

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

)

THURSDAY, THE 18<sup>th</sup> DAY

)

JUSTICE MORAWETZ

)

OF JUNE, 2009



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

AND IN THE MATTER OF A PROPOSED PLAN OF  
COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
**FRASER PAPERS INC.**, FPS CANADA INC., FRASER  
PAPERS HOLDINGS INC., FRASER TIMBER LTD., FRASER  
PAPERS LIMITED and FRASER N.H. LLC (collectively, the  
"Applicants")

**INITIAL ORDER**

THIS APPLICATION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of J. Peter Gordon sworn June 17, 2009 and the Exhibits thereto (the "Gordon Affidavit"), the Pre-Filing Report of PricewaterhouseCoopers Inc. ("PwC"), in its capacity as proposed Monitor of the Applicants, and on hearing the submissions of counsel for the Applicants, CIT Business Credit Canada Inc. ("CIT"), Brookfield Asset Management Inc. ("Brookfield") and counsel for the directors of Fraser Papers Inc., no one appearing for any other parties, and on reading the Consent of PwC to act as the Monitor, and upon being satisfied that this Court has jurisdiction to receive the Application in respect of the Applicants pursuant to sections 3 and 9(1) of the CCAA and upon being satisfied that the Applicants' center of main interest is within the jurisdiction of this Court:

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that each of the Applicants is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan") between, *inter alia*, the Applicants and one or more classes of their respective secured and/or unsecured creditors as they deem appropriate.

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by each of them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be required to continue to utilize the centralized cash management system, including blocked account and lockbox arrangements, currently in place as described in the Gordon Affidavit (the "Cash Management System") and that any Person (as defined below) providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer,

payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicants shall be entitled and are hereby directed to continue, in the ordinary course of business as carried on immediately prior to the date hereof, all existing arrangements under a Paper Supply Agreement dated January 29, 2009 as described in the Gordon Affidavit, unless otherwise agreed to by the parties thereto.

#### **PAYMENTS**

7. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses:

- (a) all outstanding and future wages, salaries, vacation pay, and expenses that may be owing at any time to employees who continue to provide services on or after the date of this Order (the "Active Employees"), in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, whether incurred prior to, on or after the date of this Order;
- (b) all existing and future employee health, dental, life insurance, short and long term disability and related benefits (collectively, the "Group Benefits") that may be owing at any time to Active Employees, in each case incurred in the ordinary course of business and consistent with existing policies and arrangements or such amended policies and arrangements as are necessary or desirable to deliver the existing Group Benefits, whether incurred prior to, on or after the date of this Order;

- (c) all normal cost contribution obligations (the "Current Contributions") in respect of current service provided by Active Employees of any funded pension plans maintained by the Applicants (collectively, the "Pension Plans") whether such Current Contributions were incurred prior to, on or after the date of this Order,
- (d) payment for goods or services actually supplied to the Applicants on or after the date of this Order; and
- (e) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, whether incurred prior to, on or after the date of this Order.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) all outstanding and future claims, premiums or other amounts payable in respect of workers' compensation programs applicable to the Applicants' employees, whether incurred prior to, on or after the date of this Order, all in the ordinary course of business and in accordance with the terms of any existing insurance or other policies;
- (c) payments on account of existing employee performance incentive programs in respect of Active Employees, whether incurred prior to or after the date of this Order, all in the ordinary course of business as carried on immediately prior to the date hereof;

- (d) with the prior written approval of the Monitor and subject to the terms of the DIP Financing, payments in respect of key employee incentive programs established on or after the date of this Order;
- (e) any amounts payable in respect of Group Benefits in respect of retired employees or other current or former employees who are not Active Employees, whether incurred prior to, on or after the date of this Order, all subject to the terms of the DIP Financing and the Definitive Documents, as defined in this Order;
- (f) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof, any local, state or federal taxation authority in the United States or any other taxation authority, in all cases in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors but: (i) are not attributable to or in respect of the ongoing Business carried on by the Applicants on or after the date of this Order; or (ii) are payable in respect of a period prior to the date of this Order;
- (g) any outstanding amounts payable in respect of (i) customer programs including, *inter alia*, rebates, adjustments, performance and volume discounts and (ii) billing errors, including duplicative invoicing, improper invoicing, duplicative payment, mispricing and various other billing and payment errors, whether incurred prior to, on or after the date of this Order; and
- (h) amounts owing for goods and services actually supplied to the Applicants, or to obtain the release of goods contracted for prior to the date of this Order, in each case with the consent of the Monitor and the DIP Lender, as defined in this Order, up to the maximum amount of USD\$12,300,000 if, in the opinion of the Applicants, such supplier is critical to the ongoing Business of the Applicants.

9. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any state or federal authority in the United States or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof, or any local, state or federal authority in the United States, in all cases in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are: (i) entitled at law to be paid in priority to claims of secured creditors; (ii) attributable to or in respect of the ongoing Business carried on by the Applicants; and (iii) payable in respect of the period commencing on or after the date of this Order, or on terms as may be agreed to between such Applicant and the applicable taxation authority.

10. THIS COURT ORDERS that until such time as the Applicants repudiate a real property lease in accordance with paragraph 17(d) of this Order, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated by the Applicants from time to time ("Rent"), for the period commencing from and including the date of this Order, bi-weekly, in advance (but not in arrears).

11. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest

thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date, save and except in respect of payments referred to in paragraph 12 below and other existing secured creditors as may be specifically provided for in the DIP Term Sheet, as defined in this Order; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

12. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the Applicants are authorized to enter into an amendment to the credit agreement dated as of May 2, 2008, between Fraser Papers Inc. and CIT Business Credit Canada Inc., as agent for itself and the lenders from time to time under such credit agreement, as amended (the "CIT Credit Agreement"), substantially on the terms of the term sheet between the Applicants and CIT (the "CIT Term Sheet") attached to the Gordon Affidavit;
- (b) the Applicants 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, and are authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to CIT under and pursuant to the CIT Term Sheet and the CIT Credit Agreement as and when the same become due and are to be performed; and
- (c) CIT shall be entitled to issue such notices as may be needed to permit it to exercise cash dominion over the lockbox accounts subject to the Existing CIT Security (as defined below).

## **RESTRUCTURING**

13. THIS COURT ORDERS that the Applicants shall, subject to such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their Business or operations;

- (b) dispose of redundant or non-material assets not exceeding CDN\$500,000 in any one transaction or CDN\$2,000,000 in the aggregate, subject to paragraph 17(d), if applicable;
- (c) terminate the employment of such of their employees or temporarily lay off such of their employees as appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) in accordance with paragraphs 14 and 15, vacate, abandon or quit any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days' notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (e) repudiate such of their arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicants, or any of them, deem appropriate on such terms as may be agreed upon between any one of the Applicants and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (f) pursue all avenues of refinancing and offers for material parts of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

14. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the



landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and such Applicant, or by further Order of this Court upon application by the Applicants on at least four (4) days' notice to such landlord and any such secured creditors. If an Applicant repudiates the lease governing such leased premises in accordance with paragraph 13(d) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute, and the repudiation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

15. THIS COURT ORDERS that if a lease is repudiated by an Applicant in accordance with paragraph 13(d) of this Order, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

16. THIS COURT ORDERS that, subject to the other provisions of this Order (including the payment of Rent as herein provided) and any further Order of this Court, the Applicants shall be permitted to dispose of any or all of the Property located (or formerly located) at such leased premises without any interference of any kind from landlords (notwithstanding the terms of any leases) and, for greater certainty, the Applicants shall have the right to realize upon the Property and other assets in such manner and at such locations, including leased premises, as they deem suitable or desirable for the purpose of maximizing the proceeds and recovery therefrom.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

17. THIS COURT ORDERS that until and including July 17, 2009 or such later date as this Court may order (the "Stay Period"), no claim, application, action, suit, right or remedy,

proceeding or enforcement process in any court, tribunal or arbitration association (each, a "Proceeding") shall be commenced or continued against or in respect of any of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

18. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

19. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Applicants and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

20. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or any of the Applicants, are hereby restrained until

further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

21. THIS COURT ORDERS that, without limiting paragraph 20 hereof, all Persons providing freight services to the Applicants shall deliver all shipments relating to the Applicants or their Business or Property in transit as at the date hereof (the "In Transit Shipments") in accordance with the existing arrangements and delivery instructions with respect to the In Transit Shipments. The Applicants are hereby directed to pay to the applicable freight provider the freight costs associated with the In Transit Shipments, within five (5) business days following delivery of the In Transit Shipments.

#### **NON-DEROGATION OF RIGHTS**

22. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to any Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

## **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

24. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 7(a), 9(a), 9(b) and 9(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct in respect thereto.

25. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of USD\$30,000,000, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

26. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

## **APPOINTMENT OF MONITOR**

27. THIS COURT ORDERS that PricewaterhouseCoopers Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

28. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination to CIT and the DIP Lender and their counsel of financial and other information as agreed to between the Applicants and CIT or the DIP Lender, as applicable, which may be used in these proceedings, including reporting on a basis to be agreed with CIT and with the DIP Lender;
- (d) assist the Applicants in their preparation of the Applicants' cash flow statements, budgets and any other reporting or information that they may require in relation to the Business or the Property, including any reporting required by CIT or the DIP Lender, which information shall be reviewed with the Monitor and delivered to CIT and its counsel, and to the DIP Lender and its counsel in accordance with any reporting requirements of the DIP Term Sheet or the CIT Term Sheet, or as otherwise agreed to by CIT or the DIP Lender, as applicable;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan and, to the extent required by the Applicants, in their negotiations with creditors, customers, vendors and other interested Persons;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) assist the Applicants, to the extent required by the Applicants, in dealing with their respective creditors, customers, vendors and other interested Persons;
- (h) assist the Applicants with their financing and restructuring activities to the extent required by the Applicants;

- (i) have full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including any affiliate of, or person related to, PwC;
- (k) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

29. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder, and such similar legislation in any jurisdiction in which the Property may be located (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the

Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants, CIT and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

32. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor and all counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis.

34. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor and the Applicants' Canadian and U.S. counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of CDN\$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order

in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

#### **DIP FINANCING**

36. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "DIP Facility") from Brookfield (the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed USD\$22,000,000 unless permitted by further Order of this Court.

37. THIS COURT ORDERS that the DIP Facility shall be substantially on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lender dated as of June 17, 2009 (the "DIP Term Sheet") annexed to the Gordon Affidavit, as same may be amended from time to time with the Monitor's written consent.

38. THIS COURT ORDERS AND DECLARES that this Court has been advised of the minority approval requirements of Multilateral Instrument 61-101 "Protection of Minority Security Holders in Special Transactions" and the exemption from such requirements contained in Section 5.7(d) hereof, all as contained in the Gordon Affidavit, and that compliance with the provisions of such Multilateral Instrument is hereby dispensed with.

39. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property as security for any and all



obligations of the Applicants under or pursuant to the DIP Facility, the DIP Term Sheet and the Definitive Documents, which charge shall not exceed the aggregate amount owed to the DIP Lender under or pursuant to the DIP Facility, the DIP Term Sheet and the Definitive Documents. The DIP Lender's Charge shall have the priority set out in paragraphs 45 and 47 hereof.

41. THIS COURT ORDERS that CIT shall be entitled to the benefit of and is hereby granted a charge (the "CIT DIP Charge") on the Property to secure amounts outstanding under the CIT Term Sheet and the CIT Credit Agreement as amended pursuant to paragraph 12(a), all as described in the CIT Term Sheet and the CIT Credit Agreement, in the amount of US\$20,000,000 minus the amount outstanding from time to time under the DIP Facility.

41A. THIS COURT ORDERS that the Applicants shall notify each of CIT, the DIP Lender and the Monitor of any requested advance under the CIT DIP Portion or the DIP Facility prior to such advance.

42. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender and CIT may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or the DIP Term Sheet or any of the Definitive Documents, or the CIT DIP Charge;
- (b) upon the occurrence of an event of default under the DIP Term Sheet or Definitive Documents or the DIP Lender's Charge, the DIP Lender, may immediately cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge and make demand, accelerate payment and give other notices and, upon five (5) days notice to the Applicants and the Monitor, may exercise any and all of its other rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or

interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the DIP Term Sheet or the Definitive Documents, the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to the DIP Lender in accordance with the Definitive Documents and the DIP Lender's Charge, but subject to the priorities as set out in paragraphs 45 and 47 of this Order;

- (c) upon the occurrence of an event of default under the CIT Term Sheet, the CIT Credit Agreement or the CIT DIP Charge, CIT, may immediately cease making advances to the Applicants and set off and/or consolidate any amounts owing by CIT to the Applicants against the obligations of the Applicants to CIT under the CIT Term Sheet, the CIT Credit Agreement, the related documents or the CIT DIP Charge and make demand, accelerate payment and give other notices and, upon five (5) days notice to the Applicants and the Monitor, may exercise any and all of its other rights and remedies against the Applicants or the Property including under or pursuant to the CIT Term Sheet, the CIT Credit Agreement and the CIT DIP Charge, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the CIT Term Sheet, the CIT Credit Agreement or the CIT DIP Charge, CIT shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to CIT in accordance with the CIT Term Sheet, the CIT Credit Agreement and the CIT DIP Charge, but subject to the priorities as set out in paragraphs 49 and 51 of this Order; and
- (d) the foregoing rights and remedies of the DIP Lender and CIT shall each be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

43. THIS COURT ORDERS AND DECLARES that CIT and the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the BIA, with respect to any advances made under the CIT Term Sheet, the CIT Credit Agreement, the DIP Term Sheet or the Definitive Documents and with respect to any claims and rights the DIP Lender may have under or pursuant to the Paper Supply Agreement and the Amended and Restated Guarantee and Reimbursement Agreement dated as of September 22, 2008 made by the Applicants in favour of the DIP Lender and the liens relating thereto.

#### **INTER-COMPANY TRANSACTION CHARGE**

44. THIS COURT ORDERS AND DECLARES that each Applicant shall be entitled to and is hereby granted the benefit of a charge (the "Inter-Company Charge") on the Property of each of the other Applicants in an amount equal to but not exceeding:

- (a) in respect of the period from June 1, 2009 to the date of this Order, the costs of all goods and services supplied by one Applicant to another; and
- (b) in respect of the period from and after the date of this Order, (i) the costs of all goods and services supplied by one Applicant to another, (ii) costs incurred by one Applicant on behalf of another and (iii) the net advances actually made by one Applicant to another,

all in accordance with existing cash management and inter-company transaction practises existing as at the date of this Order. The Inter-Company Charge in favour of the Applicants shall have the priority set out in paragraphs 45 and 47 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

45. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge, the CIT DIP Charge, the DIP Lender's Charge and the Inter-Company Charge as among them, and as against the existing security held by CIT prior to the issuance of this Order (the "Existing CIT Security"), shall be as follows:

(a) with respect to all assets charged in favour of CIT under the Existing CIT Security (collectively, the "CIT Collateral"):

First – Existing CIT Security;

Second – Administration Charge (to the maximum amount of CDN \$750,000);

Third – CIT DIP Charge;

Fourth – DIP Lender's Charge;

Fifth – Directors' Charge (to the maximum amount of USD\$30,000,000);

Sixth – Inter-Company Charge; and

(b) with respect to the Property of the Applicants other than the CIT Collateral:

First – Administration Charge (to the maximum amount of CDN \$750,000);

Second – CIT DIP Charge;

Third – DIP Lender's Charge;

Fourth – Directors' Charge (to the maximum amount of USD\$30,000,000); and

Fifth – Inter-Company Charge.

46. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the CIT DIP Charge, the DIP Lender's Charge and the Inter-Company Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge, the CIT DIP Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person other than the Existing CIT Security. In addition, the

Inter-Company Charge shall not rank in priority to any Encumbrances existing as of the date hereof in favour of any Person.

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Existing CIT Security or any of the Charges unless the Applicants also obtain the prior written consent of the Monitor, CIT, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

49. THIS COURT ORDERS that the Charges, the DIP Term Sheet and the Definitive Documents, and (with respect to advances made on or after the date hereof) the Existing CIT Security, shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges and/or the DIP Lender and/or CIT thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents, nor the CIT Term Sheet or the amendments to the CIT Credit Agreement authorized hereby shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Term Sheet, the creation of the Charges, or the execution,

delivery or performance of the Definitive Documents, the CIT Term Sheet or the amendments to the CIT Credit Agreement authorized hereby; and

- (c) the payments made by the Applicants pursuant to this Order, the DIP Term Sheet or the Definitive Documents, the CIT DIP Term Sheet, the CIT Credit Agreement and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

### **SERVICE AND NOTICE**

50. THIS COURT ORDERS that the Monitor shall, within ten (10) business days of the date of entry of this Order, cause a notice to be sent to the Applicants' known creditors, other than employees and creditors to which the Applicants owe less than CDN\$1,000.00, at their addresses as they appear on the Applicants' records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order.

51. THIS COURT ORDERS that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

52. THIS COURT ORDERS that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at [www.pwc.com/car-fraserpapers](http://www.pwc.com/car-fraserpapers)

**GENERAL**

53. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

54. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

55. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to Fraser Papers Inc. on behalf of the Applicants in any foreign proceeding including a proceeding to be commenced by the Applicants pursuant to Chapter 15 of the United States *Bankruptcy Code*, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

56. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

57. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

58. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 18 2009

PER / PAR:  Joanne Nicoara  
Registrar, Superior Court of Justice

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED  
AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
**FRASER PAPERS INC.**, FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LTD.,  
FRASER PAPERS LIMITED and FRASER N.H. LLC (collectively, the "Applicants")

Applicant(s)

Court File No.: CV-09-8241-00CL

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**INITIAL ORDER**

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COURT FILE NO.: CV-09-8241-00CL

DATE: 20090622

**SUPERIOR COURT OF JUSTICE – ONTARIO  
(COMMERCIAL LIST)****RE: IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED****AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF WITH RESPECT TO FRASER PAPERS INC.  
FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER  
TIMBER LTD., FRASER PAPERS LIMITED, FRASER N.H. LLC****Applicants****BEFORE: MORAWETZ J.****COUNSEL: Michael Barrack, Robert Thornton and D. J. Miller for the Applicants****David Chernos, for the Brookfield Asset Management Inc.****Susan Grundy, for CIT Business Canada Inc.****Peter Griffin, for Board of Directors of the Applicants****Robert J. Chadwick and Cathy Costa for PricewaterhouseCoopers Inc.,  
Proposed Monitor****HEARD: JUNE 18, 2009****ENDORSEMENT**

[1] On June 18, 2009, I granted an Initial Order in the proceedings with reasons to follow. These are those reasons.

[2] Fraser Papers Inc. ("FPI"), FPS Canada Inc. ("FPSC"), Fraser Papers Holdings Inc. ("Fraser Holdings"), Fraser Timber Ltd., Fraser Papers Limited and Fraser N.H. LLC (collectively, the "Fraser Group" or the "Applicants") make this application under the *Companies' Creditors Arrangement Act*.

[3] FPI is a CBCA company with a registered head office in Toronto, Ontario. It is a publicly-traded company listed on the Toronto Stock Exchange. As of June 1, 2009, the issued and outstanding capital of FPI consisted of 50,166,789 common shares. There are no other classes of shares outstanding at this time. As at December 31, 2008, Brookfield Asset Management Inc. ("Brookfield") owned, directly or indirectly, approximately 70.5% of the outstanding common shares of FPI.

[4] The other Applicants are either a direct or indirect wholly-owned subsidiaries of FPI. A simplified corporate chart is attached to the affidavit of J. Peter Gordon (the "Gordon Affidavit") which was filed in support of the application.

[5] FPI owns all of the issued and outstanding shares of FPSC and Fraser Holdings. Fraser Holdings owns all of the issued and outstanding shares of Fraser Timber Ltd. and Fraser Papers Limited. Fraser Papers Limited is the sole member and manager of Fraser N.H. LLC.

[6] Detailed information concerning the background of the Applicants, their creditors and their financial status forms part of the Gordon Affidavit and is also summarized in the First Report submitted by PricewaterhouseCoopers Inc. ("PwC") in its capacity as proposed Monitor (the "PwC Report").

[7] The PwC Report notes that a key to the Fraser Group's ability to carry on its business operations as usual, is the ongoing multi-dimensional support provided by Brookfield Asset Management Inc. ("BAM").

[8] The Fraser Group is a speciality paper company with integrated paper, pulp and lumber operations. The operations of the Applicants comprise two paper mills, one market pulp mill, two internal pulp mills, a biomass cogeneration power plant, and four lumber mills in New Brunswick, Quebec, Maine and New Hampshire.

[9] The Fraser Group operates largely as an integrated business. PwC reports that while the Applicants' operations include the above-noted locations in both Canada and the United States, each location provides to or receives product from another location creating an integrated nature to the business.

[10] For fiscal 2008, the Applicants had consolidated net sales of approximately \$688.6 million (unless otherwise stated, all monetary amounts are expressed in United States dollars, the Applicants' reporting currency) and suffered a net loss of \$71.9 million. For the four months ended May 2, 2009, the Applicants reported a net loss of \$22.1 million on consolidated net sales of \$202.8 million.

[11] PwC further reports that the Fraser Group's debt structure and approximate current amounts outstanding is as follows (excluding any amounts in respect of pensions, post-employment benefits, guarantees, potential exposure under foreign exchange hedging contracts and potential environmental liabilities):

Lender/Type of debt	Outstanding Amount
	US\$ millions
CIT – secured	56
NB Loan – secured	29
CIBC – unsecured	25
3 <sup>rd</sup> party trade creditors – Canadian entities*	43
3 <sup>rd</sup> party trade creditors – US entities*	30
Intercompany payable to FPI – US entities*	32

\* Balances as at May 2, 2009

[12] FPI is the borrower under the CIT Business Canada Inc. (“CIT”) Facility (the CIT Facility”). The CIT Facility is guaranteed by all of the other Applicants. CIT has a first charge over inventory and accounts receivable of each of the Applicants. BAM has also guaranteed \$25 million of the outstanding amount under the CIT Facility.

[13] The Province of New Brunswick has a first charge over the fixed assets in New Brunswick and a second charge on inventory and accounts receivable in New Brunswick in connection with FPI’s indebtedness to it (the “NB Loan”). Counsel to the Applicants advised that the Province of New Brunswick is aware of these CCAA proceedings.

[14] FPI is the borrower under the unsecured CIBC Facility. BAM has guaranteed \$25 million of the outstanding amount under this facility.

[15] The two BAM guarantees noted above are secured by guarantees of each of the Applicants and a general security agreement over all of the Applicants’ assets, which security is subordinate to the CIT and NB Loan security.

[16] The Applicants seeks protection under the CCAA to facilitate the re-organization of their affairs.

[17] PwC reports that based on discussions with management, the principal causes of the need for the CCAA filing include:

- (i) the poor economic conditions of the past few years, resulting in significant operating losses and a severe working capital shortfall;

- (ii) the impact of the U.S. "Black Liquor Tax Credit", which the Applicants are not entitled to receive, which has further lowered the price of pulp;
- (iii) the uncertainty associated with negotiating new collective bargaining agreements and obtaining concessions under the existing collective bargaining agreements with certain of its unions;
- (iv) the recent stock market crash which has resulted in material funding deficiencies in the Applicants' defined pension benefit plans; and
- (v) the continued poor outlook for the housing, lumber and pulp markets.

[18] In addition, PwC has been advised by the Applicants that it does not have the liquidity required to meet the following near term obligations;

- (i) the ongoing losses associated with the pulp and lumber operations;
- (ii) the repayment of the \$25 million CIBC term loan which matures in September 2009;
- (iii) \$7.8 million of severance payments related to the temporary shutdown of the Thurso pulp mill, due for payment in two equal amounts in November 2009 and December 2009.
- (iv) the approximate amount of \$10 million required to bring their overdue supplier balances back to normal credit terms; and
- (v) the approximate amount of \$7.7 million owing to various municipalities for property taxes.

[19] The Applicants contemplate a comprehensive operational and balance sheet restructuring, and PwC reports that the Applicants have already commenced dealing with the numerous issues that are currently negatively impacting the profitability of its various business units.

[20] The Applicants have indicated that significant additional time is required in order to be able to meet with all of the relevant parties, to attempt to negotiate revisions to contract terms, to determine which parts of the business are viable based on these contract revisions, to update business plans, to arrange exit financing and to develop a plan of arrangement and compromise for consideration by the Applicants' creditors.

[21] PwC understands that negotiations will take place with these various parties throughout the summer of 2009.

[22] Copies of FPT's audited consolidated financial statements as at December 31, 2008 as well as consolidating statements as at May 2, 2009 are filed in the record.

[23] The Applicants have acknowledged that they are insolvent.

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[24] PwC has consented to act as the Monitor (the "Monitor") of the Applicants in the CCAA proceedings.

[25] The record filed in support of the application also contains the required cash flow forecast which forecast estimates that the Applicants have an urgent need for DIP Financing. The Applicants have received two term sheets in respect of DIP Financing – one from BAM and one from CIT, the Applicants existing revolving credit lender.

[26] The PwC Report comments at length with respect to the DIP Financing proposals. The PwC Report indicates that the two proposals have super priority charges and would be in priority to existing charges granted to the Province of New Brunswick in respect of its advances to fund capital expenditures in New Brunswick.

[27] Counsel to the Applicants advised that the Province of New Brunswick is aware of the priming provisions, subject to a maximum of \$20 million. The Applicants have acknowledged that this \$20 million cap is acceptable at this time.

[28] PwC also reports that it has inquired into the marketing process for the DIP Financing arrangements and has been advised by management that the financing requirement was not marketed externally to other potential lenders given the nature of the industry and the willingness of the existing lenders to fund ongoing operations. Management has advised PwC that the two DIP term sheets represent the only alternative available to the Applicants to ensure the continuation of the Applicants' operations at this time.

[29] PwC reports that it has compared the principal financial terms of the two DIP Financing arrangements to a number of other recent debtor-in-possession financing packages in the forestry, pulp and paper sector with respect to pricing, loan availability and certain security considerations and based on this comparison, PwC is of the view that the financial terms of the DIP Facilities term sheets appear to be commercially reasonable and consistent with current market transactions.

[30] I accept that DIP Financing is urgently required and that financing on the basis of the term sheets should be approved.

[31] The proposed form of Order provides for a number of charges which are described in both the Gordon Affidavit and the PwC Report. These charges include an administrative charge, a CIT DIP charge, a DIP Lenders' charge, a directors' charge and an intercompany charge.

[32] Counsel to the Applicants advised that the directors' charge is in the amount of \$30 million; however, counsel also advised that there is a directors' and officers' insurance policy in place which should have the practical impact of reducing any exposure under the directors' charge.

[33] In its Report, PwC has recommended that the Applicants be granted the benefit of protection under the CCAA and, as well, PwC is supportive of the charges and financial thresholds proposed in the Draft Order. The priority of the various charges is specified in the Draft Order.

[34] Having reviewed the record and have heard submissions, I am satisfied that the Applicants qualify as debtor corporations within the meaning of the CCAA. The Applicants clearly have obligations in excess of the qualifying limit and have acknowledged that they are insolvent. The jurisdiction of this court to receive the CCAA application has been established.

[35] The Applicants seeks an Initial Order under Section 11 of the CCAA. The required Statement of Projected Cash Flow and the other financial documents required under Section 11(2) have been filed. The application was not opposed by any party appearing.

[36] I am satisfied that it is appropriate that the Applicants be granted protection under the CCAA and an order shall issue to that effect. The Draft Order is based on the Model Order and the modifications as proposed are acceptable.

[37] As previously noted, the Fraser Group is fully integrated including between the Canadian and the United States operations. The integration of the Applicants' business is described in detail in the Gordon Affidavit. The Applicants are of the view that the restructuring to be undertaken under the CCAA will require a review of the operations of the Fraser Group as a whole and may involve a restructuring of certain business and the sale of the remaining businesses and related assets. The Applicants anticipate that this process will require a judicial proceeding and approval in the United States in view of the assets and operations located in the United States.

[38] The Applicants are of the view that the restructuring of the Fraser Group will be administered most efficiently through a single, centralized restructuring process. Such a process would likely minimize the cost of the restructuring, minimize the time necessary to effect the restructuring and thereby maximize the overall value of the assets and operations for all stakeholders.

[39] The Applicants contemplate that the CCAA proceeding in Canada will be the primary court-supervised process for the restructuring of the Fraser Group. The Applicants have also indicated that they will be seeking an Order pursuant to Chapter 15 of the United States Bankruptcy Code to have the CCAA proceedings recognized as "foreign main proceedings". The effect of the Chapter 15 proceedings would be to give effect to this Initial Order in the United States.

[40] The Applicants are of the view that FPT's centre of main interest ("COMI") is Ontario. Its registered head office is in Ontario and all corporate, management, banking and strategic functions are undertaken from its head office in Ontario.

[41] In considering whether these CCAA proceedings should be recognized as "foreign main proceedings", paragraphs 24 – 28 of the Gordon Affidavit provides comprehensive reasons for the basis for his conclusion that the Applicants' COMI is also Ontario.

[42] PwC has also commented on this issue in the PwC Report at paragraphs 26 – 29. PwC has indicated that based on their understanding of the integrated nature of the Applicants' management, operations and financing as between the Canadian and U.S. Applicants, the poor liquidity situation of the U.S. Applicants which have no separate borrowing facilities, and

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PWC's view that the Applicants' COMI is Ontario, they concur with the Applicants commencing proceedings under Chapter 15.

[43] I do note that it is more usual in Chapter 15 proceedings to have the Monitor make the application as foreign representative. In this case, the Applicants have indicated that, in their view, it would be both more time effective and cost effective for the Applicants to make the application. The Applicants have indicated that the Monitor will be taking a very active role in the proceedings both in the CCAA and in any proceedings under the U.S. Bankruptcy Code. I am satisfied that the involvement of the Monitor will ensure that a satisfactory process is in place in order to keep the stakeholders informed of developments both in this proceeding and in the proceedings under the U.S. Code.

[44] An order shall issue to give effect to the foregoing.

[45] I would like to express my appreciation to the parties involved in this process. The detail contained in the Gordon Affidavit as well as the PwC Report was of great assistance to the court.

"MORAWETZ J."  
**MORAWETZ J.**

**DATE: June 22, 2009**