

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

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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

Applicants

**MOTION RECORD**  
**(Returnable October 22, 2009)**

October 19, 2009

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## **TAB 1**

**ONTARIO  
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IN THE MATTER OF THE *COMPANIES' CREDITORS  
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**REVISED NOTICE OF MOTION**

The Applicants will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on Thursday, October 22, 2009 at 10:00 o'clock in the morning or as soon thereafter as this motion can be heard at 330 University Avenue, in the City of Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. if necessary, an Order abridging the time for, and validating the service of, the Notice of Motion and the materials filed in support of the Motion;

2. an Order extending to and including December 4, 2009, or such later date as this Court may order, the stay of proceedings granted under the Order of the Honourable Mr. Justice Morawetz dated June 18, 2009, as amended (the “Initial Order”);
3. an Order amending the Order of the Honourable Madam Justice Pepall dated July 15, 2009 (the “Claims Order”) to provide that the date by which:
  - (i) any employees or former employees of the Applicants must file a Proof of Claim with the Monitor in respect of any Claims against the Applicants or the Directors, shall be extended to October 30, 2009, with the Claims Bar Date remaining at September 30, 2009 in respect of all other Claims;
  - (ii) a Notice of Disallowance must be issued by the Monitor for any Restructuring Claim that arose after September 30, 2009 shall be 23 calendar days after the Restructuring Claims Bar Date in each case;
  - (iii) a Dispute Notice must be filed in respect of any Restructuring Claim that arose after September 30, 2009 shall be 23 calendar days after the issuance of the Notice of Disallowance in respect of such Restructuring Claim;
  - (iv) a Notice of Disallowance must be issued by the Monitor in respect of any Claim filed by or on behalf of any current or former employees of the Applicants shall be November 22, 2009; and
  - (v) a Dispute Notice must be filed in respect of any Claims filed by or on behalf of any current or former employees of the Applicants shall be December 6, 2009;

4. an Order amending the Order of the Honourable Madam Justice Pepall dated September 8, 2009 appointing Davies Ward Phillips Vineberg LLP as representative counsel (the “Davies’ Order”) to include reference to the current and former (retired) members of the Office of Professional Employees International Union (“OPEIU”) and the International Brotherhood of Electrical Workers (“IBEW”); and
5. such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On June 18, 2009, the Applicants filed for and obtained protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, C. C-36 as amended (the “CCAA”), and PricewaterhouseCoopers Inc. was appointed as monitor (the “Monitor”) of the Applicants pursuant to the Initial Order;
2. The Applicants sought and obtained recognition of these proceedings as foreign main proceedings pursuant to Chapter 15 of the *U.S. Bankruptcy Code* in the United States Bankruptcy Court for the District of Delaware;
3. The stay of proceedings provided by the Initial Order expires on October 23, 2009. The Applicants require an extension of the stay period in order to continue discussions with their stakeholders with a view to creating a viable restructuring plan and to give the Applicants time to attempt to achieve support among the stakeholders for such a plan;
4. The Applicants are proceeding in good faith and with due diligence;

5. Certain amendments are required to the Claims Order to extend the dates for the Monitor's issuance of Notices of Disallowances and the filing of Dispute Notices, due to the consensual extension of the Claims Bar Date for employee and retiree claims, and the fixed dates currently set out in the Claims Order;
6. Certain amendments are required to the Davies' Order to include reference to the OPEIU and the IBEW, as those small groups of unionized employees and retirees are not otherwise represented in this proceeding and wish to be covered by the Davies' Order;
7. Section 11(4) of the CCAA;
8. Rules 2.03, 3 and 37 of the *Rules of Civil Procedure*, R.R.O. 1994, Reg. 194, as amended; and
9. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this Motion:

1. the Affidavit of J. Peter Gordon, sworn October 19, 2009;
2. the Fifth Report of the Monitor, to be filed separately; and
3. such further and other materials as counsel may advise and this Honourable Court may permit.



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Proceedings commenced at Toronto

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## **TAB 2**

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

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

Applicants

**AFFIDAVIT OF PETER GORDON**  
*(Sworn October 19, 2009)*

**I, J. Peter Gordon**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND  
SAY AS FOLLOWS:**

1. I am the Chief Executive Officer and a Director of Fraser Papers Inc. ("Fraser Papers" or the "Company"), and hold the office of Chairman of each of the other Applicants (collectively, with Fraser Papers, the "Applicants") and as such I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and I believe it to be true.

2. All monetary amounts referred to in this Affidavit are in United States ("U.S.") currency unless otherwise stated and all capitalized terms used herein and not otherwise defined are as defined in the Initial Order of Mr. Justice Morawetz dated June 18, 2009.



### **Status of Operations and Market Conditions**

3. Since filing for protection on June 18, 2009 (“the Filing”), the operating environment for the Applicants has remained extremely challenging and can be characterized by weak demand and lower prices for the Company’s paper and lumber products, rising costs for certain key inputs including market pulp and oil and volatility in the Canadian dollar exchange rate, as set out in more detail below.

4. The economic slowdown in North America continues to significantly impact the demand for all grades of paper. Sales volumes from the Applicants’ two paper mills were 15% below those in the first nine months of 2008. This result is only modestly better than an industry-wide decline of 22% for all printing and writing grades as reported in the recently released Pulp and Paper Products Council statistics for the year to date period to the end of August 2009. The average net realized price on sales of paper manufactured by the Applicants during the same time period improved modestly by 2%, reflecting a higher value product mix with increased volumes of specialty papers relative to lower priced commodity grade papers in 2009.

5. During the calendar quarter immediately following the Filing, the Applicants’ paper mills in Madawaska, Maine and Gorham, New Hampshire operated at a combined rate of 88% of full capacity having taken downtime to manage inventories to customer orders and requirements. Operating at any rate less than full capacity at manufacturing facilities with high fixed costs has a detrimental impact on profitability and cash flow. By way of example, during the three-month period to September 30, 2009 the Applicants estimate that market-related downtime at the two paper mills had a negative cash impact of \$4.4 million.

6. As referenced in paragraph 151 of my Affidavit sworn on June 17, 2009 in support of the Initial Order (the “First Gordon Affidavit”), a complete facility shutdown was undertaken at the Applicants’ Edmundston, New Brunswick location involving the (i) groundwood pulp mill; (ii) the sulphite pulp mill; and (iii) the CoGen Facility. Both the CoGen Facility and the groundwood pulp mill restarted in June,

2009 following annual maintenance. The re-start of the sulphite pulp mill was dependent upon reaching an acceptable collective bargaining agreement with unionized employees that would reduce overall manning levels and lower wage and benefit costs. In mid-August, an agreement was finally reached following protracted negotiations and two failed ratification votes. The sulphite pulp mill re-started operations on August 28, 2009.

7. During the shutdown of the Edmundston sulphite pulp mill the Applicants purchased market pulp to meet the requirements of the Madawaska paper mill but incurred substantial fixed costs related to the sulphite mill closure. These costs are estimated to be \$4.2 million.

8. As referenced in paragraph 150 of the First Gordon Affidavit, on June 1, 2009 the Applicants indefinitely closed the bleached hardwood pulp mill in Thurso, Quebec and sold the remaining inventory of pulp. During the period since Filing, the market for bleached hardwood pulp of the type that Thurso produced has improved, reflecting increased demand from Asian paper mills. However, the current market price remains below the cash cost of production at the Thurso mill and, accordingly, this facility remains closed. In addition, the Applicants estimate that an investment of CAD\$20 million in working capital would be required to support a re-start of operations at the mill. The Applicants do not have sufficient financing to fund a re-start of the Thurso mill. The cash costs related to the closure of the Thurso pulp mill during the calendar quarter following the Filing are \$3.3 million.

9. The market for softwood lumber remains depressed. Average realizations from sales of lumber from the Applicants' operations were \$236/mfbm during the third quarter of 2009, a decrease of 16% from the same period in 2008. Of the Applicants' four lumber mills only one mill, located in Masardis Maine, operated during the quarter albeit at 45% of full capacity. Total sales of lumber during the same quarter were only 21 MMFbm, or 57% lower than the same period in 2008. The largest market for the Applicants' lumber production is for new home construction in the northeastern United States. While the

decline in housing activity in the U.S. appears to have bottomed, the overall demand for lumber remains at historic lows.

10. Reflecting the status of operations and market conditions described in paragraphs 3 to 9 above, the Applicants' consolidated business doesn't generate sufficient receipts to cover its disbursements. A summary of the Applicants' cash flows for the period June 29 to October 4, 2009 with a comparison to actual results is annexed hereto and marked as Exhibit "A". This summary demonstrate that the Applicants generated negative cash flow of \$7.9 million from the business for that period. This figure includes \$5.7 million of capital expenditures relating to the completion of the Plaster Rock lumber mill modernization project.

11. In addition to these factors as discussed in paragraphs 3 to 9 above, the costs of the restructuring process have been significant. The Applicants have incurred \$3.6 million in fees to September 30, 2009 including fees paid to its own professional advisors, the Monitor and its counsel, and fees paid to the DIP Lenders.

12. With the uncertainty surrounding the restructuring of the Company and the future of the ongoing business, the Applicants have lost a number of key managers and employees who have chosen to accept employment offers elsewhere.

13. In summary, the Applicants' business situation continues to be fragile and the outlook remains difficult and challenging. The need for improvement, stability and certainty are paramount.

#### **Progress Towards a Restructuring**

14. Notwithstanding the foregoing, the Applicants have completed a number of critical initiatives since the Filing that are focused on lowering both fixed and variable costs and improving operating efficiencies. These are described more fully in the following paragraphs.

15. After extensive negotiations and two failed ratification votes, a new three-year collective agreement expiring June 30, 2012 was reached with unionized employees at the Edmundston pulp mill in mid-August, 2009. The key economic elements of this agreement are summarized as follows:

- (a) a reduction of 42 positions in the sulphite pulp mill;
- (b) wage reduction of approximately 4% in the first year, followed by a 2% increase in each of the second and third years, subject to positive pre-tax earnings after capital expenditures at the combined Edmundston and Madawaska facilities;
- (c) vacation pay reduction from 2.4% to 2.0%; and
- (d) the current defined benefit pension benefit is being replaced with a defined contribution benefit for future service, effective November 1, 2009.

16. On October 15, 2009 an agreement was reached with unionized employees at the Plaster Rock lumber mill. The agreement involves a new four-year contract expiring January 31, 2013 and includes the following key terms:

- (a) wage reduction of approximately 4% in the first year followed by increases of 0.5%, 1% and 2% in the three subsequent years combined with a profit-sharing formula; and
- (b) the current defined benefit pension benefit is being replaced with a defined contribution benefit for future service, effective November 1, 2009.

17. Prior to and after the re-start of operations at the Edmundston sulphite pulp mill on August 28, 2009 the Applicants made efforts to secure an adequate supply of softwood chips required for the ongoing operation of the mill. Due to the reduced demand for chips from other pulp mills in eastern Canada, the Applicants were able to secure one year agreements with a number of third parties covering 350,000 tons of chips, or approximately 70% of the annual requirement at average pricing that is 15% lower than pre-Filing levels.

18. In accordance with an agreement reached by the Applicants with the Government of New Brunswick to provide up to CAD\$9 million in DIP financing, the Applicants resumed the modernization project at the Plaster Rock lumber mill. This project has three components: i) the installation of new equipment that provides increased operating efficiencies in the saw mill; ii) the installation of a new energy efficient biomass boiler to produce required heat energy to dry the lumber to customer specifications; and iii) the installation of a new, more efficient kiln in which to dry the lumber. The modernization project is essentially complete and final testing and tuning of equipment is underway. The project is expected to lower conversion costs at the lumber mill by 20%. It is also expected that the project will be under the initial budget of CAD\$17.6 million by approximately CAD\$0.6 million.

19. The Company submitted an application to the Federal Government's CAD\$1 billion Pulp and Paper Green Transformation Program. On October 9, 2009, the Applicants received written confirmation that they were allocated CAD\$23.2 million in credits for the Edmundston facility and CAD\$9.9 million in credits for the Thurso facility. These credits, available until March 31, 2012, represent the Applicants' maximum potential funding under the program and may be used to finance approved capital projects with environmental benefits, including energy efficiency and the production of renewable energy from forest biomass. Both facilities have capital projects that would provide long term sustainable economic benefits. Credits earned at one facility may be spent upon eligible projects at another facility owned by the same company. These credits could represent a key source of future funding for high-return capital projects in the restructured Company.

20. The Applicants secured sufficient log supply on improved terms which enabled the re-start of the Masardis lumber mill in Maine in late August. Despite depressed lumber prices, new commercial arrangements with its suppliers and high operating efficiencies have enabled the operation to begin to generate positive cash flow while also re-starting deliveries of by-product softwood chips for the Edmundston sulphite pulp mill. The Masardis lumber mill recorded \$300,000 of positive cash flow in September, 2009.

21. As referenced in paragraph 153 of the First Gordon Affidavit, the Applicants had approached the Ministry of Economic Development, Innovation and Export of the Quebec Government (the "MEDIE") with a proposal to finance a new subsidiary company that would own and operate the Thurso pulp mill. After lengthy discussions and due diligence by the Ministry, the proposal was declined. However, on October 6, 2009 the MEDIE did agree to reimburse the Applicants' cost to maintain the Thurso pulp mill from that date until February 1, 2010. During this period, the Applicants will work with the MEDIE to indentify a strategic partner and develop a business plan that would enable a re-start of production at the facility.

22. The Applicants have completed a thorough review of their contracts and have repudiated six contracts that were deemed detrimental to the on-going business. The parties to these repudiated contracts have been advised to file a Proof of Claim in respect of their Restructuring Claim arising out of the repudiation.

23. On September 15, 2009 the Applicants provided notice to approximately 230 active salaried employees that the current defined benefit pension benefit would be replaced with a defined contribution benefit for future service, effective November 1, 2009. All future defined benefit accruals under the existing Canadian defined benefit arrangements cease as of October 31, 2009.

24. On September 22, 2009 the Applicants provided notice to approximately 610 retired and 330 active salaried employees in respect of changes to the existing post-retirement benefit programs. These amendments to the Company's programs are designed to rationalize the coverage from six plans to one common plan in each of Canada and the U.S. and to reflect benefit coverage already provided by Government programs in both jurisdictions. No changes were made to the post-retirement benefit plans for active or retired unionized employees. At December 31, 2008, the unfunded benefit liability related to the Applicants' post-retirement benefit plans was recorded at \$46.8 million. The Applicants expect that

the amendments, effective on November 1, 2009 for retirees in the U.S. and January 1, 2010 for Canadian retirees, will significantly reduce the unfunded liability and future funding requirements.

### **Claims Process and Information Requests**

25. The Applicants and their counsel have been working closely with the Monitor in reviewing the Proofs of Claim filed, with a view to determining those that will be accepted or disallowed.

26. The Applicants and their counsel have also responded to numerous requests for information and documents received from Davies Ward Phillips & Vineberg LLP (“Davies”) as representative counsel for unrepresented employees and retirees under the various pension plans and benefit plans and from counsel for the CEP.

27. Since the commencement of the claims process, the Applicants have been receiving and responding to many requests for information from various creditors, employees and former employees.

### **Framework for a Restructuring**

28. The Applicants are of the view that a successful restructuring that maximizes value for creditors requires re-establishing a sustainable competitive business that can generate stable free cash flow. To achieve this result, the Applicants believe it will be necessary to divest assets or operations, lower debt levels and decrease exposure to uncontrollable risk factors, including market prices for lumber, pulp and oil, and lower exposure to the Canadian dollar exchange rate. In addition, given the Applicants’ financial track record, limited access to capital and challenging business environment, it is unlikely that the business emerging from this restructuring will be in any position to bear the financial burden of the existing pension deficit and funding obligations.

29. Some of the factors that have significantly hampered the Applicants’ ability to restructure include:

- (a) weak markets forcing downtime and uncertain outlook for certain products including commodity papers, market pulp and lumber;
- (b) volatile markets for key inputs including market pulp, chemicals and oil;
- (c) the strengthening Canadian dollar relative the U.S. dollar;
- (d) high labour and energy costs at its operations;
- (e) strong competition from U.S. producers of papers who benefit from continuing subsidies including the black liquor tax credits referenced in paragraphs 99 and 100 of the First Gordon Affidavit and more recently another proposed U.S. subsidy for biomass;
- (f) the absence of financing in the capital markets available to re-finance existing indebtedness, given the Applicants' lack of a track record for generating cash flow and uncertain outlook for the business and the forest products industry in general;
- (g) substantial funding obligations and the long term liability relating to its defined benefit pension plans, Supplemental Executive Retirement Plans ("SERPs") and post-retirement benefit plans; and
- (h) unsustainable terms and conditions under the long term Power Purchase Agreement covering the sale of electricity to NB Power from the CoGen Facility.

30. As outlined in paragraphs 145 and 148 of the First Gordon Affidavit, over the past three years the Applicants have taken steps to address the challenges facing them and the industry generally by implementing a number of initiatives to grow their specialty papers business, reduce their exposure to commodity paper, hardwood pulp and lumber markets and lower operating costs through reductions in high cost capacity, process efficiencies, higher productivity and energy conservation.



31. The Applicants remain of the view that the specialty papers business represents a core business that can be preserved, enhanced and maximized for the benefit of the Applicants' creditors and other stakeholders, provided the obstacles identified below can be overcome.

32. The Applicants believe that any restructuring to be undertaken will need to focus on the following:

- (a) the Company's core specialty paper assets in Edmundston, New Brunswick and Madawaska, Maine that produce specialty papers for new and existing applications that are outside of traditional printing and writing segments;
- (b) an adequate and secure supply of competitively priced wood fibre in New Brunswick for the manufacture of pulp and paper;
- (c) building upon a competitive advantage related to lower cost, renewable energy that can be generated from the CoGen facility in Edmundston;
- (d) lowering the fixed costs related to operating the Applicants' manufacturing facilities;
- (e) having access to capital to maintain and enhance its existing assets as well as to pursue high return internal opportunities; and
- (f) being conservatively financed with adequate liquidity, modest debt and flexible terms to provide the necessary support during periods of market volatility.

33. The Applicants also believe that the transaction that creates the path forward to a restructuring must provide:

- (a) certainty, so that stakeholders have confidence that a transaction can be successfully completed;
- (b) an exit for the ongoing business from creditor protection and the corresponding liabilities at the earliest possible time; and

- (c) maximum recovery of value for creditors, from both the specialty papers business as well as the other operations.

34. The Applicants have been in extensive discussions with their three secured creditors including Brookfield Asset Management Inc., CIT Business Credit Canada Inc. and the Government of New Brunswick. Collectively these three secured creditors were owed in excess of \$100 million as at the Filing and agreed to support the Applicants' efforts to restructure by provide up to an additional US\$44 million and CAD\$9 million in DIP financing. The Applicants have achieved consensus among the secured creditors that a restructuring that focuses on the specialty papers business as broadly described above is an appropriate strategy to pursue, and negotiations have begun in earnest to consider the terms and conditions of such a transaction.

35. In those discussions it is broadly accepted by the secured creditors that for any restructuring to be successful, a conversion of a substantial portion of the existing secured debt will have to be converted into the equity of the future operations. The Applicants have kept the Monitor apprised of all discussions and developments with these key stakeholders, and have sought the Monitor's input where appropriate.

36. As reported in paragraphs 120 and 121 in the First Gordon Affidavit, in addition to indebtedness owing to secured creditors, the Applicants owe approximately \$85 million to trade creditors and for environmental costs in addition to obligations of \$218 million (as at December 31, 2008 as determined in accordance with GAAP) associated with the Applicant's pension plans, SERPs and retiree benefit plans. Claims related to severance obligations and repudiated contracts would be in addition to these amounts. Given the magnitude of these unsecured claims and the challenges related to this restructuring, the Applicants fully expect that the compromise required of the unsecured creditors will be significant and that these liabilities, including those related to the employee pension plans, will have to be dealt with as part of a Plan of Arrangement.

37. The Applicants have committed significant time and resources to considering all available alternatives. In my view, this will likely require a two-stage process. The success and viability of this process depends in large part on the ability of the Applicants to improve and then stabilize the core specialty papers' business in Edmundston, New Brunswick and Madawaska, Maine as a stand-alone business in the very near term, while continuing to negotiate and implement restructuring solutions for the other facilities and assets over the longer term.

### **Outstanding Issues**

38. In addition to finalizing terms and conditions with the secured creditors, there are three significant outstanding issues that require resolution, each of which must be achieved within the next four weeks, in my opinion, in order to preserve the likelihood of a feasible restructuring transaction involving ongoing operations:

- (a) securing collective bargaining agreements for unionized employees at the Madawaska paper mill. In this regard, negotiations are underway ahead of the contract expiry on October 31, 2009;
- (b) reaching agreement with the representatives for the beneficiaries under the pension plans, to ensure that the existing pension liabilities can be addressed in a manner that does not impact the opportunity for a specialty papers business to be preserved; and
- (c) reaching an acceptable agreement with NB Power with respect to an amendment to the terms and conditions under the long term Power Purchase Agreement covering sales of electricity to NB Power from the CoGen facility.

39. As the Applicants have had ongoing, advanced discussions with their key stakeholders to gain support for the framework of a proposed restructuring, I am confident that if the hurdles outlined above

can be overcome, the Applicants' business operations can be restructured and value can be maximized for the benefit of all stakeholders.

40. Time is of the essence, and the continued passage of time will only serve to decrease the likelihood that the Applicants will be able to restructure in such a manner as to recover value from the ongoing business. The DIP lenders have been patient in allowing the Applicants to consider restructuring alternatives, pursue various initiatives and take steps to implement further cost reductions. However, as the Applicants are unable to generate positive cash flow from operations due to weak market conditions, high costs associated with maintaining closed facilities and continuing professional costs incurred through this court proceeding, changes are required to be made and these changes must occur in the very near term in order to recover value for the creditors.

### **Other Matters and Relief Sought**

#### ***Unions***

41. Prior Affidavits filed in this proceeding refer to the (i) CEP; (ii) United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "USW"); and (iii) New Brunswick Regional Council of Carpenters, Millwrights and Allied Workers, Local 2450 (the "CMAW") as representing the Applicants' hourly employees. These are the largest collective bargaining units with which the Applicants are involved.

42. Another union, the Office and Professional Employees International Union (the "OPEIU"), is involved at the Madawaska facility. This union includes approximately 62 active employees, and 59 retirees, all of whom are beneficiaries under the U.S. defined benefit pension plan, as described in more detail in the First Gordon Affidavit.

43. I am advised by Phil Cyr, President of Local 232 of OPEIU, and do verily believe that the OPEIU has not retained counsel in connection with this proceeding and its members and retirees are currently

unrepresented. The OPEIU does not wish to engage counsel due to the limited number of members and retirees involved, and would like to be represented by Davies pursuant to the Order appointing Davies as representative counsel for otherwise-unrepresented employees and retirees.

44. There are also 24 retirees from the Thurso facility who were formerly members of the International Brotherhood of Electrical Workers Union (the "IBEW"). There are no active members of the IBEW employed by the Applicants. These retirees are beneficiaries under the Applicants' defined benefit pension plan for hourly employees in Quebec, and were formerly employees of the MacLaren Power Company, which is a predecessor to Fraser Papers.

45. I am advised by Francine Clement, Manager of Administration and Human Resources at the Thurso pulp mill, and do verily believe that the IBEW has not retained counsel in connection with this proceeding and these retirees are currently unrepresented. The IBEW does not wish to engage counsel due to the small number of retirees involved, and would like to be represented by Davies pursuant to the Order appointing Davies as representative counsel for otherwise-unrepresented employees and retirees.

46. I am advised by Natasha vandenHoven of Davies, and do verily believe, that Davies has been in contact with the representative of OPEIU and has confirmed that Davies is prepared to represent those employees and retirees, and the IBEW retirees, subject to the Order appointing Davies as representative counsel being amended to reflect that fact. The Applicants seek an amendment to the Order appointing Davies as representative counsel to reflect the inclusion of the OPEIU and IBEW as part of Davies' mandate.

### ***Representative Counsel***

47. The Applicants supported the appointment of representative counsel by the Court on September 8, 2009 to represent those employees and retirees who were not otherwise represented in this proceeding. At that time an Affidavit was sworn by Glen McMillan, the Applicants' Chief Financial Officer, which

was filed on behalf of the Applicants. Paragraph 29 of that Affidavit states as follows: *"...the Company has not previously retained the Davies firm in respect of any matter, nor does the Company have any prior relationship with the Davies firm or the individuals who are involved in representing the Davies Committee."*

48. I am advised by Ms. D.J. Miller of our counsel Thornton Grout Finnigan LLP and do believe that on September 30, 2009 she received a call from Anita Boehm of Davies' New York office, inquiring as to the claims process involving the Applicants. Through that call we learned that a tax partner in Davies' New York office had previously provided advice to the Applicants' general U.S. counsel Pierce Atwood on a discreet tax matter involving the black liquor tax credits, for which an account in the amount of approximately US\$5,600 was outstanding.

49. Neither I, nor Glen McMillan who swore the affidavit on September 1, 2009 in support of the appointment of representative counsel, was aware of this fact until Ms. Miller received the call referred to above on September 30, 2009. Based on inquiries I have made since that time I can confirm that Davies' New York office did provide tax advice to the Applicants regarding the black liquor tax credits available to pulp mills in the United States. The mandate was very limited, has been completed, did not extend to any matter other than this tax advice, did not involve anyone from Davies' Canadian offices or anyone from the Applicants' head office in Canada. I am advised by Jay Swartz of Davies' Toronto office and do believe that no one from Davies' Toronto or Montreal offices were aware of or involved in the prior limited mandate.

50. While a clarification to Mr. McMillan's affidavit is required to correct a statement that he and I believed to be correct at that time, the Applicants confirm there is no prior relationship with any individuals at Davies who are involved in representing the employees and retirees, and the Applicants have no relationship with the Davies firm that would be impacted by their appointment by the Court in this matter.

*Claims Order*

51. The Applicants agreed to an extension of the Claims Bar Date (as defined in the Claims Bar Order dated July 15, 2009) from September 30 to October 23, 2009 pursuant to the Order appointing Davies as representative counsel. This extension was considered appropriate in view of the communications required to be undertaken by Davies with their constituents, obtaining and reviewing all pension and benefit plan documentation, and preparing and filing claims on behalf of the various groups of claimants.

52. At the request of counsel for the CEP, the USW and the CMAW, the Applicants also agreed to give those unions until October 23, 2009 to file claims on behalf of the parties they represent. In order to ensure that all Claims filed by or on behalf of employees and retirees (whether individually or by a representative on their behalf) are treated equally, the Applicants and the Monitor agreed to extend the Claims Bar Date from September 30 to October 23, 2009 for all employee and retiree claims. The Claims Bar Date of September 30, 2009 remains in place for all other Claims.

53. On October 16, 2009 Davies requested a further extension of the Claims Bar Date and the Applicants and the Monitor agreed to a further extension to October 30, 2009. As the Applicants wish to treat all employees and retirees equally in connection with the claims process, the Applicants propose that the Claims Bar Date for all employee and retiree claims be extended to October 30, 2009. The Claims Bar Date of September 30, 2009 with respect to all other claims will not be extended and has expired.

54. The Claims Order provides that the Restructuring Claims Bar Date shall be the earlier of thirty (30) days after the event giving rise to a Restructuring Claim (such as the repudiation of a contract) or seven (7) days prior to the date set for voting on any Plan.

55. The Claims Order currently provides (in paragraph 32) that if the Monitor disputes the validity and/or amount set out in any Proof of Claim, the Monitor is to send a Creditor's Dispute Package by no

later than October 23, 2009. The Claims Order also provides (in paragraph 34) that any creditor who receives a Creditor's Dispute Package and wishes to file a Dispute Notice must do so by November 6, 2009.

56. In view of the consensual extension of the Claims Bar Date for all employee and retiree claims to October 30, 2009, and the fact that Restructuring Claims may arise after the existing Claims Bar Date of September 30, 2009, the Applicants seek certain amendments to the Claims Order to provide that the date by which:

- (i) a Notice of Disallowance must be issued by the Monitor for any Restructuring Claim that arose after September 30, 2009 shall be 23 calendar days after the Restructuring Claims Bar Date in each case;
- (ii) a Dispute Notice must be filed in respect of any Restructuring Claim that arose after September 30, 2009 shall be 23 calendar days after the issuance of the Notice of Disallowance in respect of such Restructuring Claim;
- (iii) a Notice of Disallowance must be issued by the Monitor in respect of any Claim filed by or on behalf of any current or former employees of the Applicants shall be November 22, 2009; and
- (iv) a Dispute Notice must be filed in respect of any Claims filed by or on behalf of any current or former employees of the Applicants shall be December 6, 2009.

***Stay Extension and Supporting Cash Flow***

57. The Applicants are proceeding in good faith and require an extension of the Stay Period in order to continue negotiations with their major stakeholders, continue the claims process including the reviewing and resolution of all claims against the Applicants, and determine if a restructuring involving

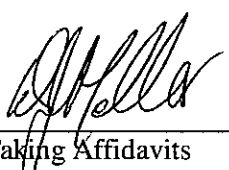


their ongoing operations is possible. The Applicants are seeking a relatively short extension of the Stay Period for that purpose. The obstacles outlined in paragraph 38 above are required to be resolved in order for the Applicants to achieve a restructuring that involves any ongoing operations. Without a resolution, it is the intention of the Applicants to re-attend at that time with an update for the Court and a discussion of alternatives, including the possible liquidation of all assets under the supervision of the Court and the Monitor.

58. The Applicants have prepared a cash flow forecast for the period ending December 5, 2009 in support of the requested stay extension, a copy of which is annexed hereto and marked as Exhibit "B". The forecast indicates that the Applicants will incur a net negative cash flow of approximately \$14.4 million, to be funded by cash on hand and draws under the DIP facilities. While the Applicants have adequate liquidity to fund the required cash outflow at this time, the situation further emphasizes the sense of urgency to achieve a restructuring of the Applicants' business in the very near term.

59. I swear this Affidavit in support of the relief requested in the Applicants' Notice of Motion dated October 19, 2009 and for no other or improper purpose.

**SWORN** before me at the City of Toronto,  
in the Province of Ontario, this 19<sup>th</sup> day of  
October, 2009.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

*D.J. Miller*

  
\_\_\_\_\_  
**J. PETER GORDON**

## **EXHIBIT “A”**

# EXHIBIT

"A"

For the Period from June 29, 2009 to October 4, 2009			
\$000	Actual	Forecast	Variance Fav/(Unfav)
<b>Total Receipts</b>	149,235	136,585	12,650
<b>Disbursements:</b>			
Raw Material Costs	67,646	71,514	3,868
Productions Overhead Costs	16,916	17,100	184
Selling, General & Admin Costs	18,726	18,116	(610)
Employee Costs	33,721	32,939	(782)
Pre-filing Debt Interest & Other Bank Charges	806	1,268	461
DIP Interest & Fees	890	1,384	494
Capital Expenditures - Plaster Rock	5,694	5,918	224
Capital Expenditures - Other	1,147	1,488	342
Other	11,571	6,344	(5,227)
<b>Total Disbursements</b>	157,118	156,072	(1,046)
<b>Net Cash Flow before GNB DIP Financing</b>	(7,883)	(19,487)	11,604
<b>GNB DIP Financing Advances</b>	4,669	5,237	(568)
<b>Net Cash Flow after GNB DIP Financing</b>	(3,214)	(14,250)	11,036
Opening Cash	9,109	7,369	1,740
<b>Net BAM/CIT DIP Loan Advances/(Repayments)</b>	(491)	8,352	(8,843)
<b>Ending Total Cash</b>	5,404	1,471	3,933

## **EXHIBIT “B”**

Fraser Paper Inc Consolidated  
Combined 9 Week Cash Flow Forecast  
USD (in 000's)

EXHIBIT

11B

36.

Week #	1	2	3	4	5	6	7	8	9
Week Beginning	5-Oct	12-Oct	19-Oct	26-Oct	2-Nov	9-Nov	16-Nov	23-Nov	30-Nov
<b>Receipts</b>									
Collection of Trade Accounts Receivable	9,447	10,117	9,469	9,469	9,469	9,664	9,658	9,658	9,658
Collection of Other Accounts Receivable	24	3,715	423	49	67	1,661	534	49	67
<b>Total Receipts</b>	<b>9,471</b>	<b>13,832</b>	<b>9,892</b>	<b>9,518</b>	<b>9,536</b>	<b>11,324</b>	<b>10,192</b>	<b>9,707</b>	<b>9,725</b>
<b>Disbursements:</b>									
Raw Material Costs	7,025	4,688	6,795	6,665	7,120	6,749	8,146	6,941	8,920
Production Overhead Costs	546	592	643	819	743	706	761	764	659
Selling, General & Admin Costs	931	1,167	911	972	911	911	949	949	1,017
Employee Costs	1,736	3,290	1,914	3,717	1,906	3,410	2,061	3,628	2,716
Pre-filing Debt Interest & Other Bank Charges	12	12	12	12	12	12	12	12	12
DIP Interest & Fees	15	250	15	52	15	15	15	17	57
Capital Expenditures - Plaster Rock	227	129	105	92	414	-	-	-	-
Capital Expenditures - Other	235	235	235	235	187	187	187	187	110
Other	351	238	162	33	305	238	54	475	39
<b>Total Disbursements</b>	<b>11,079</b>	<b>10,602</b>	<b>10,791</b>	<b>12,597</b>	<b>11,615</b>	<b>12,229</b>	<b>12,187</b>	<b>12,975</b>	<b>13,530</b>
<b>Net Cash Inflow/(Outflow)</b>	<b>(1,607)</b>	<b>3,230</b>	<b>(899)</b>	<b>(3,079)</b>	<b>(2,079)</b>	<b>(904)</b>	<b>(1,995)</b>	<b>(3,268)</b>	<b>(3,805)</b>
Gov't of NB Capital Funding	201	114	93	81	366	-	-	-	-
<b>Cash Flow After Gov't of NB Capital Funding</b>	<b>(1,406)</b>	<b>3,344</b>	<b>(806)</b>	<b>(2,998)</b>	<b>(1,712)</b>	<b>(904)</b>	<b>(1,995)</b>	<b>(3,268)</b>	<b>(3,805)</b>
Opening Cash Balance	5,404	3,998	7,342	6,536	3,538	1,826	1,400	1,400	1,400
DIP Funding	-	-	-	-	-	478	1,995	3,268	3,805
<b>Closing Cash Balance</b>	<b>3,998</b>	<b>7,342</b>	<b>6,536</b>	<b>3,538</b>	<b>1,826</b>	<b>1,400</b>	<b>1,400</b>	<b>1,400</b>	<b>1,400</b>
<b>Cumulative DIP Draws excluding Gov't of NB</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>478</b>	<b>2,473</b>	<b>5,742</b>	<b>9,547</b>

9 Week
86,609
6,587
93,196

63,050
6,234
8,719
24,379
112
450
967
1,796
1,896
107,603

(14,407)
856
(13,551)

5,404
9,547
1,400

9,547
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## **TAB 3**

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

<b>THE HONOURABLE</b>	)	<b>THURSDAY, THE 22<sup>nd</sup> DAY</b>
	)	
<b>JUSTICE PEPALL</b>	)	<b>OF OCTOBER, 2009</b>

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

Applicants

**ORDER**

**THIS MOTION** made by the Applicants for the relief sought in the Notice of Motion herein dated October 19, 2009, was heard this day at 330 University Avenue, in the City of Toronto, Ontario.

**ON READING** the affidavit of J. Peter Gordon sworn October 19, 2009, the Fifth Report of PricewaterhouseCoopers Inc., in its capacity as court-appointed Monitor, and on hearing the submissions of counsel for the Applicants and any other parties appearing:

### **Stay Period**

1. **THIS COURT ORDERS** that the Stay Period as described in Order of this Honourable Court dated June 18, 2009, as amended (the "Initial Order") be and is hereby extended to and including December 4, 2009.

### **Amendments to Claims Order**

2. **THIS COURT ORDERS** that the Order of this Honourable Court dated July 15, 2009 (the "Claims Order") be and is hereby amended to provide that the Claims Bar Date as it relates only to any claim filed by or on behalf of an employee or retiree of the Applicants shall be October 30, 2009. The Claims Bar Date shall remain at September 30, 2009 in respect of all other claims against the Applicants or the Directors (as defined in the Claims Order). All capitalized terms referred to in this Order which constitute amendments to the Claims Order shall be as defined in the Claims Order.
3. **THIS COURT ORDERS** that the Claims Order be and is hereby further amended to provide that the date by which:
  - (i) a Notice of Disallowance must be issued by the Monitor for any Restructuring Claim that arose after September 30, 2009 shall be 23 calendar days after the Restructuring Claims Bar Date in each case;
  - (ii) a Dispute Notice must be filed in respect of any Restructuring Claim that arose after September 30, 2009 shall be 23 calendar days after the issuance of the Notice of Disallowance in respect of such Restructuring Claim;



- (iii) a Notice of Disallowance must be issued by the Monitor in respect of any Claim filed by or on behalf of any current or former employees of the Applicants shall be November 22, 2009; and
- (iv) a Dispute Notice must be filed in respect of any Claims filed by or on behalf of any current or former employees of the Applicants shall be December 6, 2009.

**Amendment to Davies' Representation Order**

4. **THIS COURT ORDERS** that the Order of this Honourable Court dated September 8, 2009 appointing Davies Ward Phillips & Vineberg LLP as representative counsel for all unrepresented current and former employees of the Applicants is hereby amended by deleting the last sentence of paragraph 1 thereof, and replacing it with the following:

“For greater certainty, the Representatives shall represent former (retired) members of the CMAW and the International Brotherhood of Electrical Workers, and current and former members of the Office and Professional Employees International Union, but shall not represent current or former (retired) members of the USW or the CEP, or current members of the CMAW.”

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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")

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

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

Proceedings commenced at Toronto

**ORDER**

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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

Applicant(s)

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

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

Proceedings commenced at Toronto

**MOTION RECORD  
(Returnable October 22 2009)**

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