

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

FACTUM OF THE APPLICANTS
(Motion Returnable April 6, 2010)

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PART I – RELIEF REQUESTED BY THE APPLICANTS

1. The Applicants seek an Order, *inter alia*:
 - (a) authorizing and approving the transaction contemplated by an asset purchase agreement dated as of December 22, 2009 (the “APA”) by and among Brookfield Asset Management Inc. (“BAM”) or its designate, as purchaser, and the Applicants, as vendors, for a sale, on a going concern basis, of all of the property, assets and undertaking of the Applicants relating to the specialty papers business;
 - (b) vesting the Applicants’ right, title and interest in the assets to BAM or its designate; and

- (c) granting releases in favour of certain parties, effective upon closing of the APA transaction (the “Releases”).

2. All monetary amounts referred to herein 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 APA.

PART II – THE FACTS

3. The Applicants commenced a proceeding and were granted protection under the *Companies’ Creditors Arrangement Act* (Canada) (“CCAA”) pursuant to the Order of the Honourable Mr. Justice Morawetz dated June 18, 2009, as amended (the “Initial Order”).

Approval of the Sale Transaction

4. Pursuant to an Order dated December 10, 2009 (the “APA Approval Order”), the APA between the Applicants and the Purchaser (defined in the APA as BAM or its designate) was approved as a stalking horse bid for the purpose of commencing a bid process for the Applicants’ specialty papers business (the “Bid Process”).

Monitor’s Eighth Report to the Court, February 2, 2010 at para. 4 [“Monitor’s Eighth Report”].

Affidavit of J. Peter Gordon sworn March 30, 2010 at para. 58 [“Gordon Affidavit”].

5. As part of the Bid Process, the Monitor, with the Applicants’ assistance, solicited the market for parties interested in purchasing the Applicants’ specialty papers business on a going concern basis by extensively publicizing the Bid Process and the opportunity to purchase the specialty papers business.

Monitor’s Eighth Report, at paras. 5-9.

6. The Monitor prepared an initial list of potential buyers consisting of 101 parties and subsequently identified an additional 32 prospective purchasers for a total of 133 potential purchasers. These potential purchasers were sent a “teaser” letter and an outline of the Bid Process.

Monitor’s Eight Report, at paras. 5, 11-13 and 15.

7. Those potential purchasers who executed a confidentiality agreement with the Monitor were provided with further detailed information, were given access to an electronic data room and were given an opportunity to attend a webcast presentation by the Applicants on the specialty papers business.

Monitor’s Eighth Report, at para. 14.

8. Under the Bid Process, the deadline for the submission of bids was January 22, 2010. By January 21, 2010, 18 of 19 prospective purchasers who had executed the confidentiality agreement declined to submit an offer.

Monitor’s Eighth Report, at paras. 16 and 18.

9. The bid deadline was extended until January 26, 2010 to allow the remaining prospective purchaser to conduct further due diligence, however, on the expiry of the extended deadline, the prospective purchaser advised the Monitor that it would not submit an offer.

Monitor’s Eighth Report, at paras. 19-20.

10. Although all of the 19 prospective purchasers that executed the confidentiality agreement and conducted some degree of due diligence only to decline to submit an offer did not provide a reason for their decision, several did indicate that the purchase price reflected in the APA was in excess of the fair market value of the specialty papers business, including the one prospective purchaser for whom the bid deadline was extended.

Monitor’s Eighth Report, at paras. 18 and 20.

Request for Releases

11. The Applicants have not generated positive cash flow from operations in more than three years. All funding requirements are being met through further borrowings under a secured DIP facility pursuant to the Initial Order.

Gordon Affidavit, at paras. 12 and 157.

12. This restructuring is not for the purpose of creating a “leaner” company that can continue to operate profitably in future. Rather, it involves a sale of all assets of the Applicants as a going concern in order to maximize proceeds available for distribution to their creditors, and preserve ongoing employment for the Applicants’ employees in Canada and the US. Only by (i) disposing of the assets that require significant ongoing financial support; (ii) ensuring that all potential claims are identified and finally determined; (iii) controlling the need for further borrowings under the DIP; and (iv) satisfying all prior secured claims; can the Applicants implement a clear path forward and facilitate any potential distribution to unsecured creditors.

Gordon Affidavit, at paras. 12, 13, 143 and 160.

13. The Applicants are unable to fund ongoing cash losses for a sufficient period of time to develop and implement a Plan of Arrangement prior to disposing of their assets. The Court approved a sales process to facilitate a sale of substantially all of the Applicants’ assets in advance of a Plan of Arrangement. A future Plan of Arrangement will facilitate the distribution of proceeds to the Applicants’ creditors, and will include releases in favour of the Applicants’ directors and officers and certain third parties who provided financial support to facilitate the restructuring, namely, the Province of New Brunswick (“PNB”) and BAM.

Gordon Affidavit, at paras. 155-157.

14. As the support of these third parties has resulted in a transaction providing maximum benefit to the Applicants' creditors, it is appropriate that they obtain protection in the form of a release from the Court at this time as part of any approval of the transaction.

Gordon Affidavit, at paras. 110, 111, 113-119, 144-147 and 158.

15. As a result of extensive discussions with the Superintendent of Pensions for the Province of New Brunswick (the "Superintendent"), the Communications, Energy and Paperworkers Union of Canada ("CEP") and the Committee representing all Unrepresented Canadian and U.S. employees and former employees of the Applicants ("Committee") through their court-appointed counsel Davies Ward Phillips and Vineberg LLP ("Davies"), the Applicants executed term sheets in respect of the New Brunswick Pension Plan for Hourly Employees (the "NB Hourly Term Sheet") and the New Brunswick Pension Plan for Salaried Employees (the "NB Salaried Term Sheet" and, with the NB Hourly Term Sheet collectively, the "Term Sheets").

Gordon Affidavit, at paras. 48-50.

16. The Term Sheets cover: (i) all CEP employees and retirees; and (ii) all employees and retirees who are members of the Applicants' New Brunswick pension plans. The APA does not relate to any pension plans registered in the Province of Quebec, and does not include any assets in the Province of Quebec. Negotiations in respect of the conditions to be satisfied under the APA therefore did not involve Quebec employees or pension plan members.

Gordon Affidavit, at paras. 63-67.

17. The Term Sheets contain releases in favour of the Applicants' directors and officers, BAM and its officers and directors, PNB, the Superintendent and the Administrator appointed under the New Brunswick pension plans. The Releases provide that the Applicants' directors and officers and BAM and its officers and directors are released from all claims relating to the

facts and circumstances in respect of the Applicants existing as at the date of the Term Sheets and the completion of the APA.

Gordon Affidavit, at para. 66.

18. As part of the relief sought in the within motion, the Applicants seek Releases similar to those granted in the Term Sheets in respect of all creditors, not just those who are party to the Term Sheets.

19. Implementation of the Term Sheets provides the necessary path forward for all creditors of the Applicants. It is the very foundation of the Applicants' restructuring, without which, no ongoing operations and employment would be possible and liquidation was the only alternative.

Gordon Affidavit, at paras. 48, 63-68 and 141.

20. Consideration provided by various parties under the APA and the Term Sheets results in:

- (i) conversion of \$35 million of existing secured debt to equity (PNB);
- (ii) conversion of \$25 million of existing secured debt into equity (BAM);
- (iii) all creditors having the ability (based on their respective priority at law) to share in a \$40 million Promissory Note and 49% ownership of the Purchaser;
- (iv) unsecured creditors being entitled to nominate two members to the Purchaser's Board of Directors, thus having considerable influence on the future business;
- (v) ongoing employment for 700 employees in Canada and 500 employees in the U.S;
- (vi) avoiding an immediate wind-up of the New Brunswick pension plans and the purchase of annuities at a time when the plans are significantly under-funded; and

- (vi) an extended wind-up of the New Brunswick pension plans over an eight-year period, thus allowing time for a potential increase in the value of the plan assets through market recovery, and realization upon the consideration payable under the APA.

Gordon Affidavit, at paras. 87-107.

Monitor's Ninth Report to the Court, February 22, 2010 at para. 21 ["Monitor's Ninth Report"].

21. The main recipients of these benefits are the unsecured creditors of the Applicants, including in particular the Applicants' employees and retirees. The Applicants' secured creditors are expected to receive payment in full in the event of a liquidation, if no restructuring is possible. Unsecured creditors are unlikely to receive any distribution whatsoever in a liquidation, except in the most favourable of all circumstances.

Monitor's Ninth Report, at paras. 20 and 21.

PART III – ISSUES AND THE LAW

- A. What factors should the Court consider in determining whether to approve the transaction contemplated by the APA?
- B. Does the Court have the jurisdiction to grant the Releases and, if so, what factors should the Court consider in approving them?

A. Approval of the APA Transaction

- i) **Appropriate Test Prior to the 2009 CCAA Amendments**

22. There is jurisdiction under the CCAA to approve asset sales in the absence of a Plan of Arrangement where a sale is in the best interests of a debtor company's various stakeholders, particularly where the sale is on a going concern basis.

Re Nortel Networks Corp., 2009 CarswellOnt 4467 at paras. 27-40 (Ont. S.C.J.).

23. The test uniformly applied by Ontario courts is from the Ontario Court of Appeal's decision in *Royal Bank v. Soundair Corp.* In *Soundair*, the court established four "duties" that a court must perform when deciding whether a receiver who has sold property acted properly. Ontario courts have consistently recognized that the *Soundair* principles are "equally applicable *mutatis mutandis* in a CCAA sale situation".

Royal Bank v. Soundair Corp., 1991 CarswellOnt 205 (Ont. C.A.) [*"Soundair"*].

Re PSINet Ltd., 2001 CarswellOnt 3405 at para. 6 (Ont. S.C.J.).

Re Tiger Brand Knitting Co., 2005 CarswellOnt 1240 at paras. 34 & 35 (Ont. S.C.J.).

Re Intertan Canada Ltd., 2009 CarswellOnt 1489 at para. 10 (Ont. S.C.J.).

Re Nortel Networks Corp. 2009 CarswellOnt 4838 at paras. 33-35 (Ont. S.C.J.) [*"Nortel"*].

24. In reviewing a proposed sale of assets, a court should consider:

- (i) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (ii) the interests of all parties;
- (iii) the efficacy and integrity of the process by which offers are obtained;
- (iv) whether there has been unfairness in the working out of the process.

Soundair, supra at para. 16.

25. Pursuant to the APA Approval Order, this Honourable Court approved the Bid Process that would test the market and the terms of the APA for the benefit of all stakeholders.

26. Pursuant to the bid terms described in the APA Approval Order, the objectives of the sales process included, *inter alia*, ensuring that the process was fair and effective for all parties,

preserving the continuity of the operations during the sales process and maximizing value for the Applicants' creditors.

Schedule "A" to the Order of the Honourable Madam Justice Pepall dated December 10, 2009.

27. The evidence demonstrates that the Monitor made every reasonable effort to publicize the sale of the Applicants' specialty papers business. It did so through the use of various media resources, both on a Canadian and international level, including industry-specific resources.

Monitor's Eighth Report, at paras. 4-22.

Gordon Affidavit, at para. 134.

28. The Monitor mobilized its own internal resources to solicit interest in the specialty papers business and, with the Applicants, made every effort to provide all information requested by or potentially relevant to specific potential purchasers to assist them in determining whether or not to submit an offer.

Monitor's Eighth Report, at paras. 11 and 16.

29. It is in the best interests of all parties and stakeholders that the transaction contemplated by the APA is approved by the Court, as it represents the foundation for the restructuring and the greatest possible recovery for the Applicants' creditors. In seeking the Court's approval of the APA as a stalking horse bid, both the Applicants and the Monitor advised the Court that the specialty papers business was the core component of the Applicants' business that had the potential to be sold on a going concern basis.

Gordon Affidavit, at paras. 131-134.

Affidavit of J. Peter Gordon sworn December 3, 2009, at paras. 34-40 [*"December 3rd Gordon Affidavit"*].

Monitor's Sixth Report to the Court dated December 8, 2009 at para. 29 [*"Monitor's Sixth Report"*].

30. Notwithstanding a robust and well-publicized sales process, not a single offer was received by the Applicants and the Monitor. One of the reasons cited by prospective purchasers for their decision not to submit an offer was the fact that the purchase price reflected in the APA was in excess of the fair market value of the specialty papers business.

Monitor's Eighth Report, at para. 18.

31. While prospective purchasers recognized the value of the specialty papers business, as evidenced by the fact that 19 potential purchasers executed the confidentiality agreement and engaged in further due diligence, the purchase price in the APA was more than the fair market value of the business.

Monitor's Eighth Report, at paras. 18 and 20.

32. The sales process was conducted by the Monitor, with the Applicants' assistance, in the most efficacious and fair manner that could reasonably be expected. The Monitor was diligent in soliciting offers in the sales process, contacting each prospective purchaser at least three times and, in the process, casting as wide a net as possible to solicit as many offers as possible. All requests for further information were satisfied by the Monitor and the Applicants.

Monitor's Eighth Report, at paras. 15-17, 21 and 22.

33. The Monitor and the Applicants worked diligently throughout the sales process to solicit offers for the specialty papers business. Furthermore, the Monitor exercised the discretion bestowed upon it by the Court and extended the deadline to allow the sole prospective purchaser who expressed an interest in submitting an offer, an opportunity to conduct further due diligence.

Monitor's Eighth Report, at paras. 19-22.

34. The record before this Honourable Court establishes and the Applicants respectfully submit that the Bid Process has been conducted in accordance with the bidding procedures set out in the APA Approval Order and that the *Soundair* principles have been satisfied.

(ii) Test for Approval of the APA Post-2009 CCAA Amendments

35. The recent amendments to the CCAA address the disposition of a debtor company's business assets. This amendment is consistent with the form of Initial Orders regularly granted by the Commercial Court in CCAA proceedings. Section 36(1) of the CCAA provides as follows:

A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 36(1) ["CCAA"].

36. According to the Industry Canada Briefing Book, section 36 "is intended to provide the debtor company with greater flexibility in dealing with its property while limiting the possibility of abuse".

Industry Canada, "Bill C-55: Clause by Clause Analysis – Bill Clause No. 131 – CCAA Section 36" ["*Industry Canada*"].

Re Canwest Global Communications Corp., 2009 CarswellOnt 7169 at para. 32 (Ont. S.C.J.) ["*Canwest*"].

37. A debtor company must give notice to those secured creditors who are likely to be affected by its application to the court for authorization to dispose of assets outside of the ordinary course of business.

CCAA, *supra* at s. 36(2).

38. The separate service list for this motion includes, among others, those parties with registered security interests pursuant to the *Personal Property Security Act* (New Brunswick) and the United States' *Uniform Commercial Code*, those parties with statutory and registered liens on all real property that is to be purchased under the APA and those parties claiming possessory

liens on account of inventory held by those parties that is to be purchased under the APA or who have otherwise notified the Applicants or the Monitor of such interest.

Affidavit of Service of Annette Fournier sworn March 31, 2010.

39. In deciding whether to grant authorization to the debtor company to dispose of its assets, the court is to consider, among other things:

- (i) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (ii) whether the monitor approved the process leading to the proposed sale or disposition;
- (iii) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (iv) the extent to which the creditors were consulted;
- (v) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (vi) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

CCAA, supra at s. 36(3).

40. The Bid Process for the sale of the specialty papers business was approved by the Court pursuant to the APA Approval Order and was supported by the Monitor.

Monitor's Sixth Report, at para. 29.

41. The Monitor made significant and thorough efforts to canvas the market, utilizing various resources, including industry-specific media, to solicit offers for the specialty papers business. As the Monitor indicated in its Eight Report to this Honourable Court dated February 2, 2010, it is unlikely that any further marketing efforts would have secured an offer superior to that contemplated by the APA.

Monitor's Eighth Report, at paras. 6-9, 11, 12 and 22.

42. As part of the negotiation of the APA itself, extensive discussions were held with the Applicants' three secured creditors, BAM, CIT Business Credit Canada Inc. ("CIT") and PNB, all of whom support the approval of the transaction contemplated by the APA. BAM, CIT and PNB have each contributed significantly to the Applicants' restructuring efforts and have demonstrated their continued support by providing DIP financing, refinancing existing credit facilities and discharging security over the assets being purchased under the APA so as to allow the transaction to close and assisting with the necessary amendments to existing pension legislation.

Gordon Affidavit, at paras. 110-116.

43. Upon completion of the sales process, the Applicants engaged in extensive discussions and negotiations with various stakeholders to satisfy certain conditions under the APA.

Gordon Affidavit, at paras. 120-121.

44. The Applicants negotiated a Term Sheet with the CEP which addresses important union concerns, particularly related to the Applicants' pension plans, while preserving the jobs of many of the Applicants' employees and increasing the likelihood that the specialty papers business can be profitable in the long term.

Gordon Affidavit, at paras. 48-50, 54, 62-63 and 65.

45. The Applicants' creditors benefit in a number of ways by completion of the transaction contemplated by the APA. The completion of the APA transaction produces a better result for the Applicants' creditors than the only other alternative, which is liquidation.

Gordon Affidavit, at paras. 138-141.

Monitor's Ninth Report, at paras. 19 and 20.

46. Pursuant to the terms of the APA, certain liabilities of the Applicants will be assumed by the Purchaser, including sizable tax liabilities to the Town of Madawaska and the Municipality of Edmundston. A significant number of contracts will also be assigned by the Applicants to the Purchaser, greatly decreasing the disruption to the daily business operations of the counter-parties to those agreements that would otherwise result from the mass repudiation of the Applicants' contracts.

Gordon Affidavit, at para. 73, 77, 78 and 127.

47. For those creditors who hold registered liens against the assets that comprise the specialty papers business and whose liens will be vested off title to those assets, the proceeds of the sale will stand in place of those assets. Pursuant to section 36(6) of the recently amended CCAA, the Court may order that the assets sold or disposed of are done so free and clear of any security, charge or other restriction. If it so orders, the Court shall also order that the proceeds of the sale or disposition shall be subject to the security, charges or other restrictions in favour of the creditors whose security, charges or other restrictions are affected by the Court's order.

Gordon Affidavit, at paras. 79-86.

CCAA, supra at s. 36(6).

48. In Industry Canada's Briefing Book analysis of section 36(6), the specific (and timely) example of a lumber mill subject to a lien for municipal taxes in an amount in excess of the mill's market value is used to demonstrate how the Court's authority to remove the lien allows

for its sale at market value and its being put into production by the purchaser. Where once the asset would not have been sold because of its negative value, the Court's authority under section 36(5) maximizes value for the debtor company's stakeholders and increases efficiency in the insolvency system.

Industry Canada, ibid.

49. Where the disposition of the debtor company's assets is to a related party, the Court may only grant the authorization, after considering the aforementioned factors, if it is satisfied that good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company and that the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

CCAA, supra at s. 36(4).

50. In addition to considering the factors enumerated in section 36(3), the requirement that the Court must be satisfied that both factors in section 36(4) have been met in the case of related party transactions is intended to prevent the rise and possible abuse of "phoenix corporations".

Industry Canada, ibid.

51. The sales process conducted by the Monitor, with the assistance of the Applicants, was exceptionally thorough. The Monitor contacted 133 potential purchasers to solicit offers and went to great lengths to ensure that any and all information requested was available to potential purchasers to assist in their evaluation of the opportunity presented by the purchase of the specialty papers business.

Monitor's Eighth Report, at paras. 15-17, 21 and 22.

52. The Monitor extended the deadline for the submission of bids to allow a potential purchaser to conduct further due diligence in hopes of securing a superior offer to that contemplated by the APA. No such offer was ever submitted to the Monitor or the Applicants.

Monitor's Eighth Report, at paras. 19-20.

Gordon Affidavit, at para. 134.

53. The protections referenced in sections 6(5)(a) and 6(6)(a) of the CCAA stipulate that approval may only be granted if the Court is satisfied that the company can and will make certain payments. The terms of the Initial Order, and Orders issued since that date, provide for those payments that are required to be made by the Applicants. The Applicants have sufficient liquidity pursuant to the DIP facility to make all necessary payments, as evidenced by the Cash Flow Forecast.

CCAA, supra at s. 36(7).

Monitor's Tenth Report to the Court, April 1, 2010.

54. The Applicants respectfully submit that the record before this Honourable Court not only establishes that the *Soundair* principles have been satisfied, but also establishes that the transaction contemplated by the APA satisfies the factors enumerated in recently amended Section 36 of the CCAA.

B. Approval of Third Party Releases

55. The Court has the jurisdiction to approve releases in favour of debtors and third parties under a settlement agreement reached prior to the presentment of a plan where the releases:

- (i) are necessary and connected to a resolution of claims against the debtor;
- (ii) will benefit creditors generally; and
- (iii) are not overly broad or offensive to public policy.

Re Grace Canada Inc., 2008 CarswellOnt 6284 at paras. 37-40 (Ont. S.C.J.).

ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp., 2008 CarswellOnt 4811 at paras. 69-73 (Ont. C.A.).

Re Nortel Networks Corp., 2010 ONSC 1708 at paras. 77-82 (Ont. S.C.J.). [*“Nortel”*]

56. In approving releases in favour of Nortel’s directors and officers related to all future claims regarding pension plans and a health and welfare trust, Justice Morawetz noted as follows:

[t]he releases benefit creditors generally as they reduce the risk of litigation against the Applicants and their directors, protect the Applicants against potential contribution claims and indemnity claims by certain parties, including directors, officers and the HWT Trustee; and reduce the risk of delay caused by potentially complex litigation and associated depletion of assets to fund potentially significant litigation costs.

Nortel, supra at para. 81.

57. Justice Morawetz noted that in the case of the Nortel releases, they were not overly broad or offensive to public policy and that the parties that granted the releases received consideration in the form of immediate compensation and the maintenance of their rights in respect to the distribution of claims.

Nortel, supra at para. 82.

58. In the instant case, the consideration to be received by the parties bound by the release is immediate and maintains the rights of all parties as it relates to the determination of claims pursuant to the existing claims process. It is immediate, in that it will result in (i) consideration being payable to the Applicants’ for the benefit of their creditors, including unsecured creditors, that is not otherwise available to them in the absence of such transaction closing; (ii) the ability to have the affected pension plans wound up over eight years, rather than immediately as would otherwise be the case; and (iii) significant prior secured claims being addressed in a manner that

permits value to be received by unsecured creditors that would not otherwise be available if these significant prior claims remained.

Gordon Affidavit, at paras. 68, 116, 139 and 143-158.

59. A distribution to unsecured creditors can only be made once the claims of secured or priority creditors are satisfied in full. The secured claims include those in favour of BAM as the DIP Lender, CIT, the Applicants' directors and officers, and beneficiaries of the Administration Charge.

Gordon Affidavit, at para. 143.

60. As long as further potential claims could be brought, including litigation claims, no consideration payable under the APA and no proceeds from the sale of residual assets can be distributed to the Applicants' unsecured creditors. The requested releases permit the universe of claims to be known and determined with finality.

Gordon Affidavit, ibid.

61. Pursuant to the terms of the APA, BAM has agreed to allow a portion of its existing secured claim in the amount of \$25 million over all of the Applicants' assets to be replaced by common shares in the Canadian purchaser. BAM's existing secured claim has priority over all of the Applicants' unsecured creditors.

Gordon Affidavit, at para. 145.

62. Pursuant to the Claims Order, any person with a claim as against the Applicants or any of the directors and officers was required to file a proof of claim with the Monitor prior to the claims bar date.

Order of the Honourable Madam Justice Pepall dated July 15, 2009 at paras. 25-28.

63. Of the 26 claims against the Applicants' directors and officers received by the Monitor, all were disallowed and dispute notices were filed in respect of only 16 claims. Pursuant to the

Claims Order, the 10 claims that were disallowed by the Monitor for which no dispute notice was received are now fully and finally dismissed and extinguished. The 16 claims that remain outstanding and remain in dispute total less than the total aggregate amount of \$200,000. The requested releases do not affect these claims.

Gordon Affidavit, at para. 148-149.

64. The Applicants' directors and officers have worked diligently since the date of filing to assist in restructuring the Applicants' business. In large part due to their efforts, significant agreements have been concluded with the Applicants' stakeholders, the APA was negotiated and agreed to, an Agreement of Purchase and Sale has been negotiated in respect of the Thurso facility and agreements have taken reached with the PNB.

Gordon Affidavit, at para. 151.

65. The Applicants' directors and officers are concerned by the possibility that the Court may issue an Order which has the effect of extinguishing the Directors' Charge as it relates to the purchased assets under the APA, without ensuring that no further claims could be brought by any party other than the aforementioned 16 claims that remain outstanding.

Gordon Affidavit, at para. 152.

66. At this juncture of the Applicants' restructuring efforts, the sale of the specialty papers business in advance of a Plan of Arrangement being presented to creditors is unavoidably necessary as the business cannot be sustained for any further period of time without severely decreasing the likelihood of any sort of recovery for the Applicants' unsecured creditors.

Gordon Affidavit, at paras. 155-156.

67. If the universe of claims is not finalized, and further claims result in additional fees and expenses being incurred, this will drastically reduce any hope of recovery for the Applicants' creditors.

Gordon Affidavit, at para. 155-157.

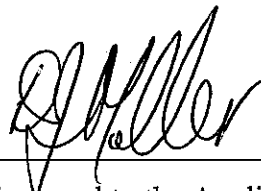
68. The agreement evidenced by the Term Sheets resulted in the PNB and the Superintendent undertaking significant measures, including an amendment to the *Pension Benefits Act* (New Brunswick). The requested amendment is to be implemented upon closing of the APA transaction. Pursuant to the Term Sheets, PNB and the Superintendent were granted releases virtually identical to those which are sought by the Applicants as part of the relief in the within motion. The Applicants respectfully submit that in light of the significant steps taken by the PNB and the Superintendent as contemplated by the Term Sheets, the Releases in respect of the PNB and Superintendent should be granted.

Gordon Affidavit, at para. 158.

PART IV – ORDER REQUESTED

69. The Applicants request an Order granting the relief set out in the Notice of Motion dated March 30, 2010.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1ST DAY OF APRIL,
2010.**



D.J. Miller, of counsel to the Applicants

SCHEDULE A – AUTHORITIES CITED

1. *Re Nortel Networks Corp.*, 2009 CarswellOnt 4467 (Ont. S.C.J.).
2. *Royal Bank v. Soundair Corp.*, 1991 CarswellOnt 205 (Ont. C.A.).
3. *Re PSINet Ltd.*, 2001 CarswellOnt 3405 (Ont. S.C.J.).
4. *Re Tiger Brand Knitting Co.*, 2005 CarswellOnt 1240 (Ont. S.C.J.).
5. *Re Intertan Canada Ltd.*, 2009 CarswellOnt 1489 (Ont. S.C.J.).
6. *Re Nortel Networks Corp.*, 2009 CarswellOnt 4838 (Ont. S.C.J.).
7. Industry Canada, “Bill C-55: Clause by Clause Analysis – Bill Clause No. 131 – CCAA Section 36”.
8. *Re Carwest Global Communications Corp.*, 2009 CarswellOnt 7169 (Ont. S.C.J.).
9. *Re Grace Canada Inc.*, 2008 CarswellOnt 6284 (Ont. S.C.J.).
10. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 CarswellOnt 4811 (Ont. C.A.).
11. *Re Nortel Networks Corp.*, 2010 ONSC 1708 (Ont. S.C.J.).

SCHEDULE B – RELEVANT STATUTES

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36.

36(1) Restriction on disposition of business assets - A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

(2) Notice to creditors - A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

(3) Factors to be considered – In deciding whether to grant the authorization, the court is to consider, among other things,

(a) Whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) Whether the monitor approved the process leading to the proposed sale or disposition;

(c) Whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) The extent to which the creditors were consulted;

(e) The effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

(4) Additional factors – related persons – If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

(5) Related persons – For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company;
and
- (c) a person who is related to a person described in paragraph (a) or (b).

(6) Assets may be disposed of free and clear – The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

(7) Restriction – employers – The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and 5(a) if the court had sanctioned the compromise or arrangement.

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

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