

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

	X	
	:	Chapter 15
In re:	:	
	:	Case No. 12-10221 (PJW)
CATALYST PAPER CORP., <u>et al.</u> ,	:	
	:	Jointly Administered
Debtors. <sup>1</sup>	:	
	:	Hearing Date: August 14, 2012 at 1:30 p.m. EDT
	:	Objections Due: August 7, 2012 at 4:00 p.m. EDT
	X	

**NOTICE OF HEARING ON MOTION FOR ORDER (I) AUTHORIZING  
THE DEBTORS TO REJECT CERTAIN EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES FOR NONRESIDENTIAL REAL PROPERTY AND  
(II) GRANTING RELATED RELIEF PURSUANT TO 11 U.S.C. §§ 105(A),  
365(A), 1507, AND 1521 AND BANKRUPTCY RULES 2002 AND 6006**

PLEASE TAKE NOTICE that on July 31, 2012 the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed the attached **Motion for Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and Unexpired Leases for Nonresidential Real Property and (II) Granting Related Relief Pursuant to 11 U.S.C. §§ 105(a), 365(a), 1507, and 1521 and Bankruptcy Rules 2002 and 6006** (the "Motion").

PLEASE TAKE FURTHER NOTICE that the Motion and all supporting documents, including the Eleventh Declaration of Brian Baarda, can be found at the following website: [www.pwc.com/car-catalystpaper](http://www.pwc.com/car-catalystpaper).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion or the relief requested therein must be made in writing, filed with the United States Bankruptcy Court

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<sup>1</sup> These jointly administered cases are those of the following Debtors: 0606890 B.C. Ltd., Catalyst Paper Corporation, Catalyst Paper Energy Holdings Inc., Catalyst Paper General Partnership, Catalyst Pulp and Paper Sales Inc., Catalyst Pulp Operations Ltd., Catalyst Pulp Sales Inc., Elk Falls Pulp and Paper Ltd., and Pacifica Poplars Ltd. (collectively, the "Canadian Debtors") in addition to Catalyst Paper Holdings Inc., Pacifica Papers U.S. Inc., Pacifica Poplars Inc., Pacifica Papers Sales Inc., Catalyst Paper (USA) Inc., Catalyst Paper (Recycling) Inc., Catalyst Paper (Snowflake) Inc., and The Apache Railway Company (collectively, the "U.S. Debtors").

for the District of Delaware (the "Bankruptcy Court"), 824 Market Street, Wilmington, Delaware 19801, and served so as to be received by the following parties no later than **August 7, 2012 at 4:00 p.m. (Eastern)**: (A) counsel for CPC as foreign representative: Skadden, Arps, Slate, Meagher & Flom LLP, 300 South Grand Avenue, Suite 3400, Los Angeles, CA 90071, Attn: Van C. Durrer, II, Esq.; (B) counsel for the Debtors: Blake, Cassels & Graydon LLP, 595 Burrard Street, P.O. Box 49314, Suite 2600, Three Bentall Centre, Vancouver, BC V7X 1L3, Canada, Attn: William C. Kaplan, Esq.; (C) counsel for certain 2016 Noteholders: Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036-6745, Attn: Stephen Kuhn, Esq., Meredith Lahaie, Esq., and Michael Stamer, Esq.; (D) counsel for certain 2014 Noteholders: Goodmans LLP, Bay Adelaide Centre, 333 Bay Street, Suite 3400, Toronto, ON M5H 2S7, Canada, Attn: Robert Chadwick, Esq., and Melaney Wagner, Esq.; (E) JPMorgan Chase, as DIP Facility agent: (i) McMillan LLP, Brookfield Place, Suite 4400, 181 Bay Street, Toronto, ON M5J 2T3, Canada, Attn: R.D. Jeffrey Rogers, Esq., and Wael Rostom, Esq., (ii) Bryan Cave LLP, One Metropolitan Square, 211 North Broadway, Suite 3600, St. Louis, MO 63102, Attn: Gregory Willard, Esq., and Heather Boelens Rucker, Esq.; (F) counsel for PwC: Fasken Martineau DuMoulin LLP, 2900 – 550 Burrard Street, Vancouver, BC V6C 0A3, Canada, Attn: John Grieve, Esq., and Kibben Jackson, Esq.; (G) PricewaterhouseCoopers, 250 Howe Street, Suite 700, Vancouver, British Columbia V6C 3S7; and (H) the Office of the United States Trustee, 844 North King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Buchbinder, Esq.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **August 14, 2012 at 1:30 p.m. (Eastern)** before the Honorable Peter J. Walsh, United States Bankruptcy Judge for the District of Delaware, in the United States Bankruptcy Court for the

District of Delaware, 6<sup>th</sup> Floor, Courtroom 2, 824 North Market Street, Wilmington, Delaware 19801 ("Hearing"). Only objections made in writing and timely filed and received will be considered by the Court at the Hearing.

**PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THE ABOVE PROCEDURES, THE RELIEF REQUESTED IN THE MOTION MAY BE GRANTED WITHOUT FURTHER NOTICE OR A HEARING.**

Dated: Los Angeles, California  
July 31, 2012

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

Counsel for Catalyst Paper Corporation

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

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	:	Chapter 15
In re:	:	
	:	Case No. 12-10221 (PJW)
CATALYST PAPER CORP., <u>et al.</u> ,	:	
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**MOTION FOR ORDER (I) AUTHORIZING THE DEBTORS TO REJECT CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES FOR NONRESIDENTIAL  
REAL PROPERTY AND (II) GRANTING RELATED RELIEF PURSUANT TO 11 U.S.C.  
§§ 105(a), 365(a), 1507, AND 1521 AND BANKRUPTCY RULES 2002 AND 6006**

Catalyst Paper Corporation (“CPC”), as the authorized foreign representative for itself and its above-captioned affiliates (collectively, the “Debtors” and, together with their non-debtor affiliates, the “Company”) in a proceeding (the “CCAA Proceeding”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, and *Business Corporations Act*, S.B.C. 2002, c.57, before the Supreme Court of British Columbia (the “Canadian Court”), hereby moves (the “Motion”) this Court, pursuant to sections 105(a), 365(a), 1507, and 1521 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) and Rules 2002 and 6006 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”) for entry of an order, substantially in the form annexed hereto as Exhibit A (the “Rejection Order”) (i) authorizing the Debtors to reject certain executory contracts and unexpired leases for nonresidential real property

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<sup>1</sup> These jointly administered cases are those of the following Debtors: 0606890 B.C. Ltd., Catalyst Paper Corporation, Catalyst Paper Energy Holdings Inc., Catalyst Paper General Partnership, Catalyst Pulp and Paper Sales Inc., Catalyst Pulp Operations Ltd., Catalyst Pulp Sales Inc., Elk Falls Pulp and Paper Ltd., and Pacifica Poplars Ltd. (collectively, the “Canadian Debtors”) in addition to Catalyst Paper Holdings Inc., Pacifica Papers U.S. Inc., Pacifica Poplars Inc., Pacifica Papers Sales Inc., Catalyst Paper (USA) Inc., Catalyst Paper (Recycling) Inc., Catalyst Paper (Snowflake) Inc., and The Apache Railway Company (collectively, the “U.S. Debtors”).

and (ii) granting related relief. In addition, CPC relies on the Eleventh Declaration of Brian Baarda (the “Eleventh Baarda Declaration”). In further support of the relief requested herein, CPC respectfully represents as follows:

**RELIEF REQUESTED**

1. By this Motion, CPC seeks approval from this Court to reject certain executory contracts and unexpired leases for nonresidential real property, in connection with the pending closure of the Arizona mill facility (the “Snowflake Mill”) owned and operated by Catalyst Paper (Snowflake) Inc., a debtor in these chapter 15 cases. Although the Company has been actively marketing the Snowflake Mill for over a year, and has engaged in intensive negotiations with a number of interested parties during that time, ultimately the Company has been unable to reach a binding sale agreement on terms reasonably acceptable to the Company with any prospective buyer. Accordingly, because the Snowflake Mill has not been a positive contributor to the Company’s overall performance, the Debtors have made the difficult decision to shutter the Snowflake Mill in conjunction with the Debtors’ planned emergence from their successful consensual restructuring process.

2. Due to the planned shutdown of operations, the Debtors are seeking authority to reject a number of contracts relating to the Snowflake Mill. Specifically, these contracts provide for supply of materials, transportation of materials and products, and services in connection with certain real property which the Debtors will no longer need or be able to perform following plant closure. Nonetheless, the Debtors have planned an orderly process to close the Snowflake Mill. Specifically, the Debtors will continue to operate the Snowflake Mill through the end of September 2012 in order to fulfill certain outstanding customer orders, and will pay all vendors and employees through such date in the ordinary course of business. However, the Debtors, in a valid exercise of their business judgment, have concluded that following the shutdown of the Snowflake Mill, the executory

contracts and unexpired leases subject to this Motion will no longer provide any benefit to the Debtors' estates and rejection of such contracts and leases will prevent the continued accrual of unnecessary post-petition expenses.

3. Under the circumstances summarized above and described further below, CPC respectfully requests that this Court enter the proposed Rejection Order. Specifically, CPC seeks entry of an order (i) authorizing the Debtors to reject certain executory contracts and unexpired leases for nonresidential real property and (ii) granting related relief. The rejection of the executory contracts and unexpired leases at issue will greatly assist the Debtors' efforts to preserve value for their estates by avoiding unnecessary post-petition expenses, and will also assist the Company upon its emergence from the Canadian and U.S. restructuring proceedings.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1410. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 365(a), 1507, and 1521.

### **BACKGROUND**

#### **A. General Background**

6. On January 17, 2012 (the "Chapter 15 Petition Date"), CPC filed and served notice of its motion for protection (the "CBCA Proceeding") under *Canada's Canada Business Corporations Act*, R.S.C. 1985, c. C-44 before the Canadian Court. On the Chapter 15 Petition Date, CPC also commenced the Debtors' chapter 15 cases by filing petitions pursuant to sections 1504 and 1515 of the Bankruptcy Code (collectively, the "Chapter 15 Cases").

7. CPC commenced the CBCA Proceeding in the Canadian Court, having reached a preliminary consensual arrangement with the representatives of various claimholders. The terms of that arrangement are reflected in the original restructuring support agreement dated January 14, 2012 (the “Original RSA”). CPC dismissed the CBCA Proceeding when the Original RSA parties were unable to obtain the required support from the other relevant stakeholders.

8. On January 31, 2012, CPC commenced the CCAA Proceeding, and the Canadian Court entered an initial order dated January 31, 2012 (as amended, the “Initial CCAA Order”), appointing the independent fiduciary PricewaterhouseCoopers as monitor (the “Monitor”) of the CCAA Proceeding and authorizing CPC to serve as foreign representative of the Debtors.

9. On March 5, 2012, this Court entered the *Order Granting Final Relief for Recognition of a Foreign Main Proceeding Pursuant to 11 U.S.C. §§ 105(a), 1517, 1519, 1520, and 1521* [Docket No. 89] (the “Recognition Order”) recognizing the CCAA Proceeding as a foreign main proceeding.

10. On March 22, 2012, the Canadian Court entered a claims procedure order (the “Claims Procedure Order”) setting forth, among things, the procedure for filing proofs of claim for Restructuring Claims (as defined below) and the procedure for review and adjudication of contested claims.

11. Following the Debtors’ initial failure in late May 2012 to garner sufficient support among its constituents for its Amended Plan of Compromise and Arrangement, the Debtors made a renewed attempt to obtain a consensual arrangement with its stakeholders by filing the Second Amended and Restated Plan of Compromise and Arrangement (the “Second Amended Plan”) on June 14, 2012. The Second Amended Plan was approved by creditors on June 25, 2012, and was sanctioned, authorized, and approved by the Canadian Court on June 28, 2012. On July 27, 2012, this Court entered the *Order (I) Recognizing and Enforcing CCAA Sanction Order, (II) Approving*

*Settlement Among the Debtors and 2014 Noteholders, and (III) Approving the Sale of Securities in Exchange for Claims Pursuant to Bankruptcy Rules 2002 and 9019 and 11 U.S.C. §§ 105(a), 363, 1507, 1525, and 1527* [Docket No. 174] recognizing and enforcing the Canadian Court’s sanction order and granting related relief.

12. Additional general background regarding the Debtors’ operations and the events leading up to the restructuring are detailed in the *Second Declaration of Brian Baarda* [Docket No. 39], and additional general background regarding the events leading up to the approval of the Second Amended Plan are detailed in the *Tenth Declaration of Brian Baarda* [Docket No. 156].

## **B. Snowflake Background**

13. The primary assets (“Assets”) of Catalyst Paper (Snowflake) Inc. (“Snowflake”) include, among other things, a 100% recycled newsprint and specialty paper manufacturing operation located in northeastern Arizona, and 100% of the equity interests in The Apache Railway Corporation (the “Apache Shares”). See Eleventh Baarda Declaration at 5. The Snowflake Mill has approximately 300 employees, and operates two paper machines with an annual capacity of 289,000 tons of newsprint and 48,000 tons of specialty papers. See id.

14. CPC purchased the Snowflake business, including both the Snowflake Mill and the Apache Shares, from Abitibi Consolidated Sales Corporation in early 2008. See Eleventh Baarda Declaration at 6. Since CPC’s acquisition of the Snowflake, North American demand for newsprint has been declining more than 10% annually since the end of 2008 due to, among other factors, reduced circulation, ongoing conservation, and migration to electronic media. Id. Concurrently, prices of old news print have increased approximately 163% since 2009. Id. This reduction in demand coupled with the volatility of supply and fuel prices has negatively impacted the profitability of the Snowflake Mill’s recycled newsprint operation, and the trend is expected to



continue. Id. Snowflake has generated negative EBITDA since 2009, with negative EBITDA<sup>2</sup> of US \$21.6 million in 2011 and projected negative EBITDA of US \$2.8 million in 2012. Id. at 8. In Q3 2011, the Company recorded an impairment charge of CAD\$151.0 million (US\$145.3 million) on certain assets of Snowflake, reflecting an erosion in the economic value of the Snowflake Mill to the Company's total operations, pursuant to U.S. GAAP principles. Id.

15. The Company has implemented a number of measures at Snowflake since the 2008 acquisition to address the various pressure described above. These measures include the production of higher-value specialty paper grades at the Snowflake Mill, which previously produced only newsprint, capital investment, productivity, quality and service improvements, full leverage of the Snowflake Mill's environmental attributes, and competitive labor agreements. See Eleventh Baarda Declaration at 7.

16. In May 2011, CPC retained RBC Capital Markets ("RBC") as its financial advisor in connection with a potential transaction involving the Assets. See Eleventh Baarda Declaration at 9. After more than a year of marketing the Assets aggressively, including pursuing a lengthy sales process with a number of interested bidders, CPC ultimately entered into negotiations with a number of prospective buyers. Id. However, CPC and RBC were ultimately unable to reach a binding sale agreement with a prospective buyer. Id.

17. After careful consideration and consultation with its advisors, the Debtors have come to the decision to permanently close the Snowflake Mill, effective September 30, 2012 (the "Closure Date"). See Eleventh Baarda Declaration at 10. The Company estimates that it will incur non-recurring costs totaling approximately US \$5 million in the aggregate in connection with the closure of the Snowflake Mill. Id. These closure costs are expected to be recouped from working capital

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<sup>2</sup> Note that EBITDA figures provided herein exclude corporate SG&A chargeable to Snowflake, some of which will translate into additional cost savings.

and the sale of certain Snowflake Mill assets in 2013. Id. The Debtors will be complying with its collective bargaining agreements, and will also be complying with its notice obligations under WARN. Id. at 11. Furthermore, Snowflake will be operating the Snowflake Mill through July and August in order to fulfill customer orders through the end of the year, in order to ease the transition for its customers and provide them with additional time to find another supplier of newsprint and specialty papers. Id.

### **C. The Snowflake Contracts**

18. In connection with a shutdown of the Snowflake Mill, the Debtors now seek to reject certain executory contracts and unexpired leases as listed on Exhibit A to the Eleventh Baarda Declaration (collectively, the “Snowflake Contracts”). The Snowflake Contracts include supply contracts, transportation and logistic contracts, and an unexpired lease for nonresidential real property and certain related services. The proposed rejection of the Snowflake Contracts will result in up to US \$13 million of cost savings to the Debtors. See Eleventh Baarda Declaration at 12.

19. Due to the upcoming termination of operations at the Snowflake Mill, the Snowflake Contracts will no longer provide any benefit to the Debtors’ estates and will, in fact, become a burden to the estates after the Closure Date. Through the rejection of the Snowflake Contracts, the Debtors will be relieved from not only paying for unneeded supplies, but also the cost of transporting such supplies, the cost of providing certain services to the lessee of real property owned by Snowflake, and other related charges associated with the Snowflake Contracts. Specifically, many of the contracts listed involve the supply of wastepaper to Snowflake by various supplier parties. Snowflake plans to purchase a sufficient supply of wastepaper from these vendors to fulfill certain customer orders through the end of the year, but will have no further use for wastepaper supply after the Closure Date. Thus, by rejecting the Snowflake Contracts, the Debtors will avoid incurring unnecessary postpetition charges for services and supplies that will provide no further

benefit to the Debtors' estates. Likewise, the Debtors will pay for the transport of supply and finished goods as needed through the closure process, but after rejection of the supply contracts, the Snowflake Mill will no longer require the same volume of materials to be transported. As for the unexpired lease of nonresidential real property, the Snowflake Mill will no longer have sufficient personnel or resources, following the Closure Date, to fulfill its service obligations under the lease.

20. Notably, the Debtors are not seeking to reject any executory contracts or unexpired leases retroactively, but are rather seeking rejection of the Snowflake Contracts effective as of the corresponding date provided in Exhibit A to the Eleventh Baarda Declaration (the "Rejection Date(s)"). The Rejection Dates range from the end of August to the Closure Date, thereby providing up to forty-five (45) days' notice of the Rejection Dates and Snowflake Mill shutdown to counterparties to the Snowflake Contracts (the "Counterparties"). All of the Counterparties will receive sufficient notice and opportunity to object to the rejection of the applicable Snowflake Contract, as the Debtors will provide notice of (a) the filing of this Motion, (b) the deadline to object to the Motion and (c) the hearing date for this Motion via facsimile and overnight mail.

21. Additionally, in order to assist the Counterparties with filing claims in the CCAA Proceeding, the Debtors have, concurrently with the notice of this Motion, also provided a claim form approved by the Canadian Court and an accompanying instruction letter (collectively, the "Claim Form"). The Counterparties will have thirty (30) calendar days following entry of the Rejection Order to submit a completed claim form to either (i) Pricewaterhouse Coopers Inc., Court-appointed Monitor of Catalyst Paper Corporation et al., 250 Howe Street, Suite 700, Vancouver, British Columbia, V6C S37, Canada, Attention: Patricia Marshall or (ii) Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, California 90245. Therefore, the Counterparties affected by the Rejection Order will have had notice of the plant closure and corresponding rejection of the Snowflake Contracts, and will have been in possession of the Claim

Form for over six (6) weeks before the deadline to submit completed proofs of claim as required above. Any claim arising from the rejection of the Snowflake Contracts will be deemed a “Restructuring Claim” as defined in the Second Amended Plan, and following review of the claim by the Monitor and related claims reconciliation process in the CCAA Proceeding, may be eligible for distributions as set forth in the Second Amended Plan.

### **BASIS FOR RELIEF**

**A. Relief under Section 365(a) of the Bankruptcy Is Available to A Trustee and Is Necessary to Effectuate the Purposes of these Chapter 15 Proceedings Pursuant to Sections 1507 and 1521(a) of the Bankruptcy Code, and Pursuant to the Recognition Order**

22. Section 1507(a) allows the Court to “provide additional assistance to a foreign representative under this title,” and section 1521(a)(7) specifically allows the Court to grant “any additional relief that may be available to a trustee,” with several specific exceptions not applicable here. 11 U.S.C. §§ 1507(a), 1521(a)(7). Similarly, courts have held that “[c]hapter 15 specifically contemplates that the court should be guided by principles of comity and cooperation with foreign courts in deciding whether to grant the foreign representative additional post-recognition relief.” In re Metcalfe & Mansfield Alternative Invs., 421 B.R. 685, 696 (Bankr. S.D.N.Y. 2010).

23. Here, CPC is requesting that the Court provide additional assistance and authorize the Debtors to exercise their business judgment and reject the Snowflake Contracts pursuant to section 365 of the Bankruptcy Code. Section 365 authorizes a trustee or debtor-in-possession to “reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Such relief would not only protect and maximize the value of the Debtors’ assets; it would also promote the fair and efficient administration of these Chapter 15 Cases and provide the Counterparties with a familiar process and forum in which to resolve any potential issues arising from the proposed rejection of the Snowflake Contracts. Thus, the application of section 365 of the Bankruptcy Code, and this Court’s authorization of the Debtors to reject the Snowflake Contracts under section 365 of

the Bankruptcy Code, will promote the stated objectives of chapter 15 as set forth in section 1501 of the Bankruptcy Code.

24. Other bankruptcy courts both inside and outside this district have also granted similar relief in the context of chapter 15 proceedings. See, e.g., In re Cinram Int'l Inc., Case No. 12-11882 (KJC) (Bankr. D. Del. July 25, 2012); In re Qimonda AG, Case No. 09-14766 (RGM) (Bankr. E.D. Va. July 22, 2009). The relief requested is also specifically allowed under the terms of the Recognition Order, which authorizes CPC to “apply to this Court as necessary for additional relief under section 1521(a) of the Bankruptcy Code, including, but not limited to, application of additional provisions of the Bankruptcy Code in the Chapter 15 Cases.” Recognition Order, at ¶ 5.

25. For all of the reasons stated above, the Court should afford CPC relief under section 365(a) of the Bankruptcy Code to these Chapter 15 Cases and authorize the Debtors to reject the Snowflake Contracts pursuant to section 365.

**B. The Rejection of the Snowflake Contracts is a Valid Exercise of the Debtors’ Business Judgment**

26. The assumption or rejection of an executory contract or unexpired lease by a debtor is subject to review under the business judgment standard. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993); Sharon Steel Corp. v. Nat’l Fuel Gas Dist. Corp., 872 F.2d 36, 40 (3d Cir. 1989); In re The Penn Traffic Co., 322 B.R. 63, 68 (Bankr. S.D.N.Y. 2005).

27. The business judgment standard is satisfied when a debtor determines that rejection of the subject contracts will benefit the estate. See In re Child World, Inc., 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); In re Helm, 355 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) (“To meet the business judgment test, the debtor in possession must ‘establish that rejection will benefit the estate’”). In applying this standard, courts show great deference to a debtor’s decision to reject an executory contract or unexpired lease, and generally will not second-guess a debtor’s business judgment. See

In re G Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) (“Generally, absent a showing of bad faith, or an abuse of business discretion, the debtor’s business judgment will not be altered.” (citing, inter alia, In re Bildisco, 682 F.2d 72, 79 (3d Cir. 1982), aff’d sub nom. NLRB v. Bildisco & Bildisco, 465 U.S. 513 (1984)); In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997) (“[A] court will ordinarily defer to the business judgment of the debtor’s management”).

28. The Debtors clearly satisfy the business judgment standard in seeking to reject the Snowflake Contracts. Certain of the Snowflake Contracts require Snowflake to purchase supply material that Snowflake does not need. Snowflake can neither profitably use the supply material before the Closure Date, nor easily resell the supply material to another entity. Other Snowflake Contracts require Snowflake to pay transportation costs to transport the completed paper products from the Snowflake Mill to the nearest railway; as Snowflake winds down its production lines, it will not require further transportation services. Finally, the unexpired lease of nonresidential real property requires Snowflake, as lessor of the property, to provide certain services in connection with the leased property. Following the Closure Date, Snowflake will no longer have the resources or manpower on hand to provide services under the lease.<sup>3</sup>

29. After the applicable Rejection Date, the Snowflake Contracts will cease to be a potential source of value to the Debtors, and will in fact drain resources from the Debtors’ estates. Accordingly, the Debtors have determined, in the sound exercise of their business judgment and with the support of the Monitor, that the rejection of the Snowflake Contracts effective in each case as of the corresponding Rejection Date will benefit the Debtors’ estates.

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<sup>3</sup> For the avoidance of doubt, although the Debtors will not fulfill the terms and conditions of Snowflake Contracts following the Closure Date, the proposed Rejection Order does protect lessees that lease any portion of Snowflake’s nonresidential real property, consistent with the provisions of section 365(h) of the Bankruptcy Code. See 11 U.S.C. § 365(h).

**C. The Procedure for Filing Restructuring Claims Arising from Rejection Is Adequate**

30. Any potential claims arising from the rejection of the Snowflake Contracts may be eligible to receive distributions as “Restructuring Claims” as defined in the Second Amended Plan, under the terms of both the CCAA and the Second Amended Plan. In order to assist the Counterparties in filing completed proofs of claim in the CCAA Proceeding, the Debtors are proposing claims filing procedures (the “Filing Procedures”) which are more expansive than the requirements of the Claims Procedure Order and which conform, in pertinent part, with procedures that would otherwise apply under section 365(g) of the Bankruptcy Code.

31. Under the CCAA, when a contract is disclaimed or resiliated, “a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.” CCAA, S. 32(7). The Second Amended Plan reflects the statute, defining “Restructuring Claim” as follows:

any right or claim of any Person against the Debtors ... in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the Debtors ... to such Person arising out of the restructuring, disclaimer, resiliation, termination, or breach on or after the Commencement Date of any contract, employment agreement, lease or other agreement or arrangement ... whether such restructuring, disclaimer, resiliation, termination or breach took place or takes place before or after the date of the Claims Procedure Order.

Second Amended Plan, at 12. Under the Second Amended Plan, a “Restructuring Claim” is classified as a “Claim,” and furthermore as a “General Unsecured Claim.” See Second Amended Plan, at 2, 7. Thus, the definition of Restructuring Claim under the Second Amended Plan with respect to rejected Snowflake Contracts is largely consistent with section 365(g) of the Bankruptcy Code, which generally provides that rejection of an executory contract or unexpired lease “constitutes a breach of such contract or lease . . . immediately before the date of the filing of the petition . . . .” 11 U.S.C. § 365(g)(1).

32. General Unsecured Claims are potentially eligible to receive distributions following the Monitor's review of such claims pursuant to the procedures established in the Claims Procedure Order. See Claims Procedure Order, at ¶¶ 26-29. Pursuant to the Claims Procedure Order, Restructuring Claims must be filed with the Monitor within ten (10) calendar days after receipt of any notice of disclaimer or resiliation (see Claims Procedure Order, Schedule C, at p. 11); however, as described further below, the Debtors are expanding these requirements for the benefit of the Counterparties.

33. The Debtors are making every effort to ensure that the Counterparties receive sufficient notice of rejection of the Snowflake Contracts; in some instances, as noted above and in Exhibit A to the Eleventh Baarda Declaration, the Counterparties will receive up to forty-five (45) days' notice of the Rejection Date. In addition to making the Claim Form available to Counterparties, the Debtors are also expanding the claims filing procedures for Counterparties beyond those set forth in the Claims Procedure Order, by (a) giving Counterparties thirty (30) calendar days following entry of the Rejection Order to file a completed proof of claim, instead of the ten (10) calendar days as provided in the Claims Procedure Order, and (b) allowing Counterparties to file a completed proof of claim with either KCC in the United States or with the Monitor in Canada. By implementing these steps, the Debtors seek to ease the process of filing claims arising from the rejection of Snowflake Contracts for those affected Counterparties.

34. The Filing Procedures proposed by the Debtors are more expansive than the procedures approved by the Canadian Court in the Claims Procedure Order, in order to allow the Counterparties a greater opportunity to file proofs of claim for any claims arising from the rejection of the Snowflake Contracts. Therefore, the Filing Procedures are more than sufficient and should be approved by this Court.



**D. The Fourteen-Day Waiting Period Under Bankruptcy Rule 6006(d) is Not Applicable**

35. Bankruptcy Rule 6006(d) provides, in relevant part, that an order “authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d). No similar waiting period is imposed on orders authorizing the debtor to reject any executory contract or unexpired lease under section 365(a) of the Bankruptcy Code. CPC submits that there is no applicable stay on the effectiveness of the Rejection Order, and such Rejection Order is therefore effective immediately upon entry.

**NOTICE**

36. CPC proposes to notify all Notice Parties of (a) the filing of this Motion, (b) the deadline to object to the Motion and (c) the hearing date for this Motion in accordance with this Court’s *Order (I) Specifying Form and Manner of Service of Notice of Filing of Petitions and Other Pleadings Pursuant to Chapter 15 of the Bankruptcy Code and (II) Scheduling a Hearing on Chapter 15 Petitions for Recognition* [Docket No. 23] (the “Notice Order”). Furthermore, CPC proposes to notify all Counterparties of (a) the filing of this Motion, (b) the deadline to object to the Motion and (c) the hearing date for this Motion via facsimile and overnight mail. In light of the nature of the relief requested herein, CPC submits that no other or further notice of this Motion is necessary or required.

## **CONCLUSION**

**WHEREFORE**, for the reasons set forth herein and in the Eleventh Baarda Declaration, CPC respectfully requests that the Court, after notice and a hearing, (a) enter the Rejection Order, substantially in the form attached hereto as Exhibit A and (b) grant any such other and further relief as this Court deems just and proper.

Dated: July 31, 2012  
Los Angeles, CA

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

Counsel for Catalyst Paper Corporation

**EXHIBIT A**

**Proposed Rejection Order**

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

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

**ORDER (I) AUTHORIZING THE DEBTORS TO REJECT CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES FOR NONRESIDENTIAL REAL  
PROPERTY AND (II) GRANTING RELATED RELIEF PURSUANT TO  
11 U.S.C. §§ 105(a), 365(a), 1507, AND 1521 AND BANKRUPTCY RULES 2002 AND 6006**

Upon consideration of the motion (the “Motion”)<sup>1</sup> of Catalyst Paper Corporation (“CPC”), as the authorized foreign representative for itself and its above-captioned affiliates (collectively, the “Debtors” and, together with their non-debtor affiliates, the “Company”) in a proceeding (the “CCAA Proceeding”) under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pending before the Supreme Court of British Columbia (the “Canadian Court”), for the entry of an order, pursuant to sections 105(a), 365(a), 1507, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) authorizing the Debtors to reject certain executory contracts and unexpired leases for nonresidential real property and (ii) granting related relief as this Court deems just and proper; and upon consideration of the Eleventh Declaration of Brian Baarda [Docket No. \_\_\_\_]; and upon further consideration of the record of the hearing on the Motion having been held before this Court; and due, sufficient, and proper notice of the Motion and the relief requested therein having been provided; and it

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and other parties in interest in these chapter 15 cases (the “Chapter 15 Cases”); and after due deliberation and sufficient cause appearing therefore,

**IT IS HEREBY FOUND** that:<sup>2</sup>

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. Venue is proper in this District pursuant to 28 U.S.C. § 1410.

D. The relief granted herein is necessary and appropriate and in the interests of the public and international comity, consistent with the public policy of the United States, warranted pursuant to sections 1507 and 1521(a)(7) of the Bankruptcy Code, and will not cause hardship of any party in interest that is not outweighed by the benefits of the relief granted herein.

E. CPC has demonstrated that without the application of section 365(a) of the Bankruptcy Code, the Debtors will incur significant unnecessary postpetition charges related to the Snowflake Contracts following the shutdown of the Snowflake Mill facility. As a result, the Debtors’ estates will suffer a decrease in value and the Debtors’ creditors and other parties in interest will be harmed thereby.

F. CPC has demonstrated that the proposed rejection of the Snowflake Contracts is a valid exercise of the Debtors’ business judgment.

G. The notice given by the Debtors of the Motion, the relief requested therein, and of the hearing in respect of the Motion was timely, proper and, under the circumstances, was

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<sup>2</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

adequate and sufficient. No further notice of the request for the relief granted at such hearing is required.

H. The hearing held on the Motion was fair and open to all parties potentially affected by the relief requested in the Motion.

I. Cause has been shown as to why this Order should not be subject to the stay provided by the Bankruptcy Rule 6006; and therefore

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

1. The Motion is granted.
2. The Debtors are entitled to relief under sections 365(a) to the extent expressly provided in this Order, as authorized under the provisions of section 1521(a)(7) of the Bankruptcy Code.
3. Pursuant to section 365(a) of the Bankruptcy Code, the Debtors' rejection of the Snowflake Contracts is hereby approved. The Snowflake Contracts listed on Exhibit A attached hereto are hereby deemed rejected as of the corresponding date (the "Rejection Date") indicated on Exhibit A. Rejection of the Snowflake Contracts shall constitute a breach of such Snowflake Contracts immediately before January 31, 2012. The Debtors shall continue, in the ordinary course of business, to satisfy obligations arising under the Snowflake Contracts up to but excluding the Rejection Date.
4. Any claims (the "Rejection Claims") arising from the rejection of the Snowflake Contracts shall be filed on or before the thirtieth (30th) calendar day following entry of this Order consistent with the procedures set forth in this Order. Rejection Claims shall be delivered by 5:00 p.m., Pacific time, on the thirtieth (30th) calendar day following entry of this Order, to either: (i) Pricewaterhouse Coopers Inc., Court-appointed Monitor of Catalyst Paper Corporation

et al., 250 Howe Street, Suite 700, Vancouver, British Columbia, V6C S37, Canada, Attention: Patricia Marshall or (ii) Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, California 90245.

5. Rejection Claims timely filed shall be deemed “Restructuring Claims” as defined in the Second Amended Plan and the Claims Procedure Order and, furthermore, such “Restructuring Claims” shall be bound by the terms of the Second Amended Plan. Any Rejection Claims not timely filed shall be deemed waived by the claimant and forever barred pursuant to the terms of the Claims Procedure Order, the Second Amended Plan and the Sanction Order.

6. To the extent that any Snowflake Contract is an unexpired lease of real property under which a Debtor is the lessor:

- a. If the rejection by the Debtor(s) amounts to such a breach as would entitle the lessee to treat such lease as terminated by virtue of its terms, applicable nonbankruptcy law, or any agreement made by the lessee, then the lessee under such lease may treat such lease as terminated by the rejection; or
- b. If the term of such lease has commenced, the lessee may retain its rights under such lease (including rights such as those relating to the amount and timing of payment of rent and other amounts payable by the lessee and any right of use, possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in or appurtenant to the real property for the balance of the term of such lease and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable nonbankruptcy law.

7. If a lessee retains its rights under subparagraph (b) of paragraph 6 of this Order, the lessee may offset against the rent reserved under such lease for the balance of the term after the date of the rejection of such lease and for the term of any renewal or extension of such lease, the value of any damage caused by the nonperformance after the Rejection Date, of any obligation of the Debtors under such lease, but the lessee shall not have any other right against the Debtors or their estates on account of any damage occurring after such date caused by such nonperformance.

8. If any lease of personal property is rejected pursuant to the procedures and provisions set forth in this Order, the leased property is no longer property of the Debtors' estates and the automatic stay under section 362 of the Bankruptcy Code is terminated with respect to such property.

9. Nothing herein, nor any action taken in connection with this Order shall be, nor shall it be construed as, a waiver of any of the Debtors' rights with respect to the Snowflake Contracts, including the right to contest any asserted claim amount or the characterization of the Snowflake Contracts and/or to assert any claim, counter-claim or defense without limitation against any Counterparty to a Snowflake Contract, whether or not such claims are related to the Snowflake Contracts.

10. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including the provisions of Bankruptcy Rule 6006(d) staying the effectiveness of this Order for fourteen (14) days which are hereby waived, this Order shall be effective, and the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order.

11. Within two (2) business days of entry of this Order, the Debtors shall serve this Order upon the Notice Parties in accordance with this Court's *Order (I) Specifying Form and*



*Manner of Service of Notice of Filing of Petitions and Other Pleadings Pursuant to Chapter 15 of the Bankruptcy Code and (II) Scheduling a Hearing on Chapter 15 Petitions for Recognition* [Docket No. 23]. Furthermore, the Debtors shall serve this Order via overnight mail upon the Counterparties.

12. This Court shall retain jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to the Motion or the implementation of this Order.

Dated: August \_\_, 2012  
Wilmington, Delaware

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HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE

**File a Motion:**12-10221-PJW Catalyst Paper Corporation

Type: bk

Chapter: 15 v

Office: 1 (Delaware)

Assets: y

Judge: PJW

Case Flag: MEGA, LEAD

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

## Notice of Electronic Filing

The following transaction was received from Van C. Durrer entered on 7/31/2012 at 7:58 PM EDT and filed on 7/31/2012

**Case Name:** Catalyst Paper Corporation**Case Number:** 12-10221-PJW**Document Number:** 175**Docket Text:**

Motion to Reject Lease or Executory Contract *Motion for Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and Unexpired Leases for Nonresidential Real Property and (II) Granting Related Relief Pursuant to 11 U.S.C. §§ 105(a), 365(a), 1507, and 1521 and Bankruptcy Rules 2002 and 6006* Filed by Catalyst Paper Corporation. Hearing scheduled for 8/14/2012 at 01:30 PM at US Bankruptcy Court, 824 Market St., 6th Fl., Courtroom #2, Wilmington, Delaware. Objections due by 8/7/2012. (Attachments: # (1) Notice # (2) Proposed Form of Order) (Durrer, Van)

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

**Document description:**Main Document**Original filename:**H:\temp\convert\Rejection Motion.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=7/31/2012] [FileNumber=10978107-0]  
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090247cbeda0835661286dde3c2ea013fb2e56e31d33f83aa43ab6c828c23]]

**Document description:**Notice**Original filename:**2 Notice.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=7/31/2012] [FileNumber=10978107-1]  
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**Document description:**Proposed Form of Order**Original filename:**Rejection Motion - Ex A.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=7/31/2012] [FileNumber=10978107-2]  
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**12-10221-PJW Notice will be electronically mailed to:**