

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Re Fraser Papers et al

Plaintiff(s)

AND

Defendant(s)

Case Management  Yes  No by Judge: Repall

Counsel	Telephone No.:	Facsimile No.:
<u>see attached</u>		

- Order  Direction for Registrar (No formal order need be taken out) *Orders Granted on April 6/11*  
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out) *Endorsement released at 9:30 Appointment April 7/11*
- Adjourned to: \_\_\_\_\_  
 Time Table approved (as follows): \_\_\_\_\_

The Applicants seek an order granting final approval of the sale transactions between the Applicants + BAM; an order extending the stay of proceedings to July 9, 2010; amending the style of case; & increasing the DIP from US \$20 million to US 25 million

acting firstly with approval of the sale transactions, I accept that the establishment of a smaller stand-alone specialty papers business + a sale of the remaining assets of the Applicants present the best opportunity to maximize value for the Applicants' creditors.

The sale transaction contemplates continuing employment for approximately 700 employees in New Brunswick +

Apr 7, 2010  
Date

874 Repall, J.  
Judge's Signature

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Judges Endorsement Continued

500 in the US. There are also donors associated benefits for the communities in which the specialty paper business is located. The wind up of the NB pension plan is deferred for 8 years thus allowing time for a potential increase in the value of the plan assets through market recovery + realization upon the cessation payable under the purchase agreement. Secured debt is also addressed. Furthermore unsecured creditors will have the ability to share in a \$40 million promissory note + 49% ownership of the purchaser.

The proposed transaction is not without challenges. Some employee groups are treated differently than unsecured creditors generally including other employee groups. The proposed offer also provides for very broad releases.

On the other hand, the Applicants have not experienced positive cash flow for 3 years, the proposed net present value exceeds the estimated range of possible net liquidation proceeds, + no other viable alternatives have presented themselves.

In the face of the shortcomings presented by the proposed transaction, the parties spent the entire day re-negotiating + by 8:30 pm had reached a consensus.

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I have considered the principles described in *RBC v Saunders* (1991) 7 CBR (3d) 1 (Ont. C.A.) + although not strictly applicable, the factors in s. 36 of the CCAA as amended, I am satisfied that the proposed order approving the transaction as amended by the parties + by me should be granted.

As to the pendency of releases generally, the case law has evolved in this regard. See for example *ATB Financial v Metcalfe + Mansfield Alternative Investments II Corp* 2008 CarswellOnt 4811 (where there was a Plan of Arrangement + *Re Grace Canada Inc* 2008 CarswellOnt 6284, and *Re North Networks Corp* 2010 ONSC 1708. In certain circumstances, the pendency of ~~releases~~ releases + third party releases may be warranted.

In this case the proposed order, which includes releases + third party releases, is supported by the Monitor + all of the many stakeholders appearing including those representing the employees + retirees. The releases in favour of the Applicants et al, while still fairly broad, have been restricted. The release will not affect the 16 outstanding claims against the officers + directors totaling \$81,000 which arose from the claims process or any outstanding claims against the Applicants arising from that same process + the Claims Order of July 15, 2009. Furthermore, that release does not encompass

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excluded claims as defined in that order, any Restructuring Claims that arise or may be filed in accordance with that order or any of the Applicants' obligations under s.18 (ii) of the Initial Order of July 15, 2009, namely compliance with statutory or regulatory provisions relating to health, safety or the environment.

There continues to be some differences in treatment of members of the unsecured creditors class generally. That said, in spite of these imperfections, I was persuaded to grant approval given the benefits to creditors generally + indeed the broader community of shareholders. Clearly, the releases were necessary + connected to a resolution of claims against the Applicants + did not appear to be offensive to public policy.

As to the remaining relief requested, the Applicants appear to have acted in good faith + with due diligence + the stay of proceedings needs to be extended so that they may complete their restructuring. The RIR is proposed to be increased from \$200 million to \$250 million + the Applicants will have the means necessary to continue during the period of the stay.

In the circumstances outlined, I granted both the approval order as amended + the stay extension order + associated relief.