Amended and Restated Initial Order shall be deleted in its entirety and replaced with the following:

57. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the DIP Lenders' Charge, any Critical Suppliers' Charge, if ordered by the Court, the KERP Charge, the D&O Charge and the Financial Advisor Charge (collectively, the "Charges") shall not be required, and the Charges shall be effective as against the Charged Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected, notwithstanding any failure to file, register or perfect any such Charges. The Charges shall attach to all Charged Property including equipment, inventory, lease, license, occupation permit, or other contractual right notwithstanding any requirement for the consent of any lessor, licensor, or other party to or finance of any such Charged

Property, or any other person, and notwithstanding the provisions of any applicable instrument or agreement to the contrary, the failure to obtain such consent shall not constitute a breach of or default under any such license, right of occupation, permit, statute, contractual or other agreement comprising or relating to such Charged Property.

18. Paragraph 61 of the Amended and Restated Initial Order shall be deleted in its entirety and replaced with the following:

61. The Administration Charge, any Critical Suppliers' Charge, if ordered by the Court, the KERP Charge, the D&O Charge, the Financial Advisor Charge, the DIP Credit Agreement, the DIP Documents, the DIP Lenders' Charge, and the ABL Facility Security in respect of the LC Cash Collateral and the Derivatives Cash Collateral shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges and the ABL Facility Security in respect of the LC Cash Collateral and the Derivatives Cash Collateral (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioner Parties; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the LC Cash Collateral nor the Derivatives Cash Collateral nor the execution, delivery, perfection, registration or performance of the DIP Documents shall create or be deemed to constitute a breach by the Petitioner Parties of any Agreement to which they are a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioner Parties entering into the DIP Documents, the creation of the Charges or the LC Cash Collateral or the Derivatives Cash Collateral, or the execution, delivery or performance of the DIP Documents; and
- (c) the payments made by the Petitioner Parties pursuant to this Order, the DIP Documents, or the ABL Facility, and the granting of the Charges and the LC Cash Collateral and the Derivatives Cash Collateral, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

**APPROVAL**

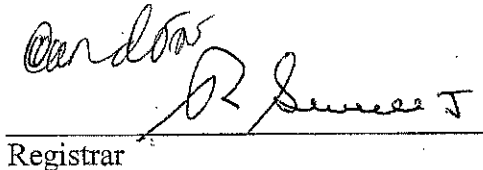
19. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



\_\_\_\_\_  
Signature of  
 party  lawyer for the Petitioner Parties  
Bill Kaplan, Q.C. / Peter Rubin

BY THE COURT.

  
\_\_\_\_\_  
Registrar

**Schedule "A"**

**LIST OF ADDITIONAL PETITIONERS**

Catalyst Pulp Operations Limited  
Catalyst Pulp Sales Inc.  
Pacifica Poplars Ltd.  
Catalyst Pulp and Paper Sales Inc.  
Elk Falls Pulp and Paper Limited  
Catalyst Paper Energy Holdings Inc.  
0606890 B.C. Ltd.  
Catalyst Paper Recycling Inc.  
Catalyst Paper (Snowflake) Inc.  
Catalyst Paper Holdings Inc.  
Pacifica Papers U.S. Inc.  
Pacifica Poplars Inc.  
Pacifica Papers Sales Inc.  
Catalyst Paper (USA) Inc.  
The Apache Railway Company

**Schedule "B"**

<b>Name of Counsel</b>	<b>Party</b>
Peter Reardon	JPMorgan Chase Bank, N.A.
David Gruber Melaney Wagner	A Representative Group of 2014 Unsecured Noteholders and certain 2016 Noteholders
John Sandrelli Shayne Kukulowicz (by telephone)	A Representative Group of 2016 Noteholders
Stefanie Quelch	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 2688
Vasuda Sinha (by telephone)	Wells Fargo Bank NA
Benjamin La Borie George Benchetrit (by telephone)	Wilmington Trust, National Association
David McKinnon (by telephone)	Ad Hoc Committee of 2014 Noteholders
Ari Kaplan Michael Prokosh	Catalyst Salaried Employees & Pensioner Committee
Randal Kaardal	Catalyst TimberWest Retired Salaried Employees Association
Don Bobert	CEP Unions – Locals 1, 76 (Powell River), 592, 686 (Port Alberni), 1132 (Crofton), 630, 1123 (Campbell River)
Charles Gordon	PPWC Local 2
Sandra Wilkinson	Superintendent of Pensions
Kathryn Esaw (by telephone)	Canexus Corp and Casco Inc.
Heather Ferris	Board of Directors of Catalyst
Mary BATTERY	Powell River Energy Inc., Quadrant Investments Ltd. and TimberWest Forest Corp.
Kevin McElcheran (by telephone)	Perella Weinberg Partners LP

No. S120712  
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

---

ORDER MADE AFTER APPLICATION

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Bill Kaplan, Q.C./Peter Rubin  
BLAKE, CASSELS & GRAYDON LLP  
Barristers and Solicitors  
Suite 2600, Three Bentall Centre  
595 Burrard Street, P.O. Box 49314  
Vancouver, B.C. V7X 1L3  
604.631.3300  
Agent: Dye & Durham

COURT OF APPEAL

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"

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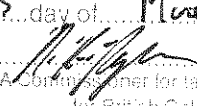
**MEMORANDUM OF ARGUMENT OF THE RESPONDENTS  
CATALYST PAPER CORPORATION ET AL.**

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**Catalyst Paper Corporation et al.**

William C. Kaplan Q.C./Peter L. Rubin  
Blake, Cassels & Graydon LLP  
Suite 2600, Three Bentall Centre  
595 Burrard Street, P.O. Box 49314  
Vancouver, BC V7X 1L3

Tel: (604) 631-3300  
Fax: (604) 631-3309  
bill.kaplan@blakes.com  
peter.rubin@blakes.com

This is Exhibit "D" referred to in the  
affidavit of... Peter Rubin.....  
sworn before me at... Vancouver.....  
this 15 day of... May....., 2012  
  
A Commissioner for taking Affidavits  
for British Columbia

## PART I: FACTS

1. For the purposes of the Appellants' application for leave to appeal, the Respondent Catalyst Paper Corporation ("**Catalyst**") accepts the facts set out in paragraphs 1-4, 6 and 10 of the Appellants' Memorandum of Argument ("**Appellants' Memorandum**"). Catalyst adopts the defined terms employed in the Appellants' Memorandum.

2. On January 31, 2012, the CCAA Judge issued an Initial Order in these proceedings (the "**Initial Order**") providing for the Directors and Officers Charge. The Initial Order further provided, in paragraph 53, that the Directors and Officers Charge and certain other charges created by the Initial Order (defined as the "**Charges**") would:

...rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise, whether existing as of the date herein or arising in the future, including any and all deemed trusts (provincial or otherwise), including under the PBSA, all claims in respect of breach of fiduciary duties and any future charges which may arise under Sections 81.3, 81.4, 81.5 and 81.6 of the BIA (collectively "Encumbrances") in favour of any Person.

(the "**Charge Priority Clause**").<sup>1</sup>

3. On February 3, 2012, the CCAA Judge issued an Amended and Restated Initial Order (the "**Restated Order**"). In the Restated Order, the proposed Critical Suppliers Charge (not yet granted) was defined as a "Charge". The Charge Priority Clause was renumbered as paragraph 55 of the Restated Order, but was otherwise unaltered. No Amended or Restated Order has been issued since February 3, 2012.<sup>2</sup>

4. On February 6, 2012, the CCAA Judge issued an Order granting the Critical Suppliers Charge (the "**Critical Suppliers Order**").<sup>3</sup>

5. On February 14, 2012, the CCAA Judge considered: (1) an extension of the stay of proceedings in the Initial Order, and (2) the final terms and priority of the DIP Lenders Charge. The CCAA Judge also heard and granted an application by the Appellants for leave to apply to represent the beneficiaries of the Salaried Plan. No application was before the Court challenging the Restated Order as regards the priority of the Directors and Officers Charge or the Critical Suppliers Charge. No change was made to the Charge Priority Clause, except that the reference

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<sup>1</sup> Catalyst's Reply Book ("CRB"), Tab 2 (Initial Order), paras. 26-28, 53.

<sup>2</sup> CRB, Tab 3 (Restated Order), paras. 25, 55.

<sup>3</sup> CRB, Tab 4 (Critical Suppliers Order).

to sections 81.3 and 81.4 of the BIA was deleted.<sup>4</sup>

6. The Appellants applied for leave to appeal to this Court on March 6, 2012. They did not seek leave to appeal from the Restated Order or the Critical Suppliers Order, and did not apply to the Court below to extend the time for applying for leave to appeal those Orders.

7. On March 8, 2012, the CCAA Judge reduced and confirmed the Directors and Officers Charge. No change was made to the Charge Priority Clause. The Appellants have not sought leave to appeal from the March 8<sup>th</sup> Order.

8. On March 9, 2012, the CCAA Judge granted the KERP and Financial Advisor Charge. No change was made to the Charge Priority Clause.<sup>5</sup>

9. Catalyst has no intention to wind up its pension plans as part of the CCAA process or otherwise. On March 22, 2012, Catalyst filed a Plan of Arrangement and Compromise (the “Plan”) with the Court below. The Plan provides that any pension claims referred to in paragraph 6(6) of the CCAA are “Unaffected Claims” and will not be affected by the Plan.<sup>6</sup>

## **PART II: POINTS IN ISSUE**

10. Catalyst submits that the following issues are raised by the Appellants’ application:
- (a) should the Appellants’ application for leave to appeal with respect the Directors and Officers Charge and the Critical Suppliers Charge the be dismissed as out of time; and
  - (b) does the Appellants’ application meet the criteria for granting leave to appeal?

## **PART III: ARGUMENT**

### **A. TIMELINESS OF THE APPELLANTS’ APPLICATION**

11. Section 13 of the CCAA provides that leave to appeal is required in order to appeal an order made under the CCAA. Subsection 14(2) provides that no appeal shall be heard unless proceedings are taken to perfect the appeal within 21 days after the order or decision is made. Pursuant to subsection 14(2), only the Court appealed from (in this case, the British Columbia

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<sup>4</sup> CRB, Tab 5 (Reasons for Judgment pronounced February 14, 2012), para. 6; Appellants’ Motion Record for Leave to Appeal (“AMR”), Tab 1 (Order pronounced February 14, 2012, para. 5).

<sup>5</sup> AMR, Tab 3 (Order pronounced March 9, 2012); CRB, Tab 6 (Reasons for Judgment pronounced March 9, 2012 (“March 9 Reasons”).

<sup>6</sup> CRB, Tab 7 (Plan), Section 1.1, “Unaffected Claim”; Section 2.5; CRB, Tab 1 (Baarda Affidavit #1), para. 82.

Supreme Court) has the jurisdiction to extend the time for perfecting an application for leave to appeal.<sup>7</sup>

12. To the extent that the Appellants challenge the priority of the Critical Suppliers Charge (granted February 6<sup>th</sup>) and the Directors and Officers Charge (granted January 31<sup>st</sup>), their application for leave to appeal is out of time and must be dismissed. The Appellants did not apply for leave until March 6, 2012, well beyond the 21 day appeal period.<sup>8</sup>

#### B. MERITS OF THE APPLICATION

13. This Court has recognized that, although no special test governs whether to grant leave to appeal under the CCAA, the application of the usual criteria for leave will, in the context of a CCAA proceeding, rarely result in leave to appeal being granted. There are two unique aspects of CCAA proceedings which lead to this conclusion: (a) the discretionary nature of most orders made in the context of the CCAA; and (b) the potential for appeals to upset “the balance between competing stakeholders that the supervisory judge has endeavoured to achieve” in the context of dynamic, “real time” proceedings. Given these considerations, the courts will “almost always” deny leave to appeal from a discretionary order made in ongoing CCAA proceedings.<sup>9</sup>

14. Both of these considerations are highlighted in the context of the present proceedings.

15. Section 11 of the CCAA provides:

11. General power of a court – **Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act***, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make **any order that it considers appropriate in the circumstances.** [*emphasis added*]

16. Section 11 explicitly contemplates that a CCAA court, in the exercise of its general discretion to make orders ensuring that the objects of the CCAA are met, is not bound by the scheme of priorities set out in the BIA. Moreover, nothing in the CCAA limits the authority of a court, in the exercise of its general discretion under s. 11, to grant charges in priority to any secured or unsecured claim, including any claim based on breach of fiduciary duty. It has been

<sup>7</sup> *Cage Logistics Inc., Re*, 2003 ABCA 36, 40 C.B.R. (4th) 165; *Vanguard Inc. v. Royal Bank of Canada*, 2004 SKCA 99, 4 C.B.R. (5th) 300.

<sup>8</sup> *Reglin v. Creston (Town)*, 2005 BCCA 635, 49 B.C.L.R. (4th) 297; *Erickson v. Jones*, 2006 BCCA 316, 226 B.C.A.C. 311.

consistently recognized that CCAA courts have a broad jurisdiction under s. 11 to make any order that realistically advances the CCAA's purpose, that is, "to permit the debtor to carry on business and, where possible, avoid the social and economic costs of liquidating its assets."<sup>10</sup>

17. Each of the impugned Charges ordered by the CCAA Judge is supported by authority and consistent with the general objects of the CCAA. Moreover, as regards the Critical Suppliers Charge, the Directors and Officers Charge and Financial Advisor Charge, the CCAA expressly authorizes the Orders made.<sup>11</sup>

18. Although s. 6(6) of the CCAA may limit the discretion of a CCAA court in approving a plan of arrangement or compromise, no such limit is imposed by s. 11 of the CCAA nor by the various provisions authorizing the Court to order various charges in priority to other debts and obligations of the subject company.<sup>12</sup> In any event, the Plan herein abides by s. 6(6).

19. There is thus no real question as to the authority of the CCAA Judge to make the orders that he did. The issue, if any, raised by the appeal is whether the CCAA Judge appropriately exercised his *discretion* to make those orders in the present case. Discretionary orders of the type made in this complex CCAA case are the very types of orders that should not be disturbed.

20. In Catalyst's submission, each of the impugned Charges was granted based on a careful balancing of interests within the context of the particular circumstances of the restructuring in this case. This is demonstrated, for example, in the reasons for judgment of the CCAA Judge issued in connection with the KERP and the Financial Advisor Charge:

In reaching the conclusion to grant priority, I have attempted to balance the interests of the petitioner and its stakeholders in effecting a restructuring against the possible prejudice to a particular group that may be affected by the order sought, in this case the employees and the pensioners.

In this case I am of the view that the position of those entitled to pension benefits will best be served by a successful restructuring. Such a restructuring will provide future employment and continued funding for the salaried plan.<sup>13</sup>

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<sup>9</sup> *Edgewater Casino Inc., Re*, 2009 BCCA 40, 51 C.B.R. (5th) 1 at paras. 13, 18-24; *Doman Industries Ltd., Re*, 2004 BCCA 253, 50 C.B.R. (4th) 194 at para. 13.

<sup>10</sup> *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379 at paras. 15, 61-62, 71; *United Used Auto & Truck Parts Ltd., Re*, 2000 BCCA 146, 73 B.C.L.R. (3d) 236 at paras. 23-31; *Skeena Cellulose Inc., Re*, 2003 BCCA 344, 13 B.C.L.R. (4th) 236 at paras. 34-42; *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587, 45 C.B.R. (5th) 163 at paras. 44-52.

<sup>11</sup> CCAA, s. 11.4, 11.51, 11.52; *Timminco Ltd., Re*, 2012 ONSC 506 at paras. 63-75.

<sup>12</sup> CCAA, s. 11, 11.2(3), 11.4(4), 11.51(2), 11.52(2).

<sup>13</sup> CRB, Tab 6 (March 9 Reasons), paras. 43-44.

21. Each of the Charges was recognized by the CCAA Judge as being vital to the restructuring of Catalyst. After weighing the interests of the parties in the balance, the CCAA Judge concluded that a successful restructuring was in the best interests of all the stakeholders, including Catalyst's pension beneficiaries.<sup>14</sup>

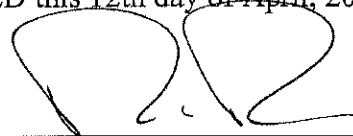
22. As previously noted, the Plan does not compromise the claims of Catalyst's pension plans or their beneficiaries. A successful restructuring represents the best prospect of ensuring that Catalyst will fully fund the plans, not only as regards the normal cost pension contributions which are protected under s. 81.5 of the BIA, but also as regards the very substantial pension deficiency payments which Catalyst is obligated to make over the next seven years. These latter payments are not entitled to priority under the BIA and would be lost to the beneficiaries in the event of a bankruptcy. Thus, as the CCAA Judge concluded, the Charges in question would not result in any real prejudice to the Appellants.<sup>15</sup>

23. Furthermore, leave to appeal should not be granted in CCAA proceedings where to do so would be "prejudicial to the prospects of restructuring the business for the benefit of the stakeholders as a whole, and hence would be contrary to the spirit and objectives of the CCAA." To permit an appeal from the priority allocated to the Charges identified by the CCAA Judge as critical to the restructuring process would create uncertainty for the beneficiaries of those Charges who are intended to rely and have relied on the priority granted in providing goods or services to the debtor. The appeal would thus be highly disruptive of the restructuring process, particularly at this very sensitive stage of the process where a Plan has been filed and a meeting of Catalyst's creditors is imminent.<sup>16</sup>

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of April, 2012:

"William Kaplan"

William C. Kaplan, Q.C.



Peter L. Rubin

<sup>14</sup> CRB, Tab 6 (March 9 Reasons), paras. 3, 12, 25-29, 41, 43-48; *Canwest Global Communications Corp., Re* (2009), 59 C.B.R. (5th) 72 at para. 48 (Ont. S.C.J.); *Timminco, supra*, at paras. 45-46; CRB, Tab 1 (Baarda Affidavit #1), paras. 152-162; *Brainhunter Inc., Re*, [2009] O.J. No. 5207 at paras. 20-21 (S.C.J.).

<sup>15</sup> BIA, s. 81.5; CRB, Tab 6 (March 9 Reasons), para. 28

<sup>16</sup> *Consumers Packaging Inc., Re* (2001), 27 C.B.R. (4th) 197 at para. 5 (Ont. C.A.); *Minister of National Revenue v. Temple City Housing Inc.*, 2008 ABCA 1, 43 C.B.R. (5th) 35 at paras. 14-15; *Doman Industries, supra*, at paras. 8, 15-16; CRB, Tab 6 (March 9 Reasons), paras. 3, 12, 26, 41, 48; CRB, Tab 8 (Order dated March 22, 2012), para. 21.

## LIST OF AUTHORITIES

### Cases

<i>ATB Financial v. Metcalfe &amp; Mansfield Alternative Investments II Corp.</i> , 2008 ONCA 587, 45 C.B.R. (5th) 163.....	4
<i>Brainhunter Inc., Re</i> , [2009] O.J. No. 5207 (S.C.J.).....	5
<i>Cage Logistics Inc., Re</i> , 2003 ABCA 36, 40 C.B.R. (4th) 165 .....	3
<i>Canwest Global Communications Corp., Re</i> (2009), 59 C.B.R. (5th) 72 (Ont. S.C.J.).....	5
<i>Century Services Inc. v. Canada (Attorney General)</i> , 2010 SCC 60, [2010] 3 S.C.R. 379 .....	4
<i>Consumers Packaging Inc., Re</i> (2001), 27 C.B.R. (4th) 197 (Ont. C.A.) .....	5
<i>Doman Industries Ltd., Re</i> , 2004 BCCA 253, 50 C.B.R. (4th) 194.....	3, 5
<i>Edgewater Casino Inc., Re</i> , 2009 BCCA 40, 51 C.B.R. (5th) 1 .....	3
<i>Erickson v. Jones</i> , 2006 BCCA 316, 226 B.C.A.C. 311.....	3
<i>Minister of National Revenue v. Temple City Housing Inc.</i> , 2008 ABCA 1, 43 C.B.R. (5th) 35...	5
<i>Reglin v. Creston (Town)</i> , 2005 BCCA 635, 49 B.C.L.R. (4th) 297 .....	3
<i>Skeena Cellulose Inc., Re</i> , 2003 BCCA 344, 13 B.C.L.R. (4th) 236.....	4
<i>Timminco Ltd., Re</i> , 2012 ONSC 506 .....	4, 5
<i>United Used Auto &amp; Truck Parts Ltd., Re</i> , 2000 BCCA 146, 73 B.C.L.R. (3d) 236 .....	4
<i>Vanguard Inc. v. Royal Bank of Canada</i> , 2004 SKCA 99, 4 C.B.R. (5th) 300.....	3

### Statutes

<i>Bankruptcy and Insolvency Act</i> , R.S.C. 1985, c. B-3. s. 81.5.....	5
<i>Companies Creditors Arrangement Act</i> , R.S.C. 1985, c. C-36, ss. 6(6), 11, 11.2, 11.4, 11.51, 11.52, 13, 14 .....	2, 3, 4

# COURT OF APPEAL FOR BRITISH COLUMBIA

Date: 20120419  
Docket: CA039754

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"

Before: The Honourable Mr. Justice Hall  
(In Chambers)

On appeal from: Supreme Court of British Columbia  
(*Catalyst Paper Corporation*, Vancouver Registry S120712)

## Oral Reasons for Judgment

Counsel for the Appellant Listed in Schedule  
"B":

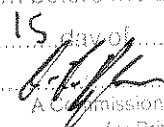
D. Yiokaris and J. Harnum

Counsel for the Respondent, Catalyst Paper  
Corporation:

W.C. Kaplan, Q.C. and P. Rubin

Counsel for the Respondent, Monitor

J. Grieve

This is Exhibit 6 referred to in the  
affidavit of Peter Rubin  
sworn before me at Vancouver  
this 15 day of May, 2012  
  
A Commissioner for taking Affidavits  
for British Columbia

Counsel for the Respondent, International  
Forest Products, Western Forest Products  
Inc. and Seaspam Marin Corp.

J. Milton, Q.C.

Counsel for the Respondent, A  
Representative Group of 2016 Note Holders

J. Sandrelli

Counsel for the Respondent, Representative  
Group of 2014 Unsecured Creditors

D.E. Gruber

Counsel for the Respondent, Catalyst Timber  
West Retired Salaried Employees Assoc.

M. Buttery

Place and Date of Hearing:

Vancouver, British Columbia  
April 18, 2012

Place and Date of Judgment:

Vancouver, British Columbia  
April 19, 2012

(leave to appeal)

[1] HALL J.A.: This is an application by the Catalyst salaried and employees' pension group for leave to appeal from orders of Mr. Justice Sewell made on February 14 and March 9, 2012, in *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, proceedings.

[2] The subject matter of the proceedings, Catalyst Paper Corporation, is in very perilous financial circumstances.

[3] It is alleged by the applicants that these orders are not in accord with certain legislative provisions and the spirit of Canadian bankruptcy and insolvency legislation. The orders in question granted priorities to *inter alia*, directors and officers, critical suppliers, key employees who had been in a key employee retention programme secured by an \$8.2 million letter of credit, and a financial advisor. It is asserted that the orders granting priorities imperilled the interests of the applicants and that the judge erred in according priority over possible equitable claims of the applicants based on alleged breaches of fiduciary duty by the subject corporation.

[4] Counsel for the Corporation and other counsel appearing on behalf of secured creditors, the Monitor and certain priority holders oppose leave. Mr. Kaplan, on behalf of the Corporation, submitted the applicants were out of time with respect to the earlier order and, as regards merit, suggested that they had no real complaint as normal course pension payments are provided for and are being made as they become due.

[5] Counsel opposed to leave cited a number of authorities in support of the proposition that judges acting under the C.C.A.A. are endowed with broad discretion. See *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. It was submitted that appellate courts have indicated reluctance to readily interfere with what is often a delicately balanced process in which the managing judge has to make interconnected discretionary decisions: See *Edgewater Casino Inc. Re*, 2009 BCCA 40.

[6] Counsel for the applicants made reference to the case of *Sun Indalex Finance, LLC, et al. v. United Steelworkers, et al.*, 2011 ONCA 265, [2011] O.J. No. 1621 (Ontario) (Civil) (By Leave) a case which is currently before the Supreme Court of Canada.

[7] In the course of his March 9, 2012 reasons, the judge made reference to the interests of the applicants:

[28] Another question on this application is whether the interests of the pensioners and salaried employees who oppose the application would be unduly prejudiced by the order sought. I have concluded that they are not. The salaried plan is a defined benefit plan. The company is obligated to make considerable payments towards the plan's solvency deficiencies over the next seven years. If the company is successful in reorganizing itself, it will be in a better position to make those payments. Further, current employees will of course benefit from continued employment and from the benefit of those payments to the pension plan of which they are currently members.

[29] With respect in particular to the KERP, I also fail to see how the proposed order causes any real prejudice to the employees and pensioners. The pensioners group which opposes the application has already agreed to an order granting the DIP financing priority over pension claims. In this case the LCs already in place if drawn upon will increase the amount outstanding under the DIP facility. If the order is not granted, the \$8.26 million in LCs will, for all practical purposes, rank in priority to the pension claims in any event. I therefore can see no prejudice in the arrangements which are proposed with respect to the KERP, that is, converting the existing security in the form of letters of credit into a charge on the fixed assets of the company.

...

[40] Counsel for the petitioner submitted to me that the claims of the pensioners as described in para. 55 of the amended order are claims of secured creditors. I do not find it necessary to decide that issue. In my view, the analysis that I have gone through with respect to the jurisdiction to grant a KERP charge applies to the question of the priority to be given to the financial advisor's charge. However, again, with respect to the financial advisor's charge, the critical issue is whether I should exercise the jurisdiction that I do have to grant a charge with the priority sought.

...

[42] If the priority for those fees is postponed to potential pension claims and claims for breach of fiduciary duty in respect of such pension claims, such security may well prove to be illusory or, at a minimum, not recoverable until after the conclusion of lengthy litigation.

[43] In reaching the conclusion to grant the priority, I have attempted to balance the interests of the petitioner and its stakeholders in effecting a

restructuring against the possible prejudice to a particular group that may be affected by the order sought, in this case the employees and pensioners.

[8] It seems clear to me that the judge was mindful of the interests of the applicants. While it may be arguable that the applicants are not timely as to the February 2012 order, I do not consider that this is a significant objection having regard to the fact that these are evolving proceedings.

[9] The tests for granting leave to appeal are well known. They are:

1. Whether the point on appeal is of significance to the practice;
2. Whether the point raised is of significance to the action itself;
3. Whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and
4. Whether the appeal will unduly hinder the progress of the action.

[10] I start by noting that this is a discretionary order. I have doubts as to the proposed appeal's significance to the practice, but it does have some significance to the action, and, obviously, to the applicants.

[11] Having reflected on the submissions and the facts, I must say that I have grave reservations about the potential merit of the appeal. I would be very dubious that a division of this Court could be persuaded to grant the relief sought on behalf of the applicants. I also consider that any appeal would have a most deleterious effect on the proceedings in the court of first instance by causing delay and uncertainty. It will be no easy task to save for operation this financially distressed corporation and an appeal would be a highly negative factor in this process.

[12] Certain submissions of the applicants addressed what could or might happen in bankruptcy proceedings but such proceedings are not presently extant.

[13] In the result, I am firmly of the view, after considering previous case law and the particular circumstance disclosed here, that it would not be appropriate to grant leave to appeal from these discretionary decisions of Mr. Justice Sewell.

[14] The application for leave to appeal is therefore dismissed.

“The Honourable Mr. Justice Hall”

## RUBIN, PETER

**From:** RUBIN, PETER  
**Sent:** Tuesday, May 01, 2012 12:22 AM  
**To:** 'Ari N. Kaplan'; 'jharnum@kmlaw.ca'; 'dyiokaris@kmlaw.ca'  
**Subject:** FW: In the Matter of Catalyst Paper Corporation et al - Notice of Application to Vary an Order of a Justice  
**Attachments:** NOATOVARY.pdf

Gentlemen,


We write further to the Notice of Application attached and sent via email on Tuesday April 24, 2012. As you are aware, the agreement reached with Catalyst requires your clients to proceed on an expedited basis in respect of the appeal matters. As you are also aware, our clients took issue with the prior delay in filing the leave application. That issue is in the past but we respectfully remind you of your clients obligations in this regard. This is a matter of some importance to our client given the continued impact on liquidity. Our clients require that your clients file and serve their motion book this week.

We will be seeking an expedited hearing date and will contact the Registry once we have your motion book.

Thank you.

Peter

Peter Rubin  
Partner  
[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)  
Dir: 604-631-3315

This is Exhibit "F" referred to in an  
affidavit of Peter Rubin  
sworn before me at Vancouver  
this 15 day of May 2012  
  
A Commissioner for taking Affidavits  
for British Columbia

---

**From:** Kavita Goldsmith [mailto:kavita@mbwlaw.ca]  
**Sent:** Tuesday, April 24, 2012 12:26 PM  
**To:** 'jgrieve@fasken.com'; 'kjackson@fasken.com'; 'vtickle@fasken.com'; 'svolkow@fasken.com'; 'michael.j.vermette@ca.pwc.com'; 'chris.a.stocco@ca.pwc.com'; 'neil.p.bunker@ca.pwc.com'; 'patricia.marshall@ca.pwc.com'; 'blair.w.linnen@ca.pwc.com'; 'mica.arlette@ca.pwc.com'; 'jamie.m.cartwright@ca.pwc.com'; 'peter.reardon@mcmillan.ca'; 'wael.rostom@mcmillan.ca'; 'john.sandrelli@fmc-law.com'; 'shayne.kukulowicz@fmc-law.com'; 'ryan.jacobs@fmc-law.com'; 'tevia.jeffries@fmc-law.com'; 'robin.peardon@fmc-law.com'; 'kelly.tsang@fmc-law.com'; 'michael.wunder@fmc-law.com'; 'mstamer@akingump.com'; 'skuhn@akingump.com'; 'mlahaie@akingump.com'; 'dgruber@farris.com'; 'rchadwick@goodmans.ca'; 'mwagner@goodmans.ca'; 'llivingston@hsblawfirm.com'; 'tinaful@hsblawfirm.com'; 'dbobert@rogerslaw.ca'; 'drogers@rogerslaw.ca'; 'kandersen@blg.com'; 'doverholt@blg.com'; 'kesaw@stikeman.com'; 'sandra.wilkinson@gov.bc.ca'; 'wharton@bernardpartners.com'; 'sanderson@vslo.ca'; 'SQuelch@vslo.bc.ca'; 'harvey@chaitons.com'; 'george@chaitons.com'; 'wskelly@heenan.ca'; 'blaborie@heenan.ca'; 'arose@stikeman.com'; 'sdd@bht.com'; 'ejm@bht.com'; 'marilyn.mauritz@interfor.com'; 'richard.butler@gov.bc.ca'; 'david.hatter@gov.bc.ca'; 'gthompson@blg.com'; 'hferris@lawsonlundell.com'; 'mwasserman@osler.com'; 'jfraser@osler.com'; 'lpillon@stikeman.com'; 'jim.ferguson@ge.com'; 'mweinczok@dickinsonwright.com'; 'mschein@vedderprice.com'; 'mbuttery@davis.ca'; 'lwilliams@davis.ca'; 'akelley@dilworthlaw.com'; 'sfreedman@dilworthlaw.com'; 'cgordon@fgglawyers.com'; 'jgauthier@fgglawyers.com'; 'mliben@stikeman.com'; 'gg@gdlaw.ca'; 'zweigs@bennettjones.com'; 'mckinnond@bennettjones.com'; 'sahnir@bennettjones.com'; 'orzyr@bennettjones.com'; 'lenzk@bennettjones.com'; 'bjohnston@litigationchambers.com'; 'rkaardal@litigationchambers.com'; 'ssweatman@spectrumhrlaw.com'; 'cgalinski@spectrumhrlaw.com'; 'neva.beckie@justice.gc.ca'; 'Iramdass@ercoworldwide.com'; 'tdewar@ercoworldwide.com'; 'dalem@sdmrealty.com'; 'vasuda.sinha@nortonrose.com'; 'orestes.pasparakis@nortonrose.com'; 'donnaree.nygard@justice.gc.ca'; 'melissa.nicolls@justice.gc.ca'; 'mmartindale@blg.com'; 'peter.rubin@blakes.com'; KAPLAN, BILL; 'krowan@ogilvielaw.com'; 'swanke@ogilvielaw.com'; PURGAS, ANTHONY; 'natasha.decicco@ge.com'; 'nholland@litigationchambers.com'; 'sross@millertomson.com'; 'christopher.ramsay@fmc-law.ca'; 'jones@bernardpartners.com'; 'aaron.welch@gov.bc.ca'; 'priesterer@olser.com';

5/11/2012

'simardc@bennettjones.com'; 'aglen@litigationchambers.com'; 'kmcclcheran@mccarthy.ca'; 'bsachdeva@pallettvalo.com';  
'peter.seddon@worksafebc.com'

**Cc:** "Ari N. Kaplan"; 'aguindon@kmlaw.ca'; Kavita Goldsmith; James Baugh; 'jharnum@kmlaw.ca'; 'dyiokaris@kmlaw.ca';  
Michael Prokosh; 'ahatnay@kmlaw.ca'

**Subject:** In the Matter of Catalyst Paper Corporation et al - Notice of Application to Vary an Order of a Justice

To: Service List

Please find attached for service upon you a filed copy of the Notice of Application to Vary an Order of a Justice.

Thank you,

Kavita Goldsmith  
McGrady & Company  
Box 12101, 1105 - 808 Nelson Street  
Vancouver, BC V6Z 2H2  
tel: (604) 734-7003 fax: (604) 734-7009

email: [kavita@mcgradylaw.ca](mailto:kavita@mcgradylaw.ca)

website: [www.mbwlaw.ca](http://www.mbwlaw.ca)

This e-mail may be privileged or confidential. Use of this e-mail by an unintended recipient is prohibited. If you receive this e-mail in error, please contact my office immediately. Thank you.

VANCOUVER  
APR 24 2012  
COURT OF APPEAL  
REGISTRY

FORM 15 (RULE 34 (1) (A))

Court of Appeal File No: CA39754  
Supreme Court File No. S120712  
Vancouver Registry

COURT OF APPEAL

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

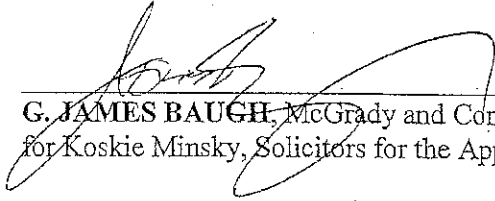
- AND -

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

NOTICE OF APPLICATION TO VARY  
AN ORDER OF A JUSTICE

TAKE NOTICE that an application under section 9 (6) of the *Court of Appeal Act* will be made by the Catalyst Salaried Employees and Pensioners Group to the Court of Appeal at 800 Smithe Street, Vancouver, in the Province of British Columbia, at such time and date as may be determined by the Registrar, for an order to discharge or vary the order of the Honourable Mr. Justice Hall made on April 19, 2012.

Date: April 24, 2012

  
G. JAMES BAUGH, McGrady and Company,  
for Koskie Minsky, Solicitors for the Appellants

Schedule "A"

**LIST OF ADDITIONAL PETITIONERS**

Catalyst Pulp Operations Limited  
Catalyst Pulp Sales Inc.  
Pacifica Poplars Ltd.  
Catalyst Pulp and Paper Sales Inc.  
Elk Falls Pulp and Paper Limited  
Catalyst Paper Energy Holdings Inc.  
0606890 B.C. Ltd.  
Catalyst Paper Recycling Inc.  
Catalyst Paper (Snowflake) Inc.  
Catalyst Paper Holdings Inc.  
Pacifica Papers U.S. Inc.  
Pacifica Poplars Inc.  
Pacifica Papers Sales Inc.  
Catalyst Paper (USA) Inc.  
The Apache Railway Company

Court of Appeal File No. CA39754  
Action No. S120712  
Vancouver Registry

COURT OF APPEAL

BETWEEN:

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 THE CATALYST PAPER CORPORATION AND THE  
PETITIONERS LISTED IN SCHEDULE "A"

---

NOTICE OF APPLICATION TO VARY AN ORDER OF A JUSTICE

---

McGRADY & COMPANY

Lawyers  
Box 12101 - Nelson Square  
Suite 1105 - 808 Nelson Street  
Vancouver, British Columbia  
V6Z 2H2

Tel: (604) 734-7003  
Fax: (604) 734-7009

ATTENTION: G. JAMES BAUGH

KOSKIE MINSKY LLP

Barristers and Solicitors  
20 Queens Street West  
Suite 900, Box 52  
Toronto, Ontario  
M5H 3R3

Tel: (416) 542-6285  
Fax: (416) 204-2819

ATTENTION: JAMES HARNUM

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 AS AMENDED**

**AND**

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

**AND**

**IN THE MATTER OF CATALYST PAPER CORPORATION AND THE  
PETITIONERS INCLUDED IN APPENDIX "A"**

**MONITOR'S TENTH REPORT TO COURT**

**April 18, 2012**

affidavit of <sup>G</sup> Peter Rubin  
sworn before me at Vancouver  
this 15<sup>th</sup> day of May 2012  
A Commissioner for taking Affidavits  
for British Columbia



**CATALYST PAPER CORPORATION, ET AL  
MONITOR'S TENTH REPORT TO COURT**

**April 18, 2012**

**6. CASH FLOW FOR THE PERIOD MARCH 1 TO MARCH 31, 2012**

- 6.1 The Company's statement of actual cash flows for the period March 1 to March 31, 2012, as compared to the Revised Forecast as included in the Monitor's Seventh Report dated March 27, 2012, is set out in Appendix B.
- 6.2 The Monitor has the following comments with respect to the Company's cash flow to March 31, 2012:
  - 6.2.1 The Company's net cash flow for the month of March 2012 was negative \$12.8 million, which is \$13.3 million better than the Revised Forecast. The improvement over the Revised Forecast was primarily due to the following:
    - 6.2.1.1 The receipts from trade accounts receivable were \$4.2 million greater than forecast. This is a normal timing variance and is not material in relation to total monthly collections.
    - 6.2.1.2 Total operating disbursements were \$7.1 million greater than forecast. This variance is comprised of raw material and freight costs that were \$10.1 million higher than forecast, offset by employee costs that were \$2.1 million less than forecast.
    - 6.2.1.3 The large unfavourable variance in raw material and freight is due to larger than forecast raw material purchases and the timing of payments which were higher than expected. The Company is hopeful that this will be a timing difference that will reverse itself as the Company's restructuring nears completion.
    - 6.2.1.4 The employee cost positive variance was due to a timing difference which will reverse in April 2012.
    - 6.2.1.5 Non-operating disbursements were \$14.7 million less than forecast primarily as a result of CCAA Restructuring Costs that were \$14.6 million less than forecast. The CCAA Restructuring Costs relate to a number of CCAA-related costs and commitments that have been incurred or made but for which the timing of the payments is uncertain.

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6.2.2 The Company's net cash flow for the period January 31 to March 31, 2012 (ie. the full period of the CCAA proceedings) was negative \$7.6 million. \$8.1 million of cash generated from operations was offset by the Non Operating disbursements of \$15.7 million which consisted primarily of professional fees and CCAA Restructuring Costs. The Monitor notes that absent the significant costs of the CCAA proceedings, including professional fees, the Company would have generated a positive cash flow before interest service costs on debt stayed by the proceedings.

6.3 The Monitor has the following comments with respect to the Company's liquidity position as at March 31, 2012:

6.3.1 As of the end of March 2012, the Company had borrowed \$86.0 million under its DIP Facility. The Company continued to post cash of \$12.8 million to collateralize letters of credit drawn against the ABL Facility, which have not been transferred to the DIP Facility. The DIP Lender also held \$7.0 million of cash in blocked accounts which it did not apply against the DIP Facility until mid-April 2012. As a result, \$19.8 million of the Company's ending cash balance is restricted and the available cash is \$17.9 million;

6.3.2 The Company's calculated Available Liquidity (i.e. available cash plus unused DIP facility) as at March 31, 2012 totalled \$22.5 million. However, as noted above, various commitments have been made relative to the CCAA Restructuring Costs, and therefore a provision against the available liquidity has been made to provide a better estimate of the Available Liquidity. After taking these commitments into consideration, the Company's Available Liquidity is \$7.9 million, which was \$10.2 million lower than forecast. The tightened liquidity was carefully managed by the Company and has improved during April 2012;

6.3.3 The Monitor notes that the letters of credit posted to secure the KERP obligations have not yet been cancelled due to an appeal filed by Koskie Minsky LLP as representative counsel for a group of employees and retirees of the Company. The letters of credit are secured by cash collateral. The appeal is in respect of certain provisions of the Amended and Restated Initial Order that affect the priority of possible pension claims relative to certain court ordered charges including a charge ordered to secure the KERP obligations. If the letters of credit are cancelled, \$8.2 million of cash would become available and improve the Company's liquidity.

**7. RESTATED REVISED FORECAST APRIL 1 TO JUNE 30, 2012**

7.1 Attached as Appendix C is the Company's Revised Forecast as previously presented in the Monitor's 7<sup>th</sup> Report to Court dated March 27, 2012, which has been updated and

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restated to reflect the opening DIP loan and Available Cash balances. No changes have been made to the forecasted receipts or disbursements.

- 7.2 The Monitor and the Company are currently working on a new forecast which is expected to be completed by the end of April 2012. The process to update the Company's cash flow is quite complicated and time consuming as it involves input and review from all levels of the Company as well as the approval of the DIP Lender. The Monitor does not expect that the new forecast will reflect any significant changes in the operating results over the entire period to June 30, 2012, but there will be changes to the timing of cash receipts and cash disbursements on a week-to-week basis. This would be a timing issue only.
- 7.3 Overall, the restated revised forecast reflects liquidity levels that are lower than reflected in the Revised Forecast, primarily due to the lower than forecast results for March 2012. The Company has reported liquidity levels during the first two weeks of April 2012 that are generally consistent with the revised restated forecast. The Monitor notes that the Available Liquidity appears sufficient for the forecast period.

**8. EXTENSION OF THE STAY OF PROCEEDINGS**

- 8.1 The Company filed its Plan on March 22, 2012 and the Creditor Meetings have been re-scheduled to May 2, 2012. In the event that the Plan is approved, the Company intends to implement the Plan within 21 days of May 7, 2012, the date on which the Company is scheduled to apply for the Sanction Order.
- 8.2 The Company has also obtained the Court's approval to the SISP in the event that the Plan is not approved. If the SISP is initiated, up to 73 days is required to complete the SISP assuming there is sufficient interest in the Company's assets to proceed with an auction.
- 8.3 The Company has applied for an extension of the stay of proceedings until June 30, 2012. The Monitor considers this period of approximately 8 weeks to be reasonable. As the Company has acted and continues to act in good faith and with due diligence, the Monitor supports the Company's request for an extension of the stay of proceedings.

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 AS AMENDED**

**AND**


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

**AND**

**IN THE MATTER OF CATALYST PAPER CORPORATION AND THE  
PETITIONERS INCLUDED IN APPENDIX "A"**

**MONITOR'S THIRTEENTH REPORT TO COURT**

**MAY 9, 2012**

This is Exhibit "H" referred to in the  
affidavit of Peter Rubin  
sworn before me at Vancouver  
this 15 day of May, 2012  
  
A Commissioner for taking Affidavits  
for British Columbia



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**MAY 9, 2012**

- 2.2 All prescribed materials filed by Catalyst and the Monitor relating to this CCAA proceeding are available to creditors and other interested parties in electronic format on the Monitor's website. The Monitor will continue to post regular updates to the website and will add prescribed and other materials as required.
- 2.3 The United States Bankruptcy Court for the District of Delaware (the "US Court") has recognized these proceedings as foreign main proceedings pursuant to Chapter 15 of the US Bankruptcy Code. The Monitor's website also contains materials relating to the Chapter 15 proceedings in the US Court.

**3. CASH FLOW TO APRIL 30, 2012**

- 3.1 The Company's statement of actual cash flows for the period April 1 to April 30, 2012, as compared to RF1 is set out in Appendix B and summarized below:

	January 31 to March 31	April 1 to April 30			January 31 to April 30
	Actual	Actual	Forecast	Variance	Actual
<b>(CAD\$ millions)</b>					
<b>Total Receipts</b>	<b>209.9</b>	<b>108.8</b>	<b>112.8</b>	<b>(4.0)</b>	<b>318.7</b>
Total Disbursements - Operating	(203.9)	(107.8)	(95.4)	(12.4)	(311.7)
Total Disbursements - Non Operating	(15.5)	(3.7)	(4.4)	0.7	(19.2)
<b>Total Disbursements</b>	<b>(219.4)</b>	<b>(111.5)</b>	<b>(99.8)</b>	<b>(11.7)</b>	<b>(330.9)</b>
<b>Net Cash Flow</b>	<b>(9.5)</b>	<b>(2.7)</b>	<b>13.0</b>	<b>(15.7)</b>	<b>(12.2)</b>
Calculated Available Liquidity	20.2	29.1	53.3	(27.1)	29.1
Adjusted Available Liquidity	5.6	15.5	41.4	(27.8)	15.5

- 3.2 The Monitor has the following comments with respect to the Company's cash flow to April 30, 2012:

3.2.1 The Company's net cash flow for the month of April 2012 was negative \$2.7 million, which was \$15.7 million lower than forecast in RF1. The variance from RF1 was primarily due to the following:

3.2.1.1 Total Receipts were approximately \$4.0 million lower than forecast. Receipts from trade accounts receivable were \$5.7 million less than forecast partially as a result of typical timing variances for the receipt of

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customer payments outstanding at month-end totalling \$3.1 million which have been subsequently collected. The Company is completing its April 2012 financial statements and analysis, and it expects that the balance of the variance will be a result of foreign exchange and the Crofton pulp mill maintenance shutdown which occurred in mid-April 2012. Receipts from other accounts receivable were \$1.8 million higher than forecast primarily due to the receipt of the January 2012 HST receivable of \$3.6 million being received several months ahead of forecast, partially offset by other delayed receipts which are expected to be collected in the middle of May 2012.

3.2.1.2 Total operating disbursements were \$12.4 million higher than forecast. The majority of this negative variance is due to the tighter than forecast credit terms that are being imposed by the Company's trade suppliers.

3.2.1.3 Non-operating disbursements were \$700,000 less than forecast and were strictly related to timing differences that are expected to reverse by the third week of May 2012.

3.2.2 The Company's cash flow from operations for the period January 31 to April 30, 2012 (i.e. the full period of the CCAA proceedings) was \$7.0 million. This was offset by non-operating disbursements of \$19.2 million, which consisted primarily of professional fees and CCAA Restructuring Costs and resulted in an overall negative cash flow of \$12.2 million.

3.3 As at end of April 2012, the Company had borrowed \$82.7 million under its DIP Facility. The Company continues to post cash of \$12.8 million to collateralize letters of credit drawn against the ABL Facility, which have not been transferred to the DIP Facility.

3.4 As at April 30, 2012, the Company's Available Liquidity (calculated as Available Cash plus unused DIP Facility) totalled \$29.1 million, which was \$27.1 million less than forecast. This is prior to any adjustment for unspent or undesignated CCAA Restructuring Costs, which were discussed in the Monitor's Tenth and Eleventh Reports. If the unspent CCAA Restructuring Costs of \$13.6 million (of which \$2.9 million is either committed or anticipated to be paid) are excluded from Available Liquidity, the Company's Adjusted Available Liquidity was \$15.5 million.

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3.5 Generally, the reduced Available Liquidity is a result of the reduced trade credit being extended to the Company during the CCAA proceedings. As the Company's operations are consistent with its business plan, the Monitor is not aware of any operational concerns that would cause a trade supplier to take steps to reduce credit that it otherwise would extend to the Company. Accordingly, the Monitor attributes the contracted trade credit terms solely to the uncertainty surrounding the Company's restructuring.

**4. CASH FLOW FORECAST FOR THE PERIOD MAY 1 TO JUNE 30, 2012**

4.1 A copy of RF2 is attached as Appendix C.

4.2 The Company has not amended its forecast operating results to any significant degree and RF2 primarily reflects changes in the timing of disbursements to trade suppliers to reflect the Company's experience during the past six to eight weeks. The operations of the Company have remained consistent with its plan and therefore, the operational aspects of this forecast have generally remained the same.

4.3 A broad spectrum of trade creditors have tightened trade credit and the Monitor is aware that certain trade creditors have adjusted their invoicing practices to further speed payments from Catalyst. Currently, Catalyst estimates that it is receiving an average of seven days trade credit, which is significantly less than assumed in RF1. As a result, Catalyst has modified its trade credit assumption in RF2 to reflect the reduced trade credit terms available to it.

4.4 The trade credit contraction reflected in RF2 during May and June 2012 is forecast to be in the range of \$25 – 30 million compared to RF1. After factoring in the contraction of credit experienced in April, the Company's forecast Available Liquidity at June 30, 2012 is \$42 million less than forecast in RF1.

4.5 Although RF2 reflects a positive Available Liquidity balance during the forecast period, the Monitor notes that the Available Liquidity is forecast to decline to a low of \$5.3 million by the end of May 2012, and recover somewhat by the end of June. The Monitor is concerned that these forecast levels of Available Liquidity provide the Company with very little ability to absorb an unexpected liquidity event.

## **APPENDIX C**

### **Revised Cash Flow Forecast for the Period May 1, 2012 to June 30, 2012**

## Appendix C

**Catalyst Paper Corporation**  
**Weekly Cash Flow Forecast Summary for the period of May 1, 2012 to June 30, 2012**  
 In CAD\$ millions

	Actual		Forecast												Total			
	Jan 31 to Apr 30		May-12						Jun-12						May 1 to Jun 30		Total	
	64	91	4	5	7	8	11	22	31	6	10	17	24	30	30-Jun	43		61
<i>Business Days in the Period</i>																		
<i>Calendar Days in the Period</i>																		
Period Ended																		
<b>Receipts - Operating</b>																		
Collection of Trade AR	301.4		15.1	24.0	24.0	42.4		105.4	30.9	25.8	25.8	25.8	25.8	25.8	108.3	213.7	213.7	515.1
Collection of Other AR	17.4		0.2	2.2	2.2	5.0		9.6	2.7	2.3	2.3	2.3	2.3	2.3	9.6	19.2	19.2	36.6
<b>Total Receipts - Operating</b>	<b>318.8</b>		<b>15.3</b>	<b>26.1</b>	<b>26.1</b>	<b>47.5</b>		<b>115.0</b>	<b>33.7</b>	<b>28.1</b>	<b>28.1</b>	<b>28.1</b>	<b>28.1</b>	<b>28.1</b>	<b>117.9</b>	<b>232.9</b>	<b>232.9</b>	<b>551.7</b>
<b>Disbursements - Operating</b>																		
Raw Material and Freight Costs	(133.4)		(7.2)	(13.4)	(13.4)	(25.0)		(59.1)	(15.5)	(12.9)	(12.9)	(12.9)	(12.9)	(12.9)	(54.1)	(113.2)	(113.2)	(246.6)
Production and Operating Costs	(122.2)		(11.9)	(12.2)	(9.5)	(16.5)		(50.1)	(13.0)	(11.7)	(11.2)	(11.2)	(11.2)	(10.3)	(46.3)	(96.4)	(96.4)	(218.6)
Employee Costs	(53.3)		(0.9)	(6.8)	(5.0)	(7.2)		(19.9)	(4.0)	(2.8)	(4.0)	(4.0)	(3.4)	(3.4)	(14.2)	(34.1)	(34.1)	(87.4)
Property Tax/Insurance/Other Taxes	(2.9)		(0.0)	(0.1)	(0.1)	(0.3)		(0.6)	(0.1)	(0.0)	(0.0)	(0.0)	(0.0)	(0.0)	(0.2)	(0.8)	(0.8)	(3.7)
<b>Total Disbursements - Operating</b>	<b>(311.8)</b>		<b>(20.0)</b>	<b>(32.5)</b>	<b>(28.1)</b>	<b>(49.0)</b>		<b>(129.6)</b>	<b>(32.5)</b>	<b>(27.5)</b>	<b>(28.2)</b>	<b>(28.2)</b>	<b>(28.2)</b>	<b>(26.7)</b>	<b>(114.8)</b>	<b>(244.5)</b>	<b>(244.5)</b>	<b>(556.3)</b>
<b>Net Operating Cash Flows</b>	<b>7.0</b>		<b>(4.8)</b>	<b>(6.4)</b>	<b>(1.9)</b>	<b>(1.5)</b>		<b>(14.6)</b>	<b>1.2</b>	<b>0.6</b>	<b>(0.1)</b>	<b>1.4</b>	<b>1.4</b>	<b>3.0</b>	<b>(4.6)</b>	<b>(11.6)</b>	<b>(11.6)</b>	<b>(4.6)</b>
<b>Disbursements - Non-Operating</b>																		
Restructuring Professional Fees	(7.5)		(0.5)	(0.5)	(2.0)	(1.2)		(4.2)	-	(1.5)	-	(1.5)	-	(1.5)	(3.0)	(7.2)	(7.2)	(14.7)
CCAA Restructuring Costs	(9.4)		-	(1.1)	(0.3)	(1.6)		(2.9)	-	-	-	-	-	-	-	(2.9)	(2.9)	(12.3)
DIP Loan Fees and Interest	(2.3)		(0.1)	(0.1)	(0.1)	(0.2)		(0.4)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.3)	(0.7)	(0.7)	(3.0)
Other Interest Income (Expenses)	-		-	-	-	-		-	-	-	-	-	-	-	-	-	-	-
<b>Total Disbursements - Non-Operating</b>	<b>(19.2)</b>		<b>(0.6)</b>	<b>(1.7)</b>	<b>(2.4)</b>	<b>(3.0)</b>		<b>(7.6)</b>	<b>(0.1)</b>	<b>(1.6)</b>	<b>(0.1)</b>	<b>(1.6)</b>	<b>(0.1)</b>	<b>(1.6)</b>	<b>(3.3)</b>	<b>(10.9)</b>	<b>(10.9)</b>	<b>(30.1)</b>
<b>Net Receipts (Disbursements)</b>	<b>(12.2)</b>		<b>(5.3)</b>	<b>(8.1)</b>	<b>(4.3)</b>	<b>(4.5)</b>		<b>(22.2)</b>	<b>1.1</b>	<b>(1.0)</b>	<b>(0.2)</b>	<b>(0.2)</b>	<b>(0.2)</b>	<b>(0.3)</b>	<b>(0.3)</b>	<b>(22.5)</b>	<b>(22.5)</b>	<b>(34.7)</b>
<b>Ending Book Cash Balance</b>	<b>29.2</b>		<b>26.9</b>	<b>18.8</b>	<b>17.8</b>	<b>17.8</b>		<b>17.8</b>	<b>17.7</b>	<b>17.7</b>	<b>17.7</b>	<b>17.7</b>	<b>17.7</b>	<b>17.7</b>	<b>17.7</b>	<b>17.7</b>	<b>17.7</b>	<b>17.7</b>
Less: Cash Collateral Held for LCs	(12.8)		(12.8)	(12.8)	(12.8)	(12.8)		(12.8)	(12.7)	(12.7)	(12.7)	(12.7)	(12.7)	(12.7)	(12.7)	(12.7)	(12.7)	(12.7)
<b>Available Ending Cash Book Balance</b>	<b>16.4</b>		<b>14.0</b>	<b>6.0</b>	<b>5.0</b>	<b>5.0</b>		<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>
<b>DIP Revolver Balance at End of Period</b>	<b>82.7</b>		<b>85.7</b>	<b>89.0</b>	<b>93.5</b>	<b>93.5</b>		<b>93.5</b>	<b>92.3</b>	<b>93.3</b>	<b>93.5</b>	<b>93.5</b>	<b>93.5</b>	<b>93.7</b>	<b>93.7</b>	<b>93.7</b>	<b>93.7</b>	<b>93.7</b>
<b>Available Liquidity*</b>	<b>29.1</b>		<b>23.3</b>	<b>15.3</b>	<b>9.8</b>	<b>5.3</b>		<b>5.3</b>	<b>6.4</b>	<b>5.5</b>	<b>11.8</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>

\* Available Liquidity is equal to Borrowing Base Availability - \$26.3MM plus Ending Book Cash, less DIP Revolver at End of Period.