

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM) THURSDAY THE 17TH DAY OF
)
JUSTICE PEPALL) SEPTEMBER, 2009



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

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 Donald Corey, Paul Gendreau, Francine Clément, Greg Cyr, Richard Marston, Robert Bruce Parkin, Robyn Wiley-Hoyt, Ken Chappel, Mark Fitzherbert and Mike Côté (collectively, and as such members may be replaced from time to time, the "Representatives"), as the Fraser Papers' Committee of Salaried Employees and Retirees (the "Committee"), on behalf of the Applicants' unrepresented Canadian and U.S. employees and former employees, including those employees not actively at work, and individuals who are: (i) beneficiaries under one of the Applicants' four registered defined benefit pension plans in Canada; (ii) beneficiaries under the Applicants' U.S. defined benefit pension plan; (iii) beneficiaries under the Applicants' Canadian registered retirement savings plan or registered defined contribution pension plan; and/or (iv) beneficiaries under any supplementary retirement plan, deferred compensation plan or health, dental, life and other benefit plan of the

Applicants (collectively, the "Plans"), but excluding any person who is (a) a director or senior officer of any of the Applicants, or (b) is otherwise represented in this proceeding (all of whom, other than the excluded parties, being collectively referred to herein as the "Represented Parties" and individually, a "Represented Party") was heard September 8, 2009 at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Records of the Representatives, the Applicants, the Communications, Energy and Paperworkers' Union of Canada (the "CEP"), the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers' International Union (the "USW"), and Nelligan O'Brien Payne LLP and Shibley Righton LLP ("Shibley Nelligan"), and on reading the Monitor's Fourth Report to the Court;

AND ON HEARING submissions of counsel for the Representatives, the Applicants, the Monitor, the CEP, the USW, the Construction Maintenance and Allied Workers Union (the "CMAW") and other parties including CIT Business Credit Canada Inc. ("CIT") and Brookfield Asset Management Inc. ("BAM");

1. **THIS COURT ORDERS** that the Representatives be, and are hereby appointed to represent the Represented Parties in this proceeding and in connection with any concurrent or subsequent proceeding that may be commenced under the *Bankruptcy and Insolvency Act* (Canada) ("BIA") or similar legislation (collectively, the "Proceedings"). For greater certainty, the Representatives shall represent former (retired) members of the CMAW, but shall not represent current or former (retired) members of the USW or the CEP, or current members of the CMAW.

2. **THIS COURT ORDERS** that such Representatives are hereby authorized to determine, file, advance or compromise any and all claims that exist or may arise at law or equity which may be made against the Applicants in the Proceedings in connection with any issue or matter related to any recovery, compromise of rights or entitlements of the Represented Parties under the Plans (collectively, the "Claims").

3. **THIS COURT ORDERS** that, for greater certainty, the Representatives do not represent Represented Parties with respect to the terms of their on-going employment with the Applicants other than in respect of the Plans.

4. **THIS COURT ORDERS** that Davies Ward Phillips & Vineberg LLP ("DWPV") be appointed in these Proceedings as counsel to the Representatives on behalf of the Represented Parties ("Representative Counsel") for all matters relating to the Claims.

5. **THIS COURT ORDERS** that the Applicants be, and they are hereby, authorized and directed to provide to Representative Counsel, as soon as possible after the granting of this Order, without charge, the names, last known addresses, last known phone numbers and email addresses (if any) of all Represented Parties, whom they are appointed to represent pursuant to the terms of this Order.

6. **THIS COURT ORDERS** that, subject to any claims of privilege by the Applicants, the Applicants shall respond to reasonable disclosure requests from Representative Counsel with respect to any Plan for which a Claim is brought on behalf of a Represented Party, without charge and will provide all documents and data that are relevant to the Claims including generally those pertaining to the various relevant Plans, including up-to-date financial information regarding the funding and investments of any of these arrangements and any

associated actuarial valuations and reports. For that purpose the Applicants are hereby authorized to provide information which includes personal information related to individual Represented Parties. For greater certainty, the Applicants are not required to create documents or data in response to such requests by Representative Counsel.

7. **THIS COURT ORDERS** that any Represented Party whose personal information is provided to the Representative Counsel by the Applicants pursuant to this Order is deemed to have consented for the purposes of any applicable privacy legislation to the Applicants providing such information, and to the collection, use and disclosure by the Representative Counsel of such information, provided that such information will be used or disclosed by the Representative Counsel solely for the purpose of representing the Represented Parties' interests in these Proceedings.

8. **THIS COURT ORDERS** that all reasonable legal, actuarial and financial expert and advisory fees and all other incidental fees and disbursements as may have been or shall be incurred by Representative Counsel in carrying out the provisions of this Order shall be paid by the Applicants in accordance with and subject to the terms hereof:

(a) accounts, including detailed time descriptions for each billing party, shall be delivered by Representative Counsel to the Applicants, the Monitor, CIT and BAM on a bi-weekly basis. Copies of the accounts delivered to the Monitor are to be un-redacted, and those delivered to the Applicants, CIT and BAM may be redacted to preserve any claim of privilege;

- (b) the Applicants, the Monitor, CIT and BAM shall have ten (10) business days to raise any objections to such accounts in writing to the Representative Counsel, failing which the accounts shall be deemed to be accepted as rendered;
- (c) if any objection to the accounts is raised by the Applicants, the Monitor, CIT or BAM in accordance with this paragraph (the "Disputed Accounts"), the Disputed Accounts shall be subject to an assessment by the presiding judge in this proceeding as soon as possible; and
- (d) if the assessment results in the Disputed Accounts being reduced, Representative Counsel shall be entitled to cease any further work on behalf of the Representatives and a motion will be scheduled for authorization to withdraw as counsel of record.

9. **THIS COURT ORDERS** that notice of the granting of this Order be provided to the Represented Parties by advertisement in local newspapers, and posted on the DWPV website and the Monitor's website, in such form and under such terms and conditions to be set by the Applicants, the Monitor and the Representatives.

10. **THIS COURT ORDERS** that the Representatives and Representative Counsel are authorized to take all steps and do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

11. **THIS COURT ORDERS** that any individual Represented Party who does not wish to be bound by this Order and all other Orders attendant hereto shall, within 30 days of

receiving notice of this Order, notify the Monitor, the Applicants and DWPV in writing, and, thereafter, neither the Representatives nor the Representative Counsel shall represent that person in these Proceedings.

12. **THIS COURT ORDERS** that the Claims Bar Date is hereby extended from September 30, 2009 at 5:00 p.m. (Eastern Standard Time) to October 23, 2009 at 5:00 p.m. (Eastern Standard Time), or such later date as may be agreed to by the Applicants, the Monitor and Representative Counsel, to enable the Representatives to file Claims on behalf of the Represented Parties. In respect of all Claims for which Representative Counsel has been appointed pursuant to this Order, the date by which the Monitor is to issue any Creditor's Dispute Package and the date by which a Creditor must file a Dispute Notice are each hereby extended by twenty-three (23) calendar days, and the Claims Order of this Honourable Court dated July 15, 2009 is hereby amended accordingly.

13. **THIS COURT ORDERS** that the Representatives and DWPV shall have no liability as a result of their respective appointment or fulfillment of their duties in carrying out the provisions of this Order save and except for any gross negligence or wilful misconduct on their part.

14. **THIS COURT ORDERS** that any member of the Committee may resign from the Committee and that Committee members may appoint any other individual Represented Party to the Committee.

15. **THIS COURT ORDERS** that the Representatives shall be at liberty and are

authorized at any time to apply to this Honourable Court for advice and directions in the discharge or variation of their powers and duties.

Stephens, J.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

ORDER

Davies Ward Phillips & Vineberg LLP
44th Floor, 1 First Canadian Place
Toronto, ON M5X 1B1

Matthew P. Gottlieb (LSUC #32268B)
Jay A. Swartz (LSUC #15417L)

Tel: 416.863.0900
Fax: 416.863.0871

Counsel Representative for the Plan Beneficiaries