

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

In re:	)	Chapter 15
	)	
FRASER PAPERS INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 09-12123(KJC)
	)	
Debtors in Foreign Proceedings.	)	Joint Administration Proposed
_____)		

**DEBTORS' MOTION FOR (A) ENTRY OF AN ORDER GRANTING RECOGNITION AND RELIEF IN AID OF FOREIGN MAIN PROCEEDING PURSUANT TO 11 U.S.C. §§ 1515, 1517 AND 1520 AND (B) A TEMPORARY RESTRAINING ORDER AND, AFTER NOTICE AND A HEARING, A PRELIMINARY INJUNCTION GRANTING PROVISIONAL RELIEF UNDER 11 U.S.C. § 1519(a)**

Fraser Papers Inc., ("Fraser") as foreign representative of Fraser and its affiliated captioned debtors and participants (collectively, with Fraser, the "Debtors") in a proceeding (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), pending before the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court"), hereby moves (the "Motion") this Court: (a) for entry of an order (the "Recognition Order") granting recognition and relief to the Canadian Proceeding as a foreign main proceeding pursuant to sections 1515, 1517, and 1519 of title 11 of the United States Code (the "Bankruptcy Code"); and (b) for entry of a temporary restraining order ("TRO") pursuant to sections 105(a) and 1519 of the Bankruptcy Code, *inter alia*, enforcing an order entered on June 18, 2009 (the "CCAA Order") by the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") in connection with a proceeding (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as

<sup>1</sup> These jointly administered cases are those of the following debtors: Fraser Papers Inc., FPS Canada Inc., Fraser Papers Holdings Inc., Fraser Timber Ltd., Fraser Papers Limited, and Fraser N.H. LLC.

DATE FILED 6-18-09  
SET NO. 7

amended (the “CCAA”), and, after notice and a hearing, a preliminary injunction, granting the Debtors provisional relief under sections 105(a) and 1519(a)(1), (2), and (3) of the Bankruptcy Code and scheduling a hearing on Fraser’s request for a preliminary injunction. In support hereof, Fraser respectfully submits the *Memorandum Of Points And Authorities In Support Of Debtors’ Motion For (A) Entry Of An Order Granting Recognition And Relief In Aid Of Foreign Main Proceeding Pursuant To 11 U.S.C. §§ 1515, 1517 And 1520 And (B) A Temporary Restraining Order And, After Notice And A Hearing, A Preliminary Injunction Granting Provisional Relief Under 11 U.S.C. § 1519(a)* (the “Memorandum”) and also represents and states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue of this proceeding and this Motion is proper in this District pursuant to 28 U.S.C. § 1410. The statutory predicates for the relief requested herein are sections 105(a), 1515, 1517, 1519(a), and 1520 of the Bankruptcy Code and Rule 7065 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 65 of the Federal Rules of Civil Procedure (the “Federal Rules”).

### **BACKGROUND**

2. Contemporaneously herewith, on June 18, 2009 (the “Petition Date”), the Debtors filed chapter 15 petitions pursuant to sections 1504 and 1515 of the Bankruptcy Code, commencing these chapter 15 cases in aid of the Canadian Proceeding, seeking recognition of the Canadian Proceeding as a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code and seeking other necessary relief in aid of the Canadian Proceeding.

3. The Court is respectfully referred to the *Declaration of J. Peter Gordon of Fraser Papers Inc. in Support of (I) Petitions for Recognition of Canadian Proceeding Under 11 U.S.C. § 1515; (II) Debtors' Motion for Order Directing Joint Administration of Chapter 15 Bankruptcy Cases Under Fed. R. Bankr. P. 1015(b); and (III) Debtors' Motion for (A) Entry Of An Order Granting Recognition And Relief In Aid Of Foreign Main Proceeding Pursuant To 11 U.S.C. §§ 1515, 1517 And 1520 And (B) Temporary Restraining Order and, After Notice and a Hearing, a Preliminary Injunction Granting Provisional Relief Under 11 U.S.C. § 1519(a)* (the "Gordon Declaration") which outlines in detail the Debtors, their operations, and the Canadian Proceeding, and is incorporated herein by reference.

#### **REQUEST FOR RELIEF**

4. By this Motion, Fraser seeks:

(a) entry, after notice and a hearing, of a TRO and preliminary injunction: (i) enforcing the CCAA Order in the United States on an interim basis; (ii) granting provisional relief under 11 U.S.C. §§ 105(a) and 1519(a)(1) prohibiting all persons and entities from (w) continuing any action or commencing any additional action involving the Debtors, their assets or the proceeds thereof, or their former, current or future directors and officers; (x) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award against the Debtors or their assets; (y) commencing or continuing any action to create, perfect or enforce any lien, setoff or other claim against the Debtors or against any of their property; or (z) managing or exercising control over the Debtors' assets located within the United States except as expressly authorized by Fraser in writing; (iii) granting provisional relief under 11 U.S.C. § 1519(a)(2) entrusting the administration or realization of all or part of the Debtors' assets located in the United States to Fraser; (iv) granting provisional relief under 11

U.S.C. § 1519(a)(3) authorizing Fraser to operate the Debtors' businesses and to exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552 of the Bankruptcy Code; (v) authorizing the financing pursuant to the CIT Term Sheet, the CIT Credit Agreement and the DIP Facility as set forth in the CCAA Order; and (vi) scheduling a hearing before this Court (the "Hearing") to consider Fraser's request for a preliminary injunction granting the same relief as set forth in items (i), (ii), (iii) and (iv) above; and

(b) entry of the Recognition Order after notice and a hearing: (i) granting recognition of the Canadian Proceeding as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code and relief related thereto; (ii) enforcing the CCAA Order (or such further order of the Canadian Court which may then be appropriate) in the United States on a permanent basis; and (iii) such further relief as this Court deems just and proper.

#### **BASIS FOR RELIEF**

5. As set forth more fully in the Memorandum, this Court should enter the Recognition Order and the TRO. Fraser believes that granting the relief sought herein will best assure an economical, expeditious and equitable administration of the Debtors' restructuring.

6. Specifically, with regard to the Recognition Order:

- (a) the Canadian Proceeding is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code because it is a collective judicial proceeding pending under Canada's insolvency law;
- (b) the Canadian Proceeding is a foreign "main" proceeding within the meaning of section 1502(4) of the Bankruptcy Code because Canada indisputably constitutes the Debtors' "center of main interests" under sections 1502(4), 1516(c) and 1517(b)(1) of the Bankruptcy Code;
- (c) the Canadian Court authorized and appointed Fraser to administer the reorganization of the Debtors' assets or affairs and to act as their representative and as the representative of the Canadian Proceeding, thereby qualifying Fraser as a foreign representative within the meaning of section 101(24) of the Bankruptcy Code; and

- (d) the Debtors' petitions meet the requirements of section 1515 of the Bankruptcy Code because: (i) they have been filed with a true and exact copy of the CCAA Order commencing the Canadian Proceeding and appointing Fraser as the foreign representative, as required by sections 1515(b) and (c) of the Bankruptcy Code; and (ii) otherwise comply with the Bankruptcy Code, Bankruptcy Rules and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

7. Accordingly, this Court should recognize the Canadian Proceeding as a foreign main proceeding, and grant Fraser recognition as the Debtors' foreign representative.

8. This Court should also enforce the CCAA Order on an interim and final basis. The CCAA Order provides relief similar to and consistent with what the Bankruptcy Code affords automatically to chapter 11 debtors. It provides the Debtors with, among other things:

- (a) Stay relief to protect their business and property;
- (b) Protection of their contractual rights from potential termination, discontinuance, alteration or interference;
- (c) Authority to remain in possession, control and management of their assets and to continue to operate their business;
- (d) Authority to restructure their business by downsizing or shutting down any operations, terminating employees or repudiating leases, with the consequences thereof dealt with in a plan of arrangement or compromise or further order by the Canadian Court;
- (e) Authority to enter into an amendment to the CIT Credit Agreement (as defined in the CCAA Order) substantially on the terms of the CIT Term Sheet (as defined in the CCAA Order);
- (f) Authority to borrow, repay and reborrow under and in accordance with the terms of the CIT Term Sheet and the CIT Credit Agreement (as defined in the CCAA Order) and granting the CIT DIP Charge (as defined in the CCAA Order) on the Debtors' assets in the amount of \$20,000,000 minus the amount outstanding from time to time under the DIP Facility (as defined in the CCAA Order), subject to the priorities, terms and conditions of the CCAA Order, to secure current and future amounts outstanding under the CIT Term Sheet and the CIT Credit Agreement (as defined in the CCAA Order);

- (g) Authority to enter into and to incur debtor-in-possession financing under the DIP Facility (as defined in the CCAA Order), and granting the DIP Lender (as defined in the CCAA Order) the DIP Lender's Charge (as defined in the CCAA Order) on all of the Debtors' assets, subject to the priorities, terms and conditions set forth in the CCAA Order, to secure current and future amounts outstanding under the DIP Facility;
- (h) Injunctive relief to protect former and current directors and officers and the ability to pay certain prepetition obligations; and
- (i) Authority to file a plan of compromise or arrangement between, among others, the CCAA Debtors and one or more classes of stakeholders.

9. Regarding the TRO, Fraser believes that unless this Court enjoins the commencement or proceedings against the Debtors and gives effect to Fraser's exclusive authority to manage and control the Debtors' assets located within the United States, the Debtors will be immediately and irreparably harmed. As described more fully in the Memorandum and Gordon Declaration, absent the relief requested herein, there exists a material threat of imminent irreparable diminution in value of the Debtors' principal assets because suppliers, creditors and other parties in interest may take steps to deplete the Debtors' estates to the detriment of all stakeholders. Creditors in the United States may seek a tactical advantage by unilateral action, including acceleration or commencement of litigation, or attachment or other attempts to gain control of the Debtors' property, in whatever United States jurisdiction that creditor may choose. Any such actions would severely impair the Debtors' ability to obtain the best recoveries possible for all stakeholders under the Canadian Proceeding, and would jeopardize the Debtors' attempts to reorganize.

10. Via these actions, creditors may also seek to avoid participating in the Canadian Proceeding, the success of which depends on the Debtors' ability to adopt a plan covering the claims of all stakeholders. The threat of disruption of this process, as well as the potential costs incurred by the Debtors in defending themselves from these actions, would seriously harm the

prospects of a successful reorganization in the Canadian Proceeding, and would cause irreparable harm to the Debtors and other parties in interest.

11. Moreover, without interim approval by this Court of the financing authorized by the Canadian Court in the CCAA Order, the Debtors will not have access to the financial resources necessary to fund their capital requirements to continue operations uninterrupted, thereby preserving the value of the Debtors' assets. Simply put, without approval of the relief requested in the Motion for Relief, it is likely that the Debtors will be forced to stop operations, and the Debtors will suffer irreparable harm for which they will have no adequate remedy at law.

#### **NOTICE**

12. Fraser requests that the Court grant this Motion without notice to creditors. Fraser will serve the signed order approving this Motion on identified interested parties by United States mail, postage prepaid or as otherwise ordered by this Court. In light of the nature of the relief requested, Fraser submits, and requests that this Court hold, that no further notice is required.

#### **NO PRIOR REQUEST**

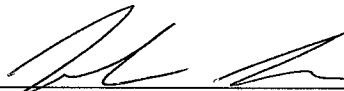
13. No prior request for the relief sought herein has been made to this or any other court in the United States.

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WHEREFORE, for the reasons set forth in the Memorandum and the Gordon Declaration, Fraser respectfully requests that the Court (i) after notice and a hearing, enter the proposed Recognition Order attached hereto as **Exhibit A**; (ii) enter the proposed temporary restraining order attached hereto as **Exhibit B**; (iii) after notice and a hearing, enter the proposed order attached hereto as **Exhibit C** granting a preliminary injunction; and (iv) grant such other relief as this Court determines is fair and equitable under the circumstances.

Dated: June 18, 2009  
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL, LLP



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*Counsel to the Debtors  
Fraser Papers Inc., et al.*

**Exhibit A – Proposed Recognition Order**

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

In re:	)	Chapter 15
	)	
FRASER PAPERS INC., <i>et al.</i> , <sup>2</sup>	)	Case No. 09-12123(KJC)
	)	
Debtors in Foreign Proceedings.	)	Joint Administration Proposed
	)	
	)	RE: D.I. _____

**ORDER GRANTING RECOGNITION AND RELIEF IN AID OF FOREIGN MAIN  
PROCEEDING PURSUANT TO 11 U.S.C. §§ 1515, 1517 AND 1520**

Upon the petitions filed under chapter 15 of title 11 of the United States Code (the “Bankruptcy Code”) and the required documents thereto (the “Chapter 15 Petitions”) by Fraser Papers Inc. (“Fraser”) and its affiliated captioned debtors and participants (collectively, with Fraser, the “Debtors”); the *Declaration of J. Peter Gordon, Chief Executive Officer of Fraser Papers Inc., in Support of (I) Petitions for Recognition of Canadian Proceeding Under 11 U.S.C. § 1515; (II) Debtors’ Motion for Order Directing Joint Administration of Chapter 15 Bankruptcy Cases Under Fed. R. Bankr. P. 1015(b); and (III) Debtors’ Motion for (A) Entry Of An Order Granting Recognition And Relief In Aid Of Foreign Main Proceeding Pursuant To 11 U.S.C. §§ 1515, 1517 And 1520 And (B) Temporary Restraining Order and, After Notice and a Hearing, a Preliminary Injunction Granting Provisional Relief Under 11 U.S.C. § 1519(a)* (the “Gordon Declaration”); and the *Memorandum Of Points And Authorities In Support Of Debtors’ Motion For (A) Entry Of An Order Granting Recognition And Relief In Aid Of Foreign Main Proceeding*

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<sup>2</sup> These jointly administered cases are those of the following debtors: Fraser Papers Inc., FPS Canada Inc., Fraser Papers Holdings Inc., Fraser Timber Ltd., Fraser Papers Limited, and Fraser N.H. LLC.

*Pursuant To 11 U.S.C. §§ 1515, 1517 And 1520 And (B) A Temporary Restraining Order And, After Notice And A Hearing, A Preliminary Injunction Granting Provisional Relief Under 11 U.S.C. § 1519(a) (the “Memorandum”) related to a proceeding (the “Canadian Proceeding”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pending before the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”); and the Court having considered and reviewed the Chapter 15 Petitions, the Gordon Declaration and the Memorandum; and upon the record of the statements made by interested parties; and after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:*

- a) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334;
- b) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P);
- c) Venue is proper in this District pursuant to 28 U.S.C. § 1410;
- d) Fraser is duly appointed to act as the foreign representative (the “Foreign Representative”) of the Debtors within the meaning of sections 101(24) and 1517(a)(2) of the Bankruptcy Code;
- e) These chapter 15 cases were properly commenced in compliance with and pursuant to sections 1504 and 1515 of the Bankruptcy Code;
- f) The Chapter 15 Petitions satisfy the requirements of section 1515 of the Bankruptcy Code;
- g) The Canadian Proceeding is a foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code and is entitled to recognition as a foreign proceeding by this Court pursuant to sections 1515 and 1517(a) of the Bankruptcy Code;

h) The Canadian Proceeding is entitled to recognition as a foreign main proceeding pursuant to sections 1502(4) and 1517(b)(1) of the Bankruptcy Code because the Debtors have their center of main interests in Canada; and

i) Recognition of the Canadian Proceeding as a foreign main proceeding is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, warranted pursuant to sections 1520 and 1521 of the Bankruptcy Code, and will not cause hardship to plaintiffs in litigation against the Debtors, if any, or any other parties-in-interest, that is not outweighed by the benefits of granting the relief set forth herein.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Canadian Proceeding is granted recognition pursuant to section 1517(a) of the Bankruptcy Code.

2. The Canadian Proceeding is recognized as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

3. The CCAA Order (as may be amended from time to time) is hereby enforced on a final basis and shall be given full force and effect in the United States.

4. All relief afforded a foreign main proceeding pursuant to section 1520 of the Bankruptcy Code is granted without limitation. Specifically, to the extent not inconsistent with the CCAA Order, the automatic stay of section 362 of the Bankruptcy Code applies with respect to the Debtors, any property of the Debtors that is within the territorial jurisdiction of the United States, and the Debtors' former, current, and future directors and officers.

5. Additional relief pursuant to sections 1521(a)(5) and 1521(b) of the Bankruptcy Code, including, but not limited to, entrusting the administration, realization and

distribution of the Debtors' assets located within the territorial jurisdiction of the United States to the Foreign Representative, is granted.

6. The Debtors are hereby authorized to enter into an amendment to the CIT Credit Agreement substantially on the terms of the CIT Term Sheet, both as defined in the CCAA Order.

7. The Debtors are hereby authorized to borrow, repay and reborrow under and in accordance with the terms of the CIT Term Sheet and the CIT Credit Agreement, both as defined in the CCAA Order.

8. CIT is hereby granted the CIT DIP Charge, as defined in the CCAA Order, on all of the Debtors' United States assets in the amount of \$20,000,000 minus the amount outstanding from time to time under the DIP Facility, subject to the priorities, terms and conditions of the CCAA Order, to secure current and future amounts outstanding under the CIT Term Sheet and the CIT Credit Agreement, both as defined in the CCAA Order.

9. The Debtors are hereby authorized to enter into the DIP Facility as defined in the CCAA Order and to incur up to \$22,000,000, the full amount of the indebtedness under the DIP Facility authorized by the CCAA Order.

10. The DIP Lender, as defined in the CCAA Order, is hereby granted the DIP Lender's Charge, as defined in the CCAA Order, on all of the Debtors' United States assets, subject to the priorities, terms and conditions set forth in the CCAA Order, to secure current and future amounts outstanding under the DIP Facility.

11. Pursuant to sections 105(a), 364(e), 1519(a)(3), and 1521(a)(7) of the Bankruptcy Code, the validity of the indebtedness and the priority of the liens authorized by the CCAA Order and made enforceable in the United States by this Order shall not be affected by

any reversal or modification of this Order on appeal or the entry of an order denying recognition of the Canadian Proceeding pursuant to section 1517 of the Bankruptcy Code;

12. No action taken by the Foreign Representative, the Debtors or each of their successors, agents, representatives, advisors or counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of or in connection with the Canadian Proceeding, this Order or these chapter 15 cases or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the immunity afforded such person under sections 306 and 1510 of the Bankruptcy Code.

13. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any requests for additional relief or any adversary proceeding brought in and through these chapter 15 cases, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

Dated: \_\_\_\_\_, 2009  
Wilmington, Delaware

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THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B – Proposed TRO**

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

In re:	)	Chapter 15
	)	
FRASER PAPERS INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 09-12123(KJC)
	)	
Debtors in Foreign Proceedings.	)	Joint Administration Proposed
	)	
_____	)	RE: D.I. _____

**TEMPORARY RESTRAINING ORDER**

Upon the motion (the "Motion") of Fraser Papers Inc. ("Fraser") as foreign representative of Fraser and its affiliated captioned debtors and participants (collectively, with Fraser, the "Debtors") in a proceeding (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), pending before the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court"), pursuant to sections 105(a) and 1519 of title 11 of the United States Code (the "Bankruptcy Code"), for the entry of a temporary restraining order (the "TRO"), *inter alia*, enforcing an order entered on June 18, 2009 (the "CCAA Order") by the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") in connection with a proceeding (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "CCAA"), and, after notice and a hearing, a preliminary injunction granting the Debtors provisional relief under sections 105(a) and 1519(a)(1), (2), and (3) of the Bankruptcy Code and scheduling a hearing (the "Hearing") on Fraser's request for a preliminary injunction; and the Court having considered

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<sup>1</sup> These jointly administered cases are those of the following debtors: Fraser Papers Inc., FPS Canada Inc., Fraser Papers Holdings Inc., Fraser Timber Ltd., Fraser Papers Limited, and Fraser N.H. LLC.

and reviewed the Motion, the petitions filed by the Debtors under chapter 15 of the Bankruptcy Code, and required documents thereto (the “Chapter 15 Petitions”), and the Memorandum (as defined in the Motion) and the Gordon Declaration (as defined in the Motion), each in support of the Motion and the Chapter 15 Petitions (collectively, the “Supporting Documents”), and based on the foregoing, the Court finds and concludes as follows:

a) Fraser has demonstrated a substantial likelihood of success that the Debtors are subject to a pending foreign main proceeding in Canada and that Fraser is the foreign representative of the Debtors;

b) The commencement or continuation of any action or proceeding in the United States against the Debtors, any of their assets or proceeds thereof, or their former, current, and future directors and officers should be enjoined pursuant to sections 105(a) and 1519 of the Bankruptcy Code to permit the expeditious and economical administration of the foreign estates in the Canadian Proceeding, and the relief requested will cause neither an undue hardship nor create any hardship to any party in interest that is outweighed by the benefits of the TRO;

c) Unless a restraining order is issued, it appears to the Court that there is a material risk that the Debtors’ assets located in the United States could be subject to attack by creditors, thereby potentially interfering with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code, and interfering with and causing harm to the Debtors’ efforts to administer the Debtors’ estates in the Canadian Proceeding, and undermining the Debtors’ efforts to achieve an equitable distribution for the benefit of all of the Debtors’ creditors; as a result, the Debtors will suffer immediate and irreparable injury for which they will have no adequate remedy at law, making it necessary that the Court grant the relief requested without prior notice to the parties in interest or their counsel;

d) Fraser has demonstrated that the incurrence of indebtedness as authorized by the CCAA Order is necessary to prevent irreparable harm to the Debtors because without such financing, the Debtors will be unable to continue operations, thereby significantly impairing the value of their assets;

e) Fraser has demonstrated that the terms of the financing are fair and reasonable and were entered into in good faith by CIT and the DIP Lender as defined in the CCAA Order and CIT and the DIP Lender would not extend financing without the protection provided by section 364(e) of the Bankruptcy Code as made applicable by section 1519 of the Bankruptcy Code;

f) The interest of the public will be served by this Court's granting of the relief requested by Fraser;

g) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334;

h) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and

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

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. All persons and entities are hereby enjoined from (a) continuing any action or commencing any additional action, involving the Debtors, their assets or the proceeds thereof, or their former, current, and future directors and officers with respect to any claim against such directors or officers that arose before the date hereof and relates to any obligations of the Debtors whereby the directors or officers are alleged to be liable in their capacity as directors or officers until further order of this Court; (b) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment, order or arbitration award against the

Debtors, their assets, or their former, current, and future directors and officers with respect to any claim against such directors or officers that arose before the date hereof and relates to any obligations of the Debtors whereby the directors or officers are alleged to be liable in their capacity as directors or officers until further order of this Court; (c) commencing or continuing any action to create, perfect or enforce any lien, setoff or other claim against the Debtors or against any of their property; or (d) managing or exercising control over the Debtors' assets located within the United States except as expressly authorized by Fraser in writing.

2. Until further order of this Court, Fraser is hereby established as the exclusive representative of the Debtors in the United States with the exclusive authority to administer the Debtors' assets and affairs in the United States including, without limitation, any transfer of or withdrawals from any bank accounts maintained by the Debtors.

3. Until further order of this Court, Fraser is hereby authorized to operate the Debtors' businesses and to exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552 of the Bankruptcy Code.

4. The CCAA Order is hereby enforced on a interim basis and shall be given full force and effect in the United States until otherwise ordered by this Court.

5. The Debtors are hereby authorized to enter into an amendment to the CIT Credit Agreement substantially on the terms of the CIT Term Sheet, both as defined in the CCAA Order.

6. The Debtors are hereby authorized to borrow, repay and reborrow under and in accordance with the terms of the CIT Term Sheet and the CIT Credit Agreement, both as defined in the CCAA Order.

7. CIT is hereby granted the CIT DIP Charge, as defined in the CCAA Order, on all of the Debtors' United States assets in the amount of \$20,000,000 minus the amount outstanding from time to time under the DIP Facility, subject to the priorities, terms and conditions of the CCAA Order, to secure current and future amounts outstanding under the CIT Term Sheet and the CIT Credit Agreement, both as defined in the CCAA Order.

8. Pending the hearing on Fraser's request for a preliminary injunction, the Debtors are hereby authorized to enter into the DIP Facility as defined in the CCAA Order and to incur up to \$22,000,000, the full amount of the indebtedness under the DIP Facility authorized by the CCAA Order.

9. The DIP Lender, as defined in the CCAA Order, is hereby granted the DIP Lender's Charge, as defined in the CCAA Order, on all of the Debtors' United States assets, subject to the priorities, terms and conditions set forth in the CCAA Order, to secure current and future amounts outstanding under the DIP Facility.

10. Pursuant to sections 105(a), 364(e), 1519(a)(3), and 1521(a)(7) of the Bankruptcy Code, the validity of the indebtedness and the priority of the lien authorized by the CCAA Order and made enforceable in the United States by this Order shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying recognition of the Canadian Proceeding pursuant to section 1517 of the Bankruptcy Code.

11. Pursuant to Federal Rule of Bankruptcy Procedure 7065(b), no notice to any person is required prior to entry and issuance of this Order.

12. Any party in interest may make a motion seeking relief from or modifying this Order by, on not less than ten (10) days' written notice to Fraser and to Fraser's counsel, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, Delaware

19899-1347 (Attention: Derek C. Abbott) and Thornton Grout Finnigan LLP, Suite 3200, Canadian Pacific Tower, 100 Wellington St. West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Canada M5K 1K7 (Attention: D.J. Miller), filing a motion seeking an order of this Court vacating or modifying the injunction entered in this proceeding, and any such request shall be the subject matter of a hearing as scheduled by the Court and, otherwise, any party in interest may file objections and be heard by the Court in accordance with the terms of any order of the Court providing for a hearing in the future on any subsequent relief sought by Fraser in this proceeding.

13. Pursuant to Federal Rule of Bankruptcy Procedure 7065, the security provisions of Federal Rule of Civil Procedure 65(c) are waived.

14. Copies of the Supporting Documents shall be served upon the Debtors, all administrators in foreign proceedings of the Debtors, all other parties (or their counsel) known by the Debtors against whom provisional relief is sought under section 1519 of the Bankruptcy Code (except the Debtors' employees), including any such parties (or counsel) that have addresses outside the United States, and all parties to any litigation in which any of the Debtors is a party and that is pending in the United States as of the Petition Date<sup>2</sup>, in accordance with Bankruptcy Rule 2002(q), and any interested party that becomes known to Fraser by first class mail or overnight courier within five (5) business days of the Petition Date (or three (3) business days following the time a party is identified by Fraser, whichever is later).

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<sup>2</sup> All capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

15. Service in accordance with this Order shall constitute adequate and sufficient service and notice.

16. The Supporting Documents shall also be made available by Fraser upon request via electronic mail or at the offices of Morris Nichols Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, Delaware 19899-1347 to the attention of Derek C. Abbott, (302) 351-9357, [dabbott@mnat.com](mailto:dabbott@mnat.com).

17. The Court shall hold a hearing on Fraser's request for a preliminary injunction granting substantially the same relief through entry of an order on recognition of the Canadian Proceeding before the Honorable \_\_\_\_\_, United States Bankruptcy Judge, for the Hearing at \_\_:\_\_.m Eastern time on \_\_\_\_\_, 2009, at the United States Bankruptcy Court, 824 Market Street, Third Floor, Wilmington, Delaware 19801 or as soon thereafter as counsel may be heard.

18. Objections, if any, submitted for the purpose of opposing Fraser's request for a preliminary injunction on the terms described above must be made in writing describing the basis therefor and the nature and extent of the respondent's interests in the Debtors' estates and shall be filed with the Court and served upon Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, Delaware 19899-1347 (Attention: Derek C. Abbott) and Thornton Grout Finnigan LLP, Suite 3200, Canadian Pacific Tower, 100 Wellington St. West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Canada M5K 1K7 (Attention: D.J. Miller), counsel for Fraser, so as to be received on or before \_\_\_\_\_, 2009 at \_\_:\_\_.m. Eastern time; except that the foregoing is without prejudice to the right of any party-in-interest to seek, upon appropriate notice and hearing, to terminate or limit this temporary restraining order.

19. If no objection to the Debtors' request for a preliminary objection is timely filed and served in accordance with this Order, this Court will enter the proposed Order for Preliminary Injunction without further notice or hearing.

20. This Order will remain in effect until the earlier of the entry of an order granting or denying the preliminary injunction or the entry of an order recognizing the Canadian Proceeding as a foreign main proceeding in accordance with 11 U.S.C. § 1517.

21. Nothing contained herein shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding.

22. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2009  
Wilmington, Delaware

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THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

2916540.5

**Exhibit C – Proposed Preliminary Injunction**

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

In re:	)	Chapter 15
	)	
FRASER PAPERS INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 09-12123(KJC)
	)	
Debtors in Foreign Proceedings.	)	Joint Administration Proposed
	)	
_____	)	RE: D.I. _____

**ORDER FOR PRELIMINARY INJUNCTION**

Upon the motion (the “Motion”) of Fraser Papers Inc. (“Fraser”) as foreign representative of Fraser and its affiliated captioned debtors and participants (collectively with Fraser, the “Debtors”) in a proceeding (the “Canadian Proceeding”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pending before the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”), pursuant to sections 105(a) and 1519 of title 11 of the United States Code (the “Bankruptcy Code”), for the entry of, after notice and a hearing, a preliminary injunction granting the Debtors provisional relief under sections 105(a) and 1519(a)(1) and (2) of the Bankruptcy Code; and the Court having considered and reviewed the Motion, the petitions filed by the Debtors under chapter 15 of the Bankruptcy Code, and required documents thereto (the “Chapter 15 Petitions”), and the Memorandum (as defined in the Motion) and the Gordon Declaration (as defined in the Motion), each in support of the Motion and the Chapter 15 Petitions (collectively, the “Supporting Documents”), and based on the foregoing, the Court finds and concludes as follows:

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<sup>1</sup> These jointly administered cases are those of the following debtors: Fraser Papers Inc., FPS Canada Inc., Fraser Papers Holdings Inc., Fraser Timber Ltd., Fraser Papers Limited, and Fraser N.H. LLC.

a) Fraser has demonstrated a substantial likelihood of success that the Debtors are subject to a pending foreign main proceeding in Canada and that Fraser is the foreign representative of the Debtors;

b) The commencement or continuation of any action or proceeding in the United States against the Debtors, any of their assets or proceeds thereof, or their former, current, and future directors and officers with respect to any claim against such directors or officers that arose before the date hereof and relates to any obligations of the Debtors whereby the directors or officers are alleged to be liable in their capacity as directors or officers until further order of this Court, should be enjoined pursuant to sections 105(a) and 1519 of the Bankruptcy Code to permit the expeditious and economical administration of the foreign estates in the Canadian Proceeding, and the relief requested will not cause either an undue hardship or that any hardship to the parties in interest is outweighed by the benefits;

c) Unless a preliminary injunction is issued, it appears to the Court that there is a material risk that the Debtors' assets located in the United States could be subject to attack by creditors, thereby potentially interfering with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code, and interfering and causing harm to, the Debtors' efforts to administer the Debtors' estates in the Canadian Proceeding, and undermining the Debtors' efforts to achieve an equitable distribution for the benefit of all of the Debtors' creditors, and as a result, the Debtors will suffer immediate and irreparable injury for which they will have no adequate remedy at law, making it necessary that the Court grant the relief requested;

d) Fraser has demonstrated that the incurrence of indebtedness as authorized by the CCAA Order is necessary to prevent irreparable harm to the Debtors because without such

financing, the Debtors will be unable to continue operations which will significantly impair the value of their assets;

e) Fraser has demonstrated that the terms of the financing are fair and reasonable and were entered into in good faith by CIT and the DIP Lender (as defined in the CCAA Order) and that CIT and the DIP Lender would not extend financing without the protection provided by section 364(e) of the Bankruptcy Code, as made applicable by section 1519 of the Bankruptcy Code;

f) The interest of the public will be served by this Court's granting of the relief requested by Fraser;

g) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334;

h) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and

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

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. All persons and entities are hereby enjoined from (a) continuing any action or commencing any additional action, involving the Debtors, their assets or the proceeds thereof, or their former, current, and future directors and officers with respect to any claim against such directors or officers that arose before the date hereof and relates to any obligations of the Debtors whereby the directors or officers are alleged to be liable in their capacity as directors or officers until further order of this Court; (b) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award against the Debtors, their assets, or their former, current, and future directors and officers with respect to any claim against such directors or officers that arose before the date hereof and relates to any

obligations of the Debtors whereby the directors or officers are alleged to be liable in their capacity as directors or officers until further order of this Court; (c) commencing or continuing any action to create, perfect or enforce any lien, setoff or other claim against the Debtors or against any of their property; or (d) managing or exercising control over the Debtors' assets located within the United States except as expressly authorized by Fraser in writing.

2. If a plaintiff in an action in which any one of the Debtors or their former or current directors and officers is or was named as a party, or as a result of which liability against any one of the Debtors may be established, all persons and entities are required to place the Debtors' United States counsel on the master service list of any such action or proceeding and take such other steps as may be necessary to ensure that such counsel receives at the address set forth below in the last paragraph of this Order (i) copies of any and all documents served by the parties to such action or proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or proceeding and (ii) any and all correspondence or other documents circulated to parties listed on the master service list.

3. With respect to any action in which any one of the Debtors may have an interest that may become known to the Debtors in the future (each a "Subsequent Claim") (i) when informed of a Subsequent Claim, United States counsel for the Debtors shall serve upon the holder of such claim a copy of the Supporting Documents and this Order or any extension thereof; (ii) the holder of a Subsequent Claim will have twenty (20) days from service of the Supporting Documents in which to file a response thereto or otherwise be enjoined from commencing or continuing the action involving any one of the Debtors, or its assets or proceeds thereof; and (iii) on not less than ten (10) days' notice to Debtors' counsel, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, Delaware 19899-1347 (Attention:

Derek C. Abbott) and Thornton Grout Finnigan LLP, Suite 3200, Canadian Pacific Tower, 100 Wellington St. West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Canada M5K 1K7 (Attention: D.J. Miller), the holder of a Subsequent Claim may file a motion seeking an order of the Court vacating or modifying the injunction entered in this proceeding with respect to such Subsequent Claim, and any such request shall be the subject matter of a hearing as scheduled by the Court and otherwise, the holder of a Subsequent Claim may file objections and be heard by the Court in accordance with the terms of any order of the Court providing for a hearing in the future on any subsequent relief sought by the Petitioners in this case.

4. Any party in interest may make a motion seeking relief from or modifying this Order by, on not less than ten (10) days' written notice to Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, Delaware 19899-1347 (Attention: Derek C. Abbott) and Thornton Grout Finnigan LLP, Suite 3200, Canadian Pacific Tower, 100 Wellington St. West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Canada M5K 1K7 (Attention: D.J. Miller), counsel for Fraser, filing a motion seeking an order of this Court vacating or modifying the injunction entered in this proceeding, and any such request shall be the subject matter of a hearing as scheduled by the Court and, otherwise, any party in interest may file objections and be heard by the Court in accordance with the terms of any order of the Court providing for a hearing in the future on any subsequent relief sought by the Debtors in this proceeding.

5. Until further order of this Court, Fraser is hereby established as the exclusive representative of the Debtors in the United States with the exclusive authority to administer the Debtors' assets and affairs in the United States including, without limitation, any transfer of or withdrawals from any bank accounts maintained by the Debtors.

6. Until further order of this Court, Fraser is hereby authorized to operate the Debtors' businesses and to exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552 of the Bankruptcy Code.

7. The Debtors are hereby authorized to enter into an amendment to the CIT Credit Agreement substantially on the terms of the CIT Term Sheet, both as defined in the CCAA Order.

8. The Debtors are hereby authorized to borrow, repay and reborrow under and in accordance with the terms of the CIT Term Sheet and the CIT Credit Agreement, both as defined in the CCAA Order.

9. CIT is hereby granted the CIT DIP Charge, as defined in the CCAA Order, on all of the Debtors' United States assets in the amount of \$20,000,000 minus the amount outstanding from time to time under the DIP Facility, subject to the priorities, terms and conditions of the CCAA Order, to secure current and future amounts outstanding under the CIT Term Sheet and the CIT Credit Agreement, both as defined in the CCAA Order.

10. The Debtors are hereby authorized to enter into the DIP Facility as defined in the CCAA Order and to incur up to \$22,000,000, the full amount of the indebtedness under the DIP Facility authorized by the CCAA Order.

11. The DIP Lender, as defined in the CCAA Order, is hereby granted the DIP Lender's Charge, as defined in the CCAA Order, on all of the Debtors' United States assets, subject to the priorities, terms and conditions set forth in the CCAA Order, to secure current and future amounts outstanding under the DIP Facility.

12. Pursuant to sections 105(a), 364(e), 1519(a)(3), and 1521(a)(7) of the Bankruptcy Code, the validity of the indebtedness and the priority of the lien authorized by the

CCAA Order and made enforceable in the United States by this Order shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying recognition of the Canadian Proceeding pursuant to section 1517 of the Bankruptcy Code.

13. Pursuant to Federal Rule of Bankruptcy Procedure 7065, the security provisions of Federal Rule of Civil Procedure 65(c) are waived.

14. This Order will remain in effect until the entry of an order recognizing the Canadian Proceeding as a foreign main proceeding in accordance with 11 U.S.C. § 1517.

15. Nothing contained herein shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding.

16. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2009  
Wilmington, Delaware

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THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

2916540.5

**File a Motion:**09-12123-KJC Fraser Papers Inc.

Type: bk

Chapter: 15 v

Office: 1 (Delaware)

Assets: u

Judge: KJC

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

## Notice of Electronic Filing

The following transaction was received from John A. Sensing entered on 6/18/2009 at 6:44 PM EDT and filed on 6/18/2009

**Case Name:** Fraser Papers Inc.**Case Number:** 09-12123-KJC**Document Number:** 7**Docket Text:**

Motion for Temporary Restraining Order \\ *Debtors' Motion For (A) Entry Of An Order Granting Recognition And Relief In Aid Of Foreign Main Proceeding Pursuant To 11 U.S.C. §§ 1515, 1517 And 1520 And (B) A Temporary Restraining Order And, After Notice And A Hearing, A Preliminary Injunction Granting Provisional Relief Under 11 U.S.C. § 1519(a)* Filed by Fraser Papers Inc.. (Attachments: # (1) Exhibit A# (2) Exhibit B# (3) Exhibit C) (Sensing, John)

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

**Document description:**Main Document**Original filename:**X:\64880 Fraser -DIP\Efile\061809 TRO MOTION.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=6/18/2009] [FileNumber=7351130-0]  
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**Document description:**Exhibit A**Original filename:**X:\64880 Fraser -DIP\Efile\061809 TRO MOTION EXHIBIT A.pdf**Electronic document Stamp:**

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**Document description:**Exhibit B**Original filename:**X:\64880 Fraser -DIP\Efile\061809 TRO MOTION EXHIBIT B.pdf**Electronic document Stamp:**

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**Document description:**Exhibit C**Original filename:**X:\64880 Fraser -DIP\Efile\061809 TRO MOTION EXHIBIT C.pdf

**Electronic document Stamp:**

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**09-12123-KJC Notice will be electronically mailed to:**

Derek C. Abbott on behalf of Debtor Fraser Papers Inc.  
dabbott@mnat.com, rfusco@mnat.com;ecampbell@mnat.com

United States Trustee  
USTPREGION03.WL.ECF@USDOJ.GOV

**09-12123-KJC Notice will not be electronically mailed to:**

John A. Sensing on behalf of Debtor Fraser Papers Inc.  
Morris Nichols Arsht Tunnell, LLP  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899-1347  
jsensing@mnat.com, kphillips@fisherkanaris.com