

*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 January 12, 2010)

January 11, 2011

**ThorntonGroutFinnigan LLP**  
Barristers and Solicitors  
100 Wellington Street West  
Suite 3200  
Toronto, Ontario  
M5K 1K7

**D.J. Miller** (LSUC# 34393P)  
**Kyla E.M. Mahar** (LSUC# 44182G)

Tel: 416-304-1616  
Fax: 416-304-1313

Lawyers for the Applicants.

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**TAB 1**

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./PAPIERS FRASER INC.**, FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC

Applicants

**NOTICE OF MOTION**  
**(Sanctioning the Applicants' Consolidated Plan of Compromise and Arrangement)**

The Applicants will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on Wednesday, January 12, 2011 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. an Order approving and sanctioning the Consolidated Plan of Compromise and Arrangement dated November 29, 2010 as amended since that date (the "Plan") and approved by the Required Majority of the Unsecured Creditor Class at the Meeting

concerning, affecting and involving the Applicants in the form attached hereto as Schedule "A" (the "**Sanction Order**");

2. an Order approving the terms of the creditor trust agreement among the Applicants, as settler of the trust, and the trustee, (the "**Creditor Trust Agreement**") in the form attached hereto as Schedule "B" (the "**Trust Order**");
3. an Order, among other things: (i) granting approval of the transaction agreement dated November 25, 2010 among the Applicants, as vendors and Plan proponents, and Brookfield Asset Management Inc. or its designate, as Plan sponsor (the "**Plan Sponsor**") (the "**Transaction Agreement**") and authorizing the Applicants to execute and deliver all definitive documentation to permit the closing of the transaction contemplated by the Transaction Agreement; (ii) vesting in the Plan Sponsor all the Applicants' right, title, benefit and interest in and to the FPHI Shares; and (iii) vesting in the Purchased Companies of all the Applicants' (other than the Purchased Companies) right, title, benefit and interest in the Included Property, with respect to (ii) and (iii), in each case free and clear of and from all liens, charges and encumbrances (save and except the Permitted Encumbrances in respect of the Included Property only), upon the closing of the transaction contemplated by the Transaction Agreement in the form attached hereto as Schedule "C" (the "**Vesting Order**"); and
4. such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. capitalized terms used but not otherwise defined in this Notice of Motion shall have the meanings ascribed to them in the Plan;
2. pursuant to the Order of the Honourable Mr. Justice Morawetz dated June 18, 2009, as amended (the “**Initial Order**”), 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**”);
3. 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;
4. the Applicants, with the Monitor’s assistance, entered into separate asset purchase agreements whereby the Applicants sold substantially all of their assets. Each of the asset purchase agreements was approved by Order of this Honourable Court;
5. pursuant to the Order of this Honourable Court dated November 3, 2010, the Applicants were authorized and directed to proceed with the preparation of the Plan on the basis of the substantive consolidation of all of the Applicants;
6. the Applicants have established the NB Hourly Trust and the NB Salaried Trust and, in accordance with the terms of the Plan, will establish the Creditor Trust;
7. the NB Hourly Trust and the the NB Salaried Trust have been established and will hold the portion of the Distribution Pool in respect of the NB Hourly Claim and the NB Salaried Claim, respectively;

8. Given the nature of the Distribution Pool, it is necessary for the Creditor Trust to be created to hold the Distribution Pool in respect of all Proved Distribution Claims other than the NB Hourly Claim and the NB Salaried Claim;
9. the Creditor Trust is to be created pursuant to the Creditor Trust Agreement, as approved by the Trust Order,
10. the Plan incorporates the Transaction Agreement whereby, *inter alia*, the Plan Sponsor will purchase the FPHI Shares, which includes the ownership of the companies that own lumber mills located in Ashland and Masardis, Maine (the “**Maine Mills**”). The Transaction Agreement requires that all Included Property be transferred to the relevant Purchased Companies free and clear of all Encumbrances expect Permitted Encumbrances and that the FPHI Shares purchased by the Plan Sponsor be free and clear of all claims and Encumbrances;
11. pursuant to the Plan, upon the closing of the Transaction Agreement, the Applicants anticipate that they will have sufficient cash to make an Implementation Payment to their Affected Creditors with Proven Distribution Claims. In addition, the Applicants will make available for distribution to their Affected Creditors with Proven Distribution Claims their Pro Rata Share of the Promissory Notes and Common Shares of Twin Rivers Papers Company Inc. which shall be held each of the NB Hourly Trust, the NB Salaried Trust and the Creditor Trust for the benefit of the respective trust beneficiaries in accordance with the terms of the Promissory Notes, the Common Shares and the NB Hourly Trust Agreement, the NB Salaried Trust Agreement, the NB Salaried Trust Agreement and Creditor Trust Agreement, respectively;

12. pursuant to the Meeting Order, the Applicants are authorized and directed to hold a meeting of their Affected Creditors on January 10, 2011 to permit such Affected Creditors to consider and vote on a resolution to approve the Plan (the “Meeting”);
13. in accordance with the Meeting Order, the Monitor caused a notice to creditors advising of the Meeting to be published in certain national and local newspapers. In addition, the Monitor sent the Meeting Materials (as defined in the Meeting Order) to each of the Applicants’ Affected Creditors and posted the Meeting Materials to the Monitor’s website in accordance with the Meeting Order. The Meeting Materials (with the exception of certain exhibits) were posted on the Monitor’s website in both English and French;
14. the Applicants are bringing this motion on the basis that the Required Majority of Affected Creditors vote to approve the Plan at the Meeting;
15. if the Plan is sanctioned by this Honourable Court, the Applicants will proceed with the implementation of the Plan and towards the conclusion and termination of the CCAA Proceedings;
16. the Monitor supports the relief sought by the Applicants;
17. the provisions of the CCAA;
18. Rules 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1994, Reg. 194, as amended; and

19. 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 Glen McMillan sworn in support of this motion, to be filed separately;
2. the Sixteenth 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.

January 5, 2011

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Canadian Pacific Tower  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON M5K 1K7

**D.J. Miller (LSUC# 34393P)**  
**Kyla E.M. Mahar (LSUC# 44182G)**  
Tel: 416-304-1616  
Fax: 416-304-1313

Lawyers for the Applicants

**TO: THIS HONOURABLE COURT**  
**AND TO: THE ATTACHED SERVICE LIST**

## SERVICE LIST

### THORNTON GROUT FINNIGAN LLP

Barristers and Solicitors  
100 Wellington Street West  
Suite 3200  
Toronto, ON M5K 1K7

#### **D.J. Miller / Kyla Mahar/ Danny Nunes**

Tel: (416) 304-1616  
Fax: (416) 304-1313  
Email: [djmiller@tgf.ca](mailto:djmiller@tgf.ca)  
[kmahar@tgf.ca](mailto:kmahar@tgf.ca)  
[dnunes@tgf.ca](mailto:dnunes@tgf.ca)

Lawyers for the Applicants

### TORYS LLP

Suite 3000, 79 Wellington St. W.  
Box 270, TD Centre  
Toronto, ON M5K 1N2

#### **Tony DeMarinis / David Chernos / Natasha De Cicco/Scott Bomhof**

Tel: (416) 865-0040  
Fax: (416) 865-7380  
Email: [tdemarinis@torys.com](mailto:tdemarinis@torys.com)  
[dchernos@torys.com](mailto:dchernos@torys.com)  
[ndecicco@torys.com](mailto:ndecicco@torys.com)  
[sbomhof@torys.com](mailto:sbomhof@torys.com)

Lawyers for Brookfield Asset Management Inc.

### BLAKE, CASSELS & GRAYDON LLP

199 Bay St.  
Suite 2800, Commerce Court West  
Toronto, ON M5L 1A9

#### **Pamela Huff / Chris Burr**

Tel: (416) 863-2400  
Fax: (416) 863-2653  
Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)  
[chris.burr@blakes.com](mailto:chris.burr@blakes.com)

Lawyers for CIT

**PRICEWATERHOUSECOOPERS INC.**

Royal Trust Tower  
20th Floor, 77 King Street West  
Toronto, ON M5K 1K7

**John McKenna / Michelle Picket / Tracey Weaver / Jonathan Zidel**

Tel: (416) 863 1133  
Fax: (416) 941-8378  
Email: [john.p.mckenna@ca.pwc.com](mailto:john.p.mckenna@ca.pwc.com)  
[michelle.pickett@ca.pwc.com](mailto:michelle.pickett@ca.pwc.com)  
[tracey.weaver@ca.pwc.com](mailto:tracey.weaver@ca.pwc.com)  
[jonathan.d.zidel@ca.pwc.com](mailto:jonathan.d.zidel@ca.pwc.com)

Court-Appointed Monitor of the Applicants

**GOODMANS LLP**

Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

**Robert Chadwick/Derek Bulas**

Tel: (416) 979-2211  
Fax: (416) 979-1234  
Email: [rchadwick@goodmans.ca](mailto:rchadwick@goodmans.ca)  
[dbulas@goodmans.ca](mailto:dbulas@goodmans.ca)

Lawyers for the Monitor

**LENZNER SLAGHT ROYCE SMITH GRIFFIN LLP**

Suite 2600, 130 Adelaide St. W.  
Toronto, ON M5H 3P5

**Peter H. Griffin / Naomi D. Loewith / Peter Osborne**

Tel: (416) 865-9500  
Fax: (416) 865-9010  
Email: [pgriffin@litigate.com](mailto:pgriffin@litigate.com)  
[nloewith@litigate.com](mailto:nloewith@litigate.com)  
[posborne@litigate.com](mailto:posborne@litigate.com)

Lawyers for the Directors of Fraser Papers Inc.

**PAULA TURTLE**

Canadian Counsel, United Steelworkers  
234 Eglinton Ave East, Suite 800  
M4P 1K7  
Tel: (416) 487-1571  
Fax: (416) 487-8826  
Email: [pturtle@usw.ca](mailto:pturtle@usw.ca)  
Canadian Counsel, USW

- 3 -

**SACK GOLDBLATT MITCHELL LLP**  
20 Dundas Street West, Suite 1100  
Toronto, ON M5G 2G8

**Charles Sinclair**  
Tel: (416) 979-4234  
Fax: (416) 591-7333  
Email: [csinclair@sgmlaw.com](mailto:csinclair@sgmlaw.com)

Lawyers for United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

**BAKER & HOSTETLER LLP**  
65E. State Street, Suite 2100  
Columbus, Ohio 43215

**Sherri B. Lazear**  
Tel: (614) 462-2631  
Fax: (614) 462-2616  
Email: [slazear@bakerlaw.com](mailto:slazear@bakerlaw.com)  
Counsel for Specialty Minerals Inc.

**CALEY WRAY**  
1600 – 65 Queen Street West  
Toronto, ON M5H 2M5

**Jesse B. Kugler / Harold Caley / Ken Stuebing**  
Tel: (416) 775-4677 / (416) 775-4672  
Fax: (416) 366-3292 / (416) 366-3293  
Email: [kuglerj@caleywray.com](mailto:kuglerj@caleywray.com)  
[caleyh@caleywray.com](mailto:caleyh@caleywray.com)  
[stuebingk@caleywray.com](mailto:stuebingk@caleywray.com)

Lawyers for Communications, Energy and Paperworkers Union of Canada

**STEIN MONAST**  
70 Dalhousie Street, Suite 300  
Quebec, ON G1K 4B2

**Karine Dionne**  
Tel: (418) 640-4438  
Fax: (418) 523-5391  
Email: [karine.dionne@steinmonast.ca](mailto:karine.dionne@steinmonast.ca)  
Lawyers for the municipality of Thurso

- 4 -

**ARAV, ROBILLARD & LANIEL**

Régie des rentes du Québec  
2600 boulevard Laurier, Bureau 501  
C.P. 5200  
Québec, QC G1K 7S9

**Louis Robillard**

Tel: (418) 657-8702 ext. 3038  
Fax: (418) 643-9590  
Email: [louis.robillard@rrq.gouv.qc.ca](mailto:louis.robillard@rrq.gouv.qc.ca)

Lawyers for Régie des rentes du Québec, a Pension Supervisory Authority for two Applicants' Pension Plans in the province of Québec

**GORMAN NASON**

121 Germain Street  
P.O. Box 7286, Station "A"  
Saint John, NB E2L 4S6

**Peter H. MacPhail / Timothy M. Hopkins**

Tel: (506) 636-7324 / (506) 636-7333  
Fax: (506) 634-8685  
Email: [peter.macphail@GormanNason.com](mailto:peter.macphail@GormanNason.com)  
[tmh@GormanNason.com](mailto:tmh@GormanNason.com)

Lawyers for the Superintendent of Pensions for New Brunswick

**PINK LARKIN**

1133 Regent Street, Suite 210  
Fredericton, New Brunswick E3B 3Z2

**Joel Michaud**

Tel: (506) 458-1989  
Fax: (506) 458-1127  
Email: [jmichaud@pinklarkin.com](mailto:jmichaud@pinklarkin.com)

Lawyers for the Active Members of the New Brunswick Regional Council of Carpenters, Millwrights and Allied Workers, Local 2450

**PINK LARKIN**

Suite 400, 1583 Hollis Street  
Halifax, NS B3J 2M4

**Ron Pink**

Tel: (902) 423-7777  
Fax: (902) 423-9588  
Email: [rpink@pinklarkin.com](mailto:rpink@pinklarkin.com)

Lawyers for Morneau Sobeco, in its capacity as Administrator of the NB Terminated Pension Plans

- 5 -

**CHARBONNEAU TREMBLAY AVOCATS, S.E.N.C.**  
 515, 37e avenue  
 Lasalle, Québec, H8P 3A4

**Marie-Pier Charbonneau / Soleil Tremblay**  
 Tel: (514) 364-4822  
 Fax: (514) 364-6499  
 Email: [mpcharbonneau.ctavocats@gmail.com](mailto:mpcharbonneau.ctavocats@gmail.com)  
[stremblay.ctavocats@gmail.com](mailto:stremblay.ctavocats@gmail.com)  
 Lawyers for Bessette & Boudreau Inc.

**HEROLD LAW, P.A.**  
 25 Independence Blvd.  
 Warren, NJ 07059 U.S.A.

**Gary S. Jacobson**  
 Tel: (908) 647-1022  
 Fax: (908) 647-7721  
 E-mail [gjacobsen@heroldlaw.com](mailto:gjacobsen@heroldlaw.com)  
 Lawyers for Transport Systems Inc.

**SHIBLEY RIGHTON LLP**  
 250 University Avenue, Suite 700  
 Toronto, Ontario M5H 3E5

**Thomas McRae**  
 Tel: (416) 214-5206  
 Fax: (416) 214-5400  
 Email: [Thomas.McRae@shibleyrighton.com](mailto:Thomas.McRae@shibleyrighton.com)  
 Co-Counsel for the Informal Steering Committee of Fraser Papers' Salaried Retirees Committee

**LOUIS BÉRUBÉ**  
 Email: [lbérubé1@nb.sympatico.ca](mailto:lbérubé1@nb.sympatico.ca)

On Behalf of Louis Berube, Annik Berube, Remika Berube by her litigation Louis Berube,  
 Johnathan Berube by his litigation guardian Louis Berube, Sebastian berube by his  
 litigation guardian Louis Berube

**FASKEN MARTINEAU DuMOULIN LLP**  
 66 Wellington Street West  
 Suite 4200, Toronto-Dominion Bank tower  
 Toronto-Dominion Centre  
 Toronto, ON M5K 1N6

**Stuart Brotman**  
 Tel: (416) 865-5419  
 Fax: (416) 364-7813  
 Email: [sbrotman@fasken.com](mailto:sbrotman@fasken.com)  
 Lawyers for E.I. du Pont de Nemours and Company

- 6 -

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
44<sup>TH</sup> Floor, 1 First Canadian Place  
Toronto, Ontario M5X 1B1

**Jay A. Swartz / Robin B. Schwill / Natasha vandenHoven / Matthew Gottlieb**

Tel: (416) 863-0900  
Fax: (416) 863-0871  
Email: [jswartz@dwpv.com](mailto:jswartz@dwpv.com)  
[rschwill@dwpv.com](mailto:rschwill@dwpv.com)  
[nvandenHoven@dwpv.com](mailto:nvandenHoven@dwpv.com)  
[MGottlieb@dwpv.com](mailto:MGottlieb@dwpv.com)

Lawyers for the Retirees and Salaried Employees of the Applicants

**NORMANDIN BEAUDRY**

1130, rue Sherbrooke Ouest  
Suite 1100  
Montreal, QC H3A 2M8

**Richard Bourget**

Tel: (514) 285-1122  
Fax: (514) 285-1199  
Email: [rbouget@normandin-beaudry.ca](mailto:rbouget@normandin-beaudry.ca)

**HONOR S. HEATH, ESQ.**

Northeast Utilities Service Company  
Legal Department  
107 Selden Street, Berlin, CT 06037  
P.O. Box 270  
Hartford, CT 06141-0270

Tel: (860) 665-4865  
Fax: (860) 665-5507  
Email: [heaths@nu.com](mailto:heaths@nu.com)  
Lawyers for Public Service Company of New Hampshire

**VERILL DANA LLP**

One Portland Square  
Portland, Maine 04112-0586

**Roger A. Clement, Jr.**

Tel: (207) 253-4412  
Fax: (207) 774-7499  
Cell: (207) 841-7331  
Email: [rclement@verrilldana.com](mailto:rclement@verrilldana.com)  
Lawyers for Montreal Maine & Atlantic Railway, Ltd.

- 7 -

**MINISTRY OF THE ATTORNEY GENERAL**

Legal Services Branch  
Financial Services Commission of Ontario  
5160 Yonge Street, P.O. Box 85  
Toronto, ON M2N 6L9

**Alena Thouin / Deborah McPhail**

Tel: (416) 590-7238  
Fax: (416) 590-7556  
Email: [alena.thouin@fsco.gov.on.ca](mailto:alena.thouin@fsco.gov.on.ca)  
[deborah.mcphail@fsco.gov.on.ca](mailto:deborah.mcphail@fsco.gov.on.ca)

Lawyers for Superintendent of Financial Services

**REED SMITH, LLP**

599 Lexington Avenue, 30th Floor  
New York, NY 10022

**Nicole O'Sullivan**

Tel: (212) 549-0234  
Fax: (212) 521-5450  
Email: [nosullivan@reedsmit.com](mailto:nosullivan@reedsmit.com)  
Counsel for General Electric Capital Corporation and NMHG Financial Services, Inc.

**THE BANK OF NEW YORK MELLON GLOBAL CORPORATE TRUST**

Default Administration Group  
101 Barclay Street - 8W  
New York, NY 10286

**David M. Kerr**

Tel: (212) 815-5650  
Fax: (732) 667-9322  
Email: [david.m.kerr@bnymellon.com](mailto:david.m.kerr@bnymellon.com)  
Bank of New York Mellon as Trustee.

**FOX, HEFTER, SWIBEL, LEVIN & CAROLL, LLP**

200 West Madison Street--Suite 3000  
Chicago, IL 60606

**Margaret M. Anderson**

Tel: (312) 224-1224  
Email: [panderson@fhslc.com](mailto:panderson@fhslc.com)  
Lawyers for Old Republic Insurance Company

- 8 -

**PENSION BENEFIT GUARANTY CORPORATION**  
1200 K St., NW  
Washington, DC 20005

**Eric Field**  
Tel: (202) 326-4020 Ext. 3987  
Email: [field.eric@pbgc.gov](mailto:field.eric@pbgc.gov)

**CHAITONS LLP**  
Barristers and Solicitors  
185 Sheppard Avenue West  
Toronto, ON M2N 1M9

**Harvey Chaiton**  
Tel: (416) 218-1129  
Fax: (416) 218-1849  
Email: [harvey@chaitons.com](mailto:harvey@chaitons.com)  
Lawyers for Counsel RB Capital, LLC

**GOWLING LAFLEUR HENDERSON LLP**  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto, ON M5X 1H5

**Clifton P. Prophet / Robin D. Walker**  
Tel: (416) 862-3509 / 862-4401  
Fax: (416) 862-7661  
Email: [clifton.prophet@gowlings.com](mailto:clifton.prophet@gowlings.com) / [robin.walker@gowlings.com](mailto:robin.walker@gowlings.com)  
Lawyers for LMS Acquisition Corporation and Montreal, Maine & Atlantic Railway, Ltd.

**LANG MICHENER LLP**  
Lawyers - Patent & Trade Mark Agents  
Brookfield Place, 181 Bay Street, Suite 2500  
Toronto, ON M5J 2T7

**John S. Contini / Sheryl Seigel**  
Tel: (416) 360-8600  
Fax (416) 365-1719  
Email: [jcontini@langmichener.ca](mailto:jcontini@langmichener.ca) / [sseigel@langmichener.ca](mailto:sseigel@langmichener.ca)  
Lawyers for MGP-Papier, Inc.

**THEALL GROUP LLP**  
4 King Street West  
Suite 1410  
Toronto, ON M4H 1B6

**Lawrence G. Theall / Maxine Mongeon**  
Tel: (416) 304-0115  
Fax: (416) 304-1395  
Email: [ltheall@theallgroup.com](mailto:ltheall@theallgroup.com) / [mmongeon@theallgroup.com](mailto:mmongeon@theallgroup.com)  
Lawyers for Domtar Industries Inc.

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, Ontario, Canada N6A 5R8

**Alissa K. Mitchell**  
Tel: (519) 931-3516  
Fax: (519) 858-8511  
Email: [amitchell@millerthomson.com](mailto:amitchell@millerthomson.com)  
Lawyers for KMW Energy Inc.

**VINCENT DAGENAIS GIBSON LLP**  
Suite 600  
325 Dalhousie Street  
Ottawa, ON K1N 7G2

**Charles Gibson**  
Tel: (613) 241-2701  
Fax: (613) 241-2599  
Email: [charles.gibson@vdg.ca](mailto:charles.gibson@vdg.ca)  
Lawyers for the Regie des Rentes du Quebec

**MORNEAU SOBECO**  
5151 George Street, Suite 1700  
Halifax, NS B3J 1M5

**Paul Chang**  
Tel: (902) 474-3239  
Fax: (902) 420-1932  
Email: [pchang@morneausobeco.com](mailto:pchang@morneausobeco.com)  
Lawyers for Administrator of the NB Pension Plans

- 10 -

**GARDINER ROBERTS**  
40 King Street West, Suite 3100  
Scotia Plaza  
Toronto, ON M5H 3Y2

**Jeffrey Rosekat**  
Tel: (416) 865-6662  
Fax: (416) 865-6636  
Email: [jrosekat@gardiner-roberts.com](mailto:jrosekat@gardiner-roberts.com)  
Lawyers for RHI Canada Inc.

**STEWART MCELVEY**  
44 Chipman Hill, Suite 1000  
Brunswick House  
Saint John, NB E2L 4S6

**Misty Watson**  
Tel: (506) 632-1970  
Fax: (506) 652-1989  
Email: [mwatson@smss.com](mailto:mwatson@smss.com)  
Lawyers for Gagnon Ornamental Works Ltd.

**NELLIGAN O'BRIEN PAYNE**  
50 O'Connor, Suite 1500  
Ottawa, ON K1P 6L2

**Steven Levitt/Christopher Rootham/Mark Seebaran**  
Tel: (613) 231-8283  
Fax: (613) 788-2369  
Email: [steven.levitt@nelligan.ca](mailto:steven.levitt@nelligan.ca)  
[christopher.rootham@nelligan.ca](mailto:christopher.rootham@nelligan.ca)  
[mark.seebaran@nelligan.ca](mailto:mark.seebaran@nelligan.ca)

Co-Counsel for the Information Steering Committee of Fraser Papers' Salaried Retirees Committee

**MINISTRY OF THE ENVIRONMENT LEGAL SERVICES BRANCH**  
10-135 St. Clair West  
Toronto, ON M4V 1P5

**Mario Faieta**  
Tel: (416) 314-6482  
Fax: (416) 585-4003  
Email: [mario.faieta@ontario.ca](mailto:mario.faieta@ontario.ca)

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**TOWN OF MASARDIS**

26 School Street  
Masardis, ME 04759

**Judy MacDonald**

Tel: (207) 435-2841  
Email: [macdjh@yahoo.com](mailto:macdjh@yahoo.com)  
Town Manager of Masardis, ME

**DON COREY**

Email: [don.corey@twinriverspaper.com](mailto:don.corey@twinriverspaper.com)

**MARK FITZHERBERT**

Email: [martk.fitzherbert@twinriverspaper.com](mailto:martk.fitzherbert@twinriverspaper.com)

**RINO GIRARD**

Email: [rino.girard@twinriverspaper.com](mailto:rino.girard@twinriverspaper.com)

Trustees under the Declaration and Agreement of Trust dated December 2, 2010

**DORIS LAVOIE**

Email: [dodu55@hotmail.com](mailto:dodu55@hotmail.com)

**JEAN CLAVETTE**

Email: [jeany@nb.sympatico.ca](mailto:jeany@nb.sympatico.ca)

**MARIO THERIAULT**

81 Boul. de la Capitale  
Edmundston, NB E3V 5A2  
Trustees under the Declaration and Agreement of Trust dated April 28, 2010

**ITW SHIPPERS PRODUCTS**

1203 N. Main Street  
Mount Pleasant, TN 38474

**Lee Grimmel**

Email: [lee.grimmel@itwshippers.com](mailto:lee.grimmel@itwshippers.com)

**HUBER RESOURCES CORP.**

1141 Main Street  
Old Town, ME 04468

**Christopher Washburn**

Email: [c.washburn@huber.com](mailto:c.washburn@huber.com)

- 12 -

**TOWN OF ASHLAND**  
20 School Street  
Ashland, ME 04732

**Deb Carney**  
Email: [deb.carney@hotmail.com](mailto:deb.carney@hotmail.com)  
Tel: (207) 435-2311

**BUCKMAN LABORATORIES**  
1256 McLean Blvd.  
Memphis, TN 38108

**Rebecca Ahmed**  
Tel: (901) 272-8320  
Email: [rahmed@buckman.com](mailto:rahmed@buckman.com)

**CIBA SPECIALTY CHEMICALS CORPORATION** CORPORATION (n.k.a. CIBA  
540 White Plains Road  
Tarrytown, NY 10591

**Andrew R. Negele**  
Tel: (207)  
Email: [andrew.negele@basf.com](mailto:andrew.negele@basf.com)

**NMHG FINANCIAL SERVICES, INC.**  
44 Old Ridgebury Road  
Danbury, CT 06810

**Rhonda Estling**  
Tel: (319) 841-7175  
Email: [Rhonda.estling@ge.com](mailto:Rhonda.estling@ge.com)

**MOTION INDUSTRIES, INC.**  
1605 Alton Road  
Birmingham, AL 35210

**John Ryder**  
Tel: (207) 478-2926  
Email: [john.ryder@motion-ind.com](mailto:john.ryder@motion-ind.com)

- 13 -

**OSLER, HOSKIN & HARCOURT LLP**  
P.O. Box 50  
1 First Canadian Place  
Toronto, ON M5X 1B8

**Attention: Steven Golick**  
Tel: (416) 362-2111  
Fax: (416) 862-6666  
Email: [sgolick@osler.com](mailto:sgolick@osler.com)  
Lawyers for the Town of Madawaska

**BUCHANAN INGERSOLL & ROONEY PC**  
1000 West Street, 14th Floor  
Wilmington, DE 19801-1054

**Peter J. Duhig**  
Tel: (302) 552-4249  
Fax: (302) 552-4295  
Email: [peter.duhig@bipc.com](mailto:peter.duhig@bipc.com)  
Lawyers for Caterpillar Financial Services Corporation

**CATERPILLAR FINANCIAL SERVICES CORPORATION**  
2120 West End Avenue  
Nashville, TN 37203

**John Tietjen**  
**Brett T. Parks**  
Tel: (615) 341-1511/(615) 341-1103  
Fax: (615) 341-3892  
Email: [john.tietjen@cat.com](mailto:john.tietjen@cat.com)  
[brett.parks@cat.com](mailto:brett.parks@cat.com)

**KEVIN ROBINSON**  
**BARBARA ROBINSON**  
90 Levesque Mill Road  
Ashland, ME 04732

**MAINE DEPARTMENT OF LABOUR**  
54 State House Station  
Augusta, ME 04333

**Neena Quirion**  
Email: [neene.quirion@maine.gov](mailto:neene.quirion@maine.gov)

- 14 -

MAINE DEPARTMENT OF TRANSPORTATION  
Child Street  
16 State House Station  
August, ME 04333-0016

Email: [legal.mainedot@maine.gov](mailto:legal.mainedot@maine.gov)

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  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NOTICE OF MOTION  
(Returnable January 12, 2011)

**ThorntonGroutFinnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Canadian Pacific Tower  
Toronto-Dominion Centre  
Toronto, ON M5K 1K7

**D.J. Miller** (LSUC# 34393P)  
**Kyla E.M. Mahar** (LSUC# 44182G)  
Tel: 416-304-1109  
Fax: 416-304-1313

Lawyers for the Applicants

**TAB 2**

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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./PAPIERS FRASER INC.**, FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC

Applicants

**AFFIDAVIT OF GLEN McMILLAN**  
(*Sworn on January 11, 2011*)

I, Glen McMillan, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Restructuring Officer ("CRO") of Fraser Papers Inc. ("Fraser Papers" or the "Company") and Secretary of the other 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 believe it to be true.
2. All monetary amounts referred to in this Affidavit are in United States (US) currency unless otherwise stated, and all capitalized terms used herein and not otherwise defined are as defined in the Consolidated Plan of Compromise and Arrangement filed by the Applicants on November 29, 2010, as same may be amended (the "Plan").
3. This Affidavit was originally intended to be sworn and filed in support of a Motion brought by the Applicants for the relief set out in the Notice of Motion dated January 5, 2011 (the "Notice of Motion") and the Applicants' request for:

- (a) an Order approving and sanctioning the Plan and granting certain ancillary relief set out therein (the “**Sanction Order**”);
- (b) an Order approving the Creditor Trust Agreement and appointing the initial trustee to act in respect of the Creditor Trust (the “**Trust Order**”); and
- (c) an Order, among other things, vesting the Applicants’ right, title and interest in and to (i) the FPHI Shares in the Plan Sponsor; and (ii) the Included Property in the Purchased Companies (the “**Vesting Order**”).

4. In accordance with an Order of this Court dated December 3, 2010, as amended by Order dated December 16, 2010 (collectively, the “**Meeting Order**”), a meeting of Affected Creditors to vote on the Plan was held on January 10, 2011 (the “**Meeting**”). At the Meeting, Affected Creditors holding 94.8% of all claims (by number) who were entitled to vote on the Plan voted in favour of acceptance of the Plan. However, large claims filed in respect of the Canadian pension plans voted to reject the Plan, and accordingly the dollar threshold required under the CCAA could not be met and the Plan was not approved.

5. The Applicants are not seeking any relief on January 12, 2011. This Affidavit is filed for the purpose of providing the Applicants’ stakeholders and this Honourable Court with an update as to recent developments and the status of the CCAA proceeding.

## **I. KEY ASPECTS OF RESTRUCTURING**

6. Early in the CCAA Proceedings, the Applicants, in consultation with the Monitor, determined that they would be unable to continue their operations over the long term in their present form. The integrated nature of the Applicants’ operations, whereby all steps required for the production of paper were undertaken through inter-related companies and operations, was not viable and did not provide sufficient flexibility to address changing market conditions. In addition, due to the ongoing significant losses experienced by the Applicants over several years, there was virtually no access to the additional financing necessary to continue operations, even if the substantial pre-filing liabilities and long-term obligations could be addressed through a Plan.

7. The Applicants therefore focussed their efforts on finding ways to maximize value for the benefit of their stakeholders. These efforts were not limited to realizing upon all assets and making a distribution of net proceeds to creditors. Rather, the Applicants considered the overall interests of their stakeholders including employees, retirees, pension regulators, customers, suppliers, trade creditors, and the social and economic interests of the provincial, state and local communities in which they had operated for many years. Those interests required a more comprehensive solution.

8. The Applicants faced an additional challenge at the time of filing, in that they had not generated positive cash flow for many years, and have not done so during the CCAA Proceedings. This required a significant commitment of new financing, and ongoing support from existing lenders and the DIP Lender.

9. The Applicants had limited options to offer creditors through a Plan, in view of the fact that there would be no ongoing operations that continued to be owned by the Applicants following implementation of the Plan.

10. In addition to the cash consideration received through various going-concern sales concluded by the Applicants, the value created for the Applicants' stakeholders in the CCAA Proceedings includes the following:

- Future employment for the Applicants' hourly and salaried employees at all locations in Quebec, New Brunswick and Maine with the prospect for future employment in New Hampshire;
- Ability for certain employees to continue making contributions to a registered pension plan on a defined contribution basis through ongoing employment;
- A 49% common equity interest in Twin Rivers, the purchaser of the Applicants' specialty papers business (the "**Common Shares**");
- An active role in Twin Rivers' future operations through two representatives on the five-person board of directors nominated by each of: (i) the Communications, Energy,

Paperworkers Union of Canada (the “**CEP**”) and (ii) the Applicants’ other unsecured creditors;

- Promissory notes payable by Twin Rivers in the aggregate amount of approximately \$44 million (the “**Promissory Notes**”), adjusted in accordance with the Twin Rivers APA;
- Mitigation of the impact of pension deficits in the pension plan for salaried employees and the pension plan for hourly employees (the “**NB Salaried Plan**” and the “**NB Hourly Plan**”, respectively and collectively, the “**NB Plans**”) through the negotiation of a comprehensive settlement involving a legislative amendment and an extended period of plan wind-up over 8 years to permit the possibility of market recovery of the pension plan assets;
- Negotiation of agreements with the New Brunswick Superintendent of Pensions (the “**NB Superintendent**”), the Administrator appointed over the NB Plans and the Ontario Pension Benefit Guaranty Fund to ensure a seamless administration of benefits, regardless of the location of the employee or retiree;
- Negotiation of the termination of the U.S. pension plan on a consensual basis to ensure that affected beneficiaries could access protections afforded by the Pension Benefit Guarantee Corporation (“**PBGC**”) on a timely basis;
- Negotiation of the return of letters of credit posted in favour of the Wisconsin Department of Natural Resources having a face value of \$2,722,475, secured by a charge in priority to unsecured creditors, for no cash consideration payable by the Applicants;
- Negotiation of the conversion of approximately CAD\$38 million in secured debt ranking ahead of unsecured creditors, to preference shares in Twin Rivers; and
- The transfer of significant liabilities, including long-term environmental obligations and benefits obligations to employees and retirees, to the purchasers of various operations.

11. The various sale transactions undertaken by the Applicants have been described in prior Affidavits and Monitor's Reports filed in the CCAA Proceedings, and are discussed later in this Affidavit.

***A. Representation Orders***

12. Early in the Proceedings motions were brought by various parties seeking Orders to represent the interest of employees, former employees and retirees. Three separate Orders were issued on September 17, 2009, wherein:

- (i) a Committee ("CESAR") was formed for the purpose of representing the interests of all salaried employees and retirees and all other employees and retirees who were not covered by other Orders issued on that date and Davies Ward Phillips and Vineberg LLP was appointed by the Court as representative counsel of CESAR ("Representative Counsel");
- (ii) the CEP was authorized to continue to represent its active union members and to represent the interests of all the CEP union retirees and pensioners (the "CEP Representation Order"); and
- (iii) the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union (the "USW") was authorized to continue to represent its active union members and to represent the interests of USW union retirees and pensioners.

13. In support of its motion for the CEP Representation Order, the CEP filed an affidavit sworn by David Coles, President of the CEP, on August 28, 2009 (the "Coles Affidavit"). Annexed hereto and marked as Exhibit "A" is a true copy of the Coles Affidavit (with only Exhibit "H" attached, as all other exhibits are lengthy collective agreements).

14. Multiple motions were before the Court early in this proceeding as to which firms and parties were best suited to represent the interests of persons whose interests may otherwise be vulnerable, if they were not represented by counsel. Consideration was also given by the Applicants and the Monitor as to whether it would be appropriate for a union to represent the

interests of both active employees and retirees. As set out in paragraphs 26 and 27 of the Monitor's Fourth Report to the Court dated September 3, 2009, the Monitor noted as follows:

26. As noted above, the Monitor understands that existing legal counsel for each of the three unions proposes to represent the interests of the former members of each respective union, as well as each union's active members. The Applicants and the Monitor support such positions, subject to matters relating to the payment of costs.

27. The Monitor also notes that, as illustrated in Table 1 above, the number of retirees in all five DB Pension Plans outnumber the active members in each plan, such that in any vote of DB Pension Plan members which requires a majority, the active members cannot "out vote" the retirees.

15. I have been actively involved in negotiations with representatives of the CEP and their counsel on behalf of the CEP active members and the CEP retirees and pensioners, including in the execution of the NB Hourly Agreement (as defined and described in detail below).

16. Until very recently I believed that the CEP and its counsel Caley Wray was, in fact, representing the interests of the CEP retirees and pensioners, in addition to the active members. In mid-December, 2010, I spoke with Conrad Pelletier, a retired CEP member residing in New Brunswick, who advised that the CEP took the position that they were not representing the interests of the CEP retirees and pensioners in respect of a decision of the NB Superintendent issued on November 25, 2010 (the "**November Pension Decision**"). A copy of the November Pension Decision is annexed hereto and marked as Exhibit "B". The impact of this issue is addressed later in this Affidavit.

#### *B. Wind-Up of Pension Plans*

##### *(i) New Brunswick Pension Plans*

17. Since the commencement of the CCAA Proceedings, the Applicants have worked closely with the NB Superintendent with the goal of minimizing the impact of the deficits under the NB Plans. This included discussions and meetings among the NB Superintendent, the Deputy Minister of Justice and Consumer Affairs/Office of the Attorney General (the "**NB Deputy Minister**"), the Applicants' counsel Thornton Grout Finnigan LLP ("TGF"), the

Applicants' pension and employment counsel Hicks Morley Hamilton Stewart Storie LLP ("Hicks Morley") and Morneau Sobeco, the actuarial firm retained by the NB Superintendent that was ultimately appointed as Administrator of the NB Plans on March 10, 2010 by the NB Superintendent.

18. An asset purchase agreement for the sale of the specialty papers business was approved by the Court on December 10, 2009 as a stalking horse bid (the "**SPB Transaction**"). A condition to the completion of the SPB Transaction was the termination of the defined benefit NB Plans and the establishment of new defined contribution pension plans by the purchaser.

19. An agreement was reached on February 24, 2010 among the Applicants, the CEP (which included national representatives and locals in the Provinces of Quebec and New Brunswick), the New Brunswick Regional Council of Carpenters, Millwrights and Allied Workers (the "**CMAW**"), the NB Superintendent and the NB Deputy Minister (the "**NB Hourly Agreement**"). Paul Chang of Morneau Sobeco attended with the NB Superintendent at TGF's offices in Toronto for the "around the clock" negotiation that led to the execution of the NB Hourly Agreement. Annexed hereto and marked as Exhibit "C" is a true copy of the final fully-executed NB Hourly Agreement in respect of the NB Hourly Plan, without lengthy schedules.

20. The terms of the NB Hourly Agreement were approved by the Court pursuant to an Order dated February 24, 2010 and, by consent of the parties, certain corrections to the form of the agreement was approved by further Order dated March 22, 2010.

21. A similar agreement was also reached among the Applicants, the NB Superintendent, the NB Deputy Minister, and Representative Counsel on March 17, 2010 in respect of the NB Salaried Plan (the "**NB Salaried Agreement**" and collectively with the NB Hourly Agreement, the "**Pension Agreements**"). By Order dated March 30, 2010 the NB Salaried Agreement was also approved by the Court.

22. In order to satisfy the conditions precedent under the asset purchase agreement for the SPB Transaction and to facilitate the implementation of the terms of the Pension Agreements,

the Province of New Brunswick passed Bill 51, being an Act to amend that Province's *Pension Benefits Act*, which received Royal Assent on March 26, 2010.

23. The NB Plans were then wound-up in their entirety by Order issued by the NB Superintendent in accordance with the terms of the Pension Agreements.

24. The timing of the final wind-up of the NB Plans pursuant to an Order issued by the NB Superintendent was closely coordinated between the Applicants and the NB Superintendent to ensure that the effective date of wind-up of the NB Plans was one day prior to the closing of the SPB Transaction, as the closing of the SPB Transaction would be effective as at 12:01 a.m. on the date of closing. Annexed hereto and marked as Exhibit "D" is a true copy of certain emails exchanged between the Applicants' counsel TGF and the NB Superintendent to coordinate the wind-up of the NB Plans to coincide with the closing of the SPB Transaction on April 28, 2010. Annexed hereto and marked as Exhibit "E" is a true copy of the Order of the NB Superintendent dated April 28, 2010 providing for a full wind-up of the NB Plans effective on April 27, 2010.

25. Court approval of the Pension Agreements was obtained and the wind-up of the NB Plans was completed to satisfy the conditions precedent necessary for completion of the SPB Transaction, as described above. Morneau Sobeco had been appointed as Administrator of the NB Plans by the NB Superintendent on March 10, 2010, as contemplated by the Pension Agreements.

26. Separate outside trusts were established for each of the NB Hourly Plan and the NB Salaried Plan in accordance with the Pension Agreements. These two trusts, together with the Creditor Trust for which court approval had originally been sought on this motion, were to comprise the three trusts that would hold all consideration available for the Applicants' Affected Creditors on implementation of the Plan, other than the Aggregate Implementation Payment Amount.

27. Due to the deficits under the NB Plans and in accordance with the Pension Agreements, pension benefits payable from the NB Plans were reduced from 100% to approximately 69% effective May 1, 2010, taking into account the estimated consideration to be received by the

Applicants under the SPB Transaction, thereby mitigating the more severe reduction that would have otherwise been experienced by retirees receiving a pension.

28. Proceedings in New Brunswick relating to the deficit under the NB Hourly Plan are discussed in further detail later in this Affidavit.

*(ii) U.S. Pension Plan*

29. The terms upon which the pension plan for U.S. employees and retirees (the “**US Plan**”) would be wound up and taken over by the PBGC were negotiated by the Applicants with the PBGC. Pursuant to a Notice of Determination issued by the PBGC terminating the Plan and appointing the PBGC as the Trustee, and the execution of an Agreement for the Appointment of the Trustee and Termination of Plan by the Applicants on August 26, 2010, the US Plan was terminated effective April 28, 2010 and assumed by PBGC effective August 31, 2010.

*(iii) Quebec Pension Plans*

30. The Applicants had engaged in efforts to negotiate an arrangement with the Régie des Rentes du Québec (the “**Régie**”) with respect to the pension plans registered in the Province of Québec for the hourly and salaried employees (the “**Quebec Hourly Plan**” and the “**Quebec Salaried Plan**”, respectively and collectively, the “**Quebec Plans**”). Those efforts included a consensus pension proposal submitted to the Régie by the Applicants, the authorized representative for the beneficiaries of the Quebec Hourly Plan (the CEP), and the court-appointed representative counsel for the Quebec Salaried Plan (Representative Counsel).

31. The Régie advised by letter dated July 8, 2010, that the Minister has indicated that only the Bill 1 arrangements (extended to the Nortel retirees) would apply to retirees in the Quebec Plans.

32. On July 12, 2010, the Applicants received notice from counsel to the Régie that the Quebec Plans were to be terminated immediately, but in no event later than July 16, 2010. After further discussions between the Applicants and the Régie, the Quebec Plans were ultimately terminated as required on July 23, 2010 and the Applicants provided notice to the Quebec Plans and the Quebec Plans’ pension committees of the termination.

33. The Régie subsequently required the Applicants to revise the effective date of the termination of the Quebec Plans retroactively to April 30, 2010. The Applicants were uncertain as to whether they could legally terminate the Quebec Plans to a retroactive date, notwithstanding this request by the Régie. Accordingly, the Applicants and the Monitor agreed to lift the stay of proceedings and consent to an Order issued by the Régie requiring an amended notice of termination reflecting a termination date of April 30, 2010. The Applicants then issued an amended notice of termination on that basis.

### *C. Sale of Specialty Papers Business*

34. Pursuant to an Order dated April 6, 2010 (the “**April Order**”), the Applicants completed the SPB Transaction with Twin Rivers. The consideration received by the Applicants on closing of the SPB Transaction totalled approximately \$193 million following settlement of the purchase price adjustment and closing balance sheet.

35. In the Monitor’s Thirteenth Report to the Court dated November 1, 2010, the Monitor advised that there were two outstanding matters to be resolved in order to finalize the closing balance sheet and determine the final principal amount of the Promissory Notes payable by Twin Rivers to the Applicants. I have confirmed with John McKenna of the Monitor and Wayne Johnson of Twin Rivers that these two issues were resolved to the satisfaction of all parties.

36. On January 4, 2011, a final version of the closing balance sheet reflecting the resolution of these previously outstanding issues was sent to Twin Rivers for approval. Based on the final closing balance sheet, the Promissory Notes payable by Twin Rivers will be increased from an original principal amount of \$40 million to approximately \$44 million.

37. In addition to permitting the Applicants to repay significant secured debt owing to CIBC, CIT and realty taxes owing to various municipalities, the closing of the SPB Transaction provided real value and consideration including:

- (i) the Promissory Notes in the principal amount of approximately \$44 million; and

- (ii) the Common Shares having a face value ascribed on closing of the SPB Transaction of approximately \$24 million.

38. Since the closing of the SPB Transaction, Twin Rivers has been providing certain transitional services to the Applicants in order for the Applicants to maintain their accounting systems and to meet the Applicants' statutory reporting obligations at minimal cost. In addition, Twin Rivers is providing lumber sales support services.

39. In addition, the Applicants have performed certain services for Twin Rivers, the costs of which are recoverable under the Pulp and Paper Green Transformation Program sponsored by the Government of Canada ("PPGTP"). I am advised by Johanne Levesque Murray, an employee of Twin Rivers and do verily believe, that the amount of the credit owing by Twin Rivers to the Applicants is approximately CAD \$115,000 related to these services. These amounts are expected to be paid to the Applicants once Twin Rivers receives the related refund under the PPGTP.

40. In accordance with the asset purchase agreement for the SPB Transaction, \$10 million of the Promissory Notes received on closing were to be held by the Monitor in escrow until the earlier of (i) implementation of a plan of compromise and arrangement by the Applicants; or (ii) one year following the closing of the SPB Transaction (April 28, 2011).

41. The completion of the SPB Transaction provided considerable benefits to the Applicants' stakeholders, including employment for approximately 1,150 hourly and salaried employees. In addition, the ongoing operations provide a continuing source of business for many suppliers and significant benefits to the communities in the region.

#### *D. Sale of Thuroso, Quebec Mill*

42. Pursuant to an agreement of purchase and sale between the Applicants and Fortress Specialty Cellulose Inc. ("Fortress") dated March 18, 2010 the facility in Thuroso, Quebec (the "Thuroso Facility") was sold to Fortress, with a closing on April 30, 2010.

43. Cash proceeds in the amount of CDN\$3 million were received on closing. From these proceeds the Applicants paid property taxes including arrears for the period up to the closing

date in the aggregate amount of CDN\$1.4 million, vacation pay owed to the Applicants' employees at the Thurso Facility in the amount of CDN\$175,694 and other related amounts payable on closing.

44. In addition to the net proceeds, the Applicants also received payment of CDN\$1.7 million representing reimbursement by the Province of Quebec for the care and maintenance costs associated with keeping the Thurso Facility available for a potential re-start during the months of January, 2010 to April 30, 2010. This reimbursement was in accordance with an agreement negotiated by the Applicants with the Province of Quebec.

45. As a result of the Applicants' sale, almost all of the existing employees at the Thurso Facility received offers of employment from Fortress.

#### *E. Sale of Gorham, New Hampshire Mill*

46. As noted in my prior Affidavits filed with this Court, the Applicants made three separate attempts to sell the mill in Gorham, New Hampshire (the "**Gorham Mill**"). Each of the first two agreements were terminated as a result of the purchaser's inability or unwillingness to complete the transaction.

47. On November 27, 2010, the Applicants executed an agreement of purchase and sale with Counsel RB Capital LLC. On December 3, 2010, the Applicants obtained an Order authorizing and directing them to complete the sale of the Gorham Mill, and on December 16, 2010 the transaction was completed.

48. On closing, the Applicants received cash in the amount of \$2,695,722 together with an additional \$50,000 in consideration for an extension of the closing date by one week. After paying approximately \$81,800 for property taxes, net cash proceeds received by the Applicants on the sale of the Gorham Mill was approximately \$2.6 million.

49. The Applicants understand that the purchaser intends to restart the Gorham Mill, thereby providing an opportunity for future employment for the Gorham Mill employees.

*F. Sale of U.S. Companies and Maine Lumber Mills*

50. On November 25, 2010, the Applicants executed the Transaction Agreement with the Plan Sponsor, which was incorporated into the Plan. This transaction involves the purchase of the shares of Fraser Papers Holdings Inc. that are currently owned by Fraser Papers Inc. Fraser Papers Holdings Inc. owns directly or indirectly 100% of the Applicants' U.S. operating subsidiaries, including the Applicant that owns the lumber mills in Ashland and Masardis, Maine (the "Maine Lumber Mills").

51. The Monitor's Fifteenth Report dated December 2, 2010 (the "Fifteenth Report"), and an Affidavit I previously swore on November 29, 2010 that was filed in this proceeding, each describe in detail the terms of the Transaction Agreement, the consideration payable to the Applicants, and the basis upon which the Applicants and the Monitor supported approval of the Plan and completion of the Transaction Agreement as being in the best interests of the Applicants' creditors.

52. Acceptance of the Plan and completion of the Transaction Agreement would have provided an opportunity for continuation of the operations at the Maine Lumber Mills and was a critical feature to the Applicants' ability to repay amounts owing to the DIP Lender. It was also expected that the proceeds received under the Transaction Agreement would permit a distribution of cash to Affected Creditors under the Plan in the form of the Implementation Payment.

53. On January 4, 2011, I received a letter from Bill Manzer, the Senior Vice President Business Strategy and Projects of Fraser Papers tendering his resignation effective January 14, 2011. Bill Manzer is the only remaining officer and employee of Fraser Papers other than myself and is responsible for the operations at the Maine Lumber Mills. As the Plan was rejected and will not be implemented by January 14, 2011 as had originally been contemplated, I will now take over responsibility for overseeing the operations of the Maine Lumber Mills.

## II. NB HOURLY PLAN

### *A. NB Hourly Agreement*

54. As described earlier in this Affidavit, the NB Hourly Agreement was executed to address all aspects of the NB Hourly Plan, the manner in which the deficit under the NB Hourly Plan would be addressed, and to provide a complete and final release in respect of, among other things, the NB Hourly Plan as a condition precedent to the completion of the SPB Transaction.

55. The NB Hourly Agreement was executed after extensive negotiations which culminated in around-the-clock meetings involving all parties at the offices of TGF, in the 48 hours leading directly into the February 24, 2010 court hearing. Representatives of the national CEP as well as its local unions were in attendance with the Applicants and their counsel, as was the NB Superintendent and Paul Chang of Morneau Sobeco, the Monitor and its counsel and Representative Counsel.

### *B. Prior Court Orders and Releases*

56. The April Order was issued in connection with a sale of the SPB Transaction following extensive negotiation of its terms among various parties, which negotiations lasted throughout the day and into the evening on the date of the court hearing. The April Order also contained releases in favour of various parties. Annexed hereto and marked as Exhibit "F" is a true copy of the April Order, without lengthy schedules.

57. The April Order was issued as a condition of the SPB Transaction which, if completed, would provide significant benefits to the Applicants' creditors and others. As with the Pension Agreements, the releases in favour of the Applicants, their directors and officers and others who could claim through or against them, were intended to ensure that no claim whatsoever (save and except for fraud or gross negligence), relating to any facts or circumstances whether known or unknown, could subsequently be brought by anyone at any future time, relating to anything including the NB Plans.

58. The obtaining of full and final releases in favour of the Applicants, their directors and officers and others was a fundamental term of the NB Hourly Agreement, which was approved

by Order dated February 24, 2010, and a fundamental term of the April Order, which permitted a closing of the SPB Transaction.

59. I am advised by D.J. Miller of TGF and can also attest, based on my attendance during the negotiations at court on April 6, 2010, that extensive input was received from various parties in connection with the wording of the April Order. Notice of the Order to be sought by the Applicants had been provided to the NB Superintendent, and comments were invited from the NB Superintendent and Morneau Sobeco, including relating to the releases.

60. On December 2, 2010, on the eve of the Applicants' motion to obtain the Meeting Order, the Applicants' counsel, D.J. Miller of TGF, received a letter from the law firm Pink Larkin who identified themselves for the first time as counsel for Morneau Sobeco. The letter was previously annexed as "F" to my Affidavit sworn on December 2, 2010 and for ease of reference is annexed hereto and marked as Exhibit "G".

61. To my knowledge, this letter represented the first time that any concern had been raised by Morneau Sobeco as to the terms of any releases in favour of the Applicants or its directors and officers, including in connection with: (i) the NB Hourly Agreement negotiated in February 2010 in the presence of Paul Chang of Morneau Sobeco; and (ii) the April Order, a draft of which had been provided to Morneau Sobeco by the NB Superintendent and which the Applicants had specifically requested comments from Morneau Sobeco and the NB Superintendent.

62. I am advised by D.J. Miller of TGF and do verily believe that the law firm Pink Larkin has been on the Service List since the commencement of the CCAA proceeding as counsel for the active members of the CMAW, but not the retirees. Pink Larkin now also represents Morneau Sobeco, the Administrator of the NB Plans. I am also advised by D.J. Miller of TGF that Pink Larkin has not filed a Notice of Appearance on behalf of Morneau Sobeco at any time in this proceeding.

63. In response to Pink Larkin's letter dated December 2, 2010, the Applicants' counsel, TGF, corresponded with Pink Larkin by letter dated December 2, 2010 a true copy of which is

annexed hereto and marked as Exhibit "H" and which was previously annexed as Exhibit "G" to my Affidavit sworn on December 2, 2010.

64. TGF's letter dated December 2, 2010 requested that Pink Larkin confirm whether Morneau Sobeco was alleging fraud or gross negligence on the part of any party who was previously released pursuant to the April Order. I am advised by D.J. Miller of TGF and do verily believe that to date no response has been received to that question.

65. I am advised by Elizabeth Brown of Hicks Morley and D.J. Miller of TGF that on December 17, 2010 they had a telephone discussion with Ron Pink and Betina Quistgaard of Pink Larkin regarding, among other things, the releases in favour of the Applicants and its directors and officers under the Plan.

66. Following that telephone discussion, on December 20, 2010 the Applicants received a letter from Pink Larkin in the form annexed hereto and marked as Exhibit "I".

67. On December 20, 2010 the Applicants' counsel TGF corresponded with Pink Larkin with respect to the issues raised in that correspondence, a true copy of which is annexed hereto and marked as Exhibit "J".

68. Morneau Sobeco attended with and assisted the NB Superintendent during the negotiations among all parties leading to the execution and implementation of the NB Hourly Agreement which has been approved or confirmed by three Court Orders issued in this proceeding. Morneau Sobeco attended meetings in Toronto with the NB Superintendent, representatives of the CEP, the Monitor, the Applicants and all relevant counsel in connection with the NB Hourly Agreement.

69. Morneau Sobeco had actual notice of the relief sought by the Applicants on the April 6, 2010 motion, as they had received from the NB Superintendent a draft of the Order sought by the Applicants, prior to the motion materials being served on the Service List in this proceeding. Morneau Sobeco raised no concerns at any time prior to December 2, 2010 with respect to the releases in favour of any party under the NB Hourly Agreement, the February 24, 2010 Court Order, or the April Order.

### ***C. NB Pension Proceedings***

70. As set out earlier in this Affidavit, on November 25, 2010 the NB Superintendent issued the November Pension Decision revoking the registration of a portion of the most recently restated text of the NB Hourly Plan.

71. The restated NB Hourly Plan was filed with the NB Superintendent on April 29, 2008 and was effective as of January 1, 2005. The NB Superintendent issued a Notice of Registration for the restated NB Hourly Plan on April 1, 2010, almost two years after it was filed with the NB Superintendent for registration.

72. The issuance of the November Pension Decision followed what I now understand to have been a lengthy review of the past administration of the NB Hourly Plan conducted by Morneau Sobeco in its capacity as current pension plan Administrator.

73. Over the course of many months, Morneau Sobeco contacted Bernie LeBlanc, Director of Pensions for the Applicants, on numerous occasions seeking documentation, information and answers to questions about the NB Hourly Plan's historical administration. I am advised by Bernie LeBlanc that Paul Chang requested information relating to the benefits provided to specific individual plan members without informing Bernie LeBlanc that he was conducting a review. I was not made aware of this ongoing review by Morneau Sobeco until November 1, 2010 through my discussions with Bernie LeBlanc.

74. On November 4, 2010, the NB Superintendent advised me that Morneau Sobeco had been conducting a review into the past administrative practices of the NB Hourly Plan and that she was expecting to issue an order within a few days.

75. Through these discussions with Bernie LeBlanc and the NB Superintendent, I learned that Morneau Sobeco's review was pursuant to their interpretation of plan text prior to a 2005 restatement. In Morneau Sobeco's opinion, the restated pension plan text, which had been restated to clarify any ambiguity in the termination section of the prior plan text, may have had the effect of taking away a vested entitlement.

76. The Applicants' position was that the pre-2005 pension plan text had been unclear in describing the termination entitlement for deferred vested members but that the Applicant's intentions, and those of the CEP whose members were beneficiaries under the NB Hourly Plan, had always been consistent since the inception of the particular termination provisions in 1992. In short, the Applicants' position was that the restated NB Hourly Plan clarified the prior wording and that the intention of the provisions had been made clear and had been implemented on that very clear basis for many years.

77. On December 3, 2010 Morneau Sobeco provided the Superintendent with an update of its preliminary valuation results of the NB Hourly Plan windup position at March 31, 2010 in light of the November Pension Decision. The effect of Morneau Sobeco's interpretation was reflected in the November Pension Decision, and produced calculations that resulted in an increase in the quantum of the wind-up deficit in the NB Hourly Plan by approximately \$30 million.

78. There are approximately 240 active CEP unionized employees who will be affected positively by the November Pension Decision. There are approximately 640 pensioners who are receiving a pension under the NB Hourly Plan whose pension amount is expected to decrease by a further 4.4% from the current level of 69% as a result of the November Pension Decision. In addition, there are a further approximately 240 additional Ontario retirees whose pensions will decrease based on the November Pension Decision.

79. In the Applicants' view, the interpretation of the NB Hourly Plan which resulted in the issuance of the November Pension Decision is contrary to the intention of the Applicants and the unions who bargained for the termination provisions under the relevant collective agreements and the NB Hourly Plan, which results in an improved benefit for the 240 active employees to the significant detriment of the retirees.

80. The Applicants disagreed with the November Pension Decision and on December 6, 2010 requested an appeal of that decision through a referral to the New Brunswick Labour and Employment Board (the "Board"), in accordance with the provisions of the *Pension Benefits Act*.

The Applicants requested that the hearing of the appeal be expedited, in view of the potential implications of the November Pension Decision being upheld.

81. I am advised by Elizabeth Brown of Hicks Morley and D.J. Miller of TGF that on the afternoon of Friday, December 17, 2010 they had a telephone discussion with Ron Pink, counsel to Morneau Sobeco, during which time Ron Pink indicated that a date had been set for the appeal of the November Pension Decision for December 29 and 30, 2010. Notwithstanding the Applicants' request for an expedited hearing, we received no notice from the NB Superintendent, the Board or Morneau Sobeco of any expedited date prior to that discussion with Ron Pink, and did not receive notice of the hearing from the Board until December 21, 2010.

82. After the Applicants requested that the November Pension Decision be referred to the Board, I read an on-line newspaper article which stated that Conrad Pelletier, who is the Chairman of the Edmundston Retirees Association had also requested that the November Pension Decision be referred to the Board for review.

83. I contacted Conrad Pelletier who advised me that:

- an executive of the CEP local 29 confirmed that the CEP and its counsel would not be representing the interests of its retirees at the Board hearing relating to the November Pension Decision;
- he contacted Fred Wilson, Assistant to the President of the CEP to request that the CEP represent the retirees at the Board hearing scheduled for December 29 and 30, 2010. Fred Wilson advised him that the hearing on December 29 and 30, 2010 was not a CCAA matter and the CEP would not be representing the retirees at the hearing.

84. In a subsequent conversation with Conrad Pelletier he also advised me that the Former Member Retainer Agreement annexed as Exhibit "H" to the Coles Affidavit and referred to in paragraph 13 of this Affidavit, was never provided to Mr. Pelletier or, to his knowledge, to the other members of the Edmundston Retirees Association who are former members of the CEP and retirees under the NB Hourly Plan.

85. I attended the Board hearing on December 29 and 30, 2010 in New Brunswick. The law firm Pink Larkin represented (i) the CEP active employees (but not retirees), (ii) the CMAW active employees (but not retirees), as well as (iii) Morneau Sobeco as administrator of the NB Hourly Plan. The retirees under the NB Hourly Plan were the only parties whose interests were not represented by counsel.

86. On December 30, 2010 the Monitor corresponded with the Vice-Chairperson of the Board to ensure that he was aware of the various court Orders and the NB Hourly Agreement. Annexed hereto and marked as Exhibit "K" is a true copy of the Monitor's letter to the Vice-Chairperson dated December 30, 2010.

87. On January 7, 2011 the Board issued a decision upholding the November Pension Decision. The Applicants disagree with the decision reached by the Board, and take particular issue with comments regarding the jurisdiction of this Honourable Court made by the Vice-Chairperson of the Board in paragraph 74 thereof. Annexed hereto and marked as Exhibit "L" is a true copy of the decision of the Board dated January 7, 2011.

### **III. THE PLAN**

88. On November 3, 2010, an Order was issued authorizing and directing the Applicants to prepare a Plan on a substantively consolidated basis and the Applicants have done so.

#### *A. The Plan*

89. In developing the Plan, the Applicants sought to maximize the recovery available for their Affected Creditors in a manner that addresses the Affected Claims in a consistent and equitable manner.

90. The purpose of the Plan was to:

- (i) settle Affected Claims and to achieve a compromise and arrangement of all Affected Claims against the Applicants in a manner that provides consistent and equitable treatment among the Applicants' Affected Creditors;
- (ii) complete the Transaction Agreement; and

- (iii) allow for the orderly allocation of the Distribution Pool to the Affected Creditors.

91. The Plan would have become effective on the Plan Implementation Date and it was contemplated that the Plan would have been implemented by the Applicants by no later than February 4, 2011, subject to the conditions precedent under the Plan being satisfied on or before that date.

92. Pursuant to the Plan, Affected Creditors with Proven Distribution Claims were to have received the Implementation Payment and be allocated their Pro Rata Share from the Distribution Pool. The Distribution Pool would be comprised of the Promissory Notes, the Common Shares and any Cash available to the Affected Creditors.

93. The Applicants and the Monitor had considered all alternative scenarios to the Plan and believed that Affected Creditors would derive a greater benefit from the implementation of the Plan supported by the DIP Lender, the Plan Sponsor and the Monitor, as being the best source of recovery for the Applicants' stakeholders.

#### ***B. Distributions under the Plan***

94. Prior to making any distributions under the Plan, the Monitor would have been responsible for establishing a Reserve for any Unresolved Claims. The Monitor would then allocate to each of the Applicants' Affected Creditors with a Proven Distribution Claim, their Pro Rata Share of the assets in the Distribution Pool. The Applicants, in consultation with the Monitor, would then deliver the Pro Rata Share of the Distribution Pool to the Affected Creditors with Proven Distribution Claims as follows:

- (a) in respect of the NB Hourly Claim, to the NB Hourly Trust;
- (b) in respect of the NB Salaried Claim, to the NB Salaried Trust; and
- (c) in respect of all other Proven Distribution Claims, to the Creditor Trust.

95. Creditors with Unresolved Claims would only receive a distribution from the Distribution Pool if and when their Unresolved Claims were determined to be Proven Distribution Claims in accordance with the Claims Order.

96. Subject to the Applicants having the Aggregate Implementation Payment Amount after repaying the Prior Repayments, the Plan provided that the Applicants would make an Implementation Payment to each Affected Creditor with a Proven Distribution Claim on the Implementation Payment Date in the amount of the lesser of: (i) the full amount of the Affected Creditor's Proven Distribution Claim; or (ii) \$500.00. The Plan contemplated that the Implementation Payment Date would be January 21, 2011. In the event that the Applicants did not have sufficient Cash to fund the Aggregate Implementation Payment Amount in full after repaying the Prior Repayments, the Implementation Payment to each of the Affected Creditors with a Proven Distribution Claim would be reduced equitably to ensure that Aggregate Implementation Payment Amount did not exceed the Cash available to the Applicants to make the Implementation Payments.

97. At the time of the Meeting the Applicants expected to have sufficient Cash on the Plan Implementation Date to pay the Implementation Payments without reduction.

98. After determination, on the Final Determination Date of all Unresolved Claims, the Monitor would have: (i) allocated to the Affected Creditors with Unresolved Claims that have become Proven Distribution Claims, their Pro Rata Share of the Distribution Pool from the Reserve and shall deliver it to the Creditor Trust; (ii) paid the Implementation Payment to such Affected Creditors; and (iii) remitted any Cash remaining in the Reserve to the Creditor Trust.

99. In so doing, as at the Final Determination Date, the Applicants would have allocated to the Trusts, all of their assets for the benefit of their Affected Creditors with Proven Distribution Claims.

#### *C. Releases Under the Plan*

100. The Releases under the Plan were drafted as an integral component of the Plan and were necessary to the success of the Plan.

101. The Released Parties (as defined under the Plan) are, and have been essential to the Applicants' restructuring efforts culminating in the Plan. Without their support and assistance, the Applicants would have been unable to present a Plan to their Affected Creditors that provides for the distribution of Cash in the form of the Implementation Payment, in addition to the allocation and delivery of the Promissory Notes and Common Shares to the Trusts. Without the support and assistance of the Released Parties, the Applicants may very well have been unable to even commence the CCAA Proceedings and to enter into the various transactions that have, in addition to maximizing recovery for the Applicants' Affected Creditors, preserved employment or the prospect of future employment for the Applicants' hourly and salaried employees in Quebec, New Brunswick and Maine, thereby benefitting those communities.

102. The releases contained in Article 9.01 of the Plan recognize the contribution that the Released Parties have made to the CCAA Proceedings, the Applicants' restructuring efforts and the Plan that was presented to the Applicants' Affected Creditors for consideration.

#### *D. Meeting Order and Notice*

103. The Meeting Order authorizing the Applicants to proceed in the calling of the Meeting of all Affected Creditors to consider and vote on the Plan.

104. The Applicants worked closely with the Monitor to ensure that notice was provided and that the meeting materials were delivered to all Affected Creditors in accordance with the Meeting Order. I am advised by John McKenna of the Monitor, and do verily believe that:

- (i) as provided in paragraph 12 of the Meeting Order, notice was published in 11 newspapers;
- (ii) the Meeting Materials were posted on the Monitor's website in accordance with paragraph 7 of the Meeting Order;
- (iii) the documents described in paragraph 8 of the Meeting Order were sent by email to all Affected Creditors or their legal counsel for whom the Monitor had obtained email addresses; and

- (iv) the Meeting Materials were sent by prepaid ordinary mail to all Affected Creditors for whom the Monitor did not have email addresses, in accordance with paragraph 9 of the Meeting Order.

105. The Applicants and the Monitor also hosted webcasts in English and French for (i) employees and retirees, and (ii) trade creditors. These webcasts were held on December 17 and 20, 2010 for the purpose of explaining the terms of the Plan and related documents in plain language, and providing a forum for those parties to ask questions. Representative Counsel asked to participate in the webcasts and was invited to do so by the Applicants and the Monitor.

106. In an effort to ensure that as many people as possible exercised their right to vote on the Plan, the Applicants prepared a letter to Affected Creditors in English and French that was sent by the Monitor on December 28, 2010. Annexed hereto and marked as Exhibit "M" is a true copy of the English form of letter sent to Affected Creditors on December 28, 2010.

107. I verily believe that, as a result of the extensive efforts undertaken by the Applicants and the Monitor to date, all Affected Creditors were provided with notice of the Meeting, the terms of the Plan and related documents, and were given an opportunity to vote on the Plan if they chose to do so.

#### **IV. MEETING OF CREDITORS AND VOTE**

108. In accordance with the Meeting Order, the Meeting to vote on the Plan was held at the Hyatt Regency hotel in Toronto at 10:00 a.m. on Monday, January 10, 2011.

109. At the Meeting, 290 creditors representing 94.8% of the number of Affected Creditors entitled to vote on the Plan, voted to accepted the Plan presented by the Applicants. However, 16 claims, including those filed by Morneau Sobeco on behalf of the NB Plans and the pension committees of the Quebec Plans, did not support the Plan.

110. As a result, the Plan did not receive the sufficient support of the requisite dollar value of claims filed by Affected Creditors. The Applicants had previously advised that the Plan

represented the best option and that no other or better Plan could be presented by the Applicants if the Plan was not approved.

111. At the Meeting, the Monitor advised those in attendance that the estimated recovery percentage to Affected Creditors with Proven Distribution Claims could be between 19% to 20% based on the estimated cash available on the Implementation Date and the undiscounted amount of the Promissory Notes and the Common Shares.

## **V. NEXT STEPS**

### ***A. Residual Assets/Issues***

112. As outlined in my prior Affidavits and Monitor's Reports, Fraser Papers Inc. owns an old fishing camp on leased land in northern Quebec. The land is leased from the Crown and is subject to an annual renewal. The camp has been listed for some time with Re/Max Tremblant Inc. at a listing price of \$100,000 with no interest expressed or offers received. Earlier today, I accepted an offer of \$40,000. If agreed by the purchaser, the sale will close on February 28, 2010.

113. The Applicants own two remote properties in the Province of Quebec that were owned by a predecessor company. They have not been used in connection with any operations of the Applicants for many years, but the Applicants have been paying annual property taxes in the aggregate amount of approximately CAD\$1,500. One property is located in the municipality of Notre Dame du Laus, and the second is in the municipality of Antoine Labelle. Due to their location and past use, these properties have no known commercial or other value that could be realized for the benefit of the Applicants' creditors.

114. The Applicants have, through their Quebec counsel, been in discussions with the two local municipalities to determine if there is any interest on their part in acquiring these properties for a nominal amount, and assuming any liabilities in connection with the properties. No claims have been filed by any parties in respect of these properties, and the Applicants have therefore not been made aware of any potential claims that may exist.

115. The municipality of Notre Dame du Laus is interested in acquiring the properties provided it can satisfy itself as to any potential liabilities. This municipality has requested that it be given until mid-February to confirm whether it's prepared to proceed on the basis suggested by the Applicants. The Applicants will be making no further realty tax payments to the municipalities in respect of these properties, and will continue their discussions with the municipalities, subject to the CCAA Proceedings.

***B. Outstanding Letters of Credit***

116. As outlined in prior affidavits and in the Fifteenth Report, certain letters of credit have been issued under the DIP facility and are outstanding in the face amount of approximately \$4.9 million. These letters of credit are posted as security to secure workers compensation insurance policies in the U.S. The Applicants believe that the estimated liability for outstanding workers compensation claims is currently less than \$1.5 million.

117. I have been attempting to have the security held by these insurance companies for the workers compensation obligations reduced. To date, I have only been able to obtain small reductions as the insurers are reluctant to release security, particularly due to the Applicants' financial position.

118. In addition, I have approached insurers in an effort to have them buy out the remaining liability pursuant to the insurance policies. To date, we have not made any alternate arrangements with any insurers.

119. The outstanding letters of credit represent an obligation and liability of the Applicants under the DIP facility that is secured by the DIP Lender's Charge over all of the Applicants' assets. In order to enable the DIP facility to be repaid in full and the DIP Lender's Charge to be released on the Plan Implementation Date, the DIP Lender must receive cash in an amount sufficient to fully repay all current borrowings under the DIP facility, all borrowings that may be required to fund the Completion Fund and to satisfy the Applicants' liability in respect of the outstanding letters of credit.

120. The Transaction Agreement provided that on the Plan Implementation Date, upon the DIP facility being repaid in full from the proceeds of from the Transaction Agreement, the Plan Sponsor would assume responsibility for managing the remaining outstanding workers compensation claims, including making payments in respect of claims out of the funds received from the Applicants in repayment of the DIP facility. Over time, as the remaining employee workers compensation claims were discharged, the LC requirement would be reduced by the insurance companies. As the LC requirement was reduced, and ultimately once it is extinguished by the return and cancellation of the letters of credit, any funds received by the Plan Sponsor that were in excess of the amounts required to repay all obligations, would be reimbursed by the Plan Sponsor to the Trusts.

121. The terms and conditions under which the Plan Sponsor would administer the claims and reimburse any excess cash was to have been contained in an Administration Agreement among the Plan Sponsor and the Trustees of the Trusts.

122. I am the sole remaining employee and officer of Fraser Papers Inc. In the absence of completion of the Transaction Agreement or a source of ongoing funding, it is difficult to contemplate any scenario whereby a party would agree to manage this ongoing liability for many years in the absence of any means of compensating them for doing so.

## **VI. REJECTION OF PLAN**

### ***A. Future Cash Requirements***

123. As I have sworn in prior Affidavits filed in this proceeding, prior to execution of the Transaction Agreement, I could see no scenario in which cash would be available for distribution to unsecured creditors. With the passage of time and the fees and expenses that have continued to be incurred, and the rejection of the Plan which incorporated the Transaction Agreement by the Applicants' creditors, the uncertainty as to whether the Promissory Notes and Common Shares would be available for distribution to the unsecured creditors is heightened.

124. The Applicants and the Monitor advised all Affected Creditor that it was their view that the Plan and the Transaction Agreement represented the best path forward. As the Plan, which

was prepared on the basis of substantive consolidation, has now been rejected at the Meeting, it is not expected that the Applicants will be in a position to present a further or alternative plan on such a basis to their creditors.

125. I am advised by the DIP Lender and do verily believe that the failure of the Applicants to obtain the Required Majority at the Meeting is viewed by the DIP Lender as a serious and material adverse event under the DIP facility.

126. In view of the uncertainty concerning whether the existing obligations under the DIP facility could be repaid in full, I am not aware of any other lender or source of financing with which to continue operations even in the short term, if the DIP Lender decided to terminate further borrowings.

127. I am advised by the DIP Lender and do verily believe that, in the event there is insufficient cash to repay all amounts owing to the DIP Lender in full, the DIP Lender will continue to assert the benefit of the DIP Lender's Charge over all property, assets and undertaking of the Applicants, which includes the Promissory Notes and Common Shares.

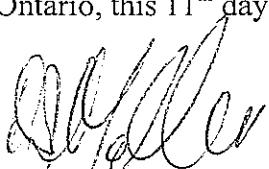
#### ***B. Impact on Pension Payments under the NB Plans***

128. As described above, the Pension Agreements mitigated the impact of the deficits that exist in the NB Plans. On April 13, 2010 I was copied on an email exchange between D.J. Miller of TGF and the NB Superintendent regarding the funded ratio under each NB Plan. This email from the NB Superintendent illustrates how the existing funded ratio was increased by up to 10% when certain factors, including the anticipated future consideration to be received by each of the NB Plans from the Applicants, was taken into account.

129. In the event the DIP Lender is not repaid in full in cash such that there is no distribution of the Promissory Notes and Common Shares to the Applicants' unsecured creditors, this will undoubtedly impact the funded ratio under each NB Plan and therefore the pension payment entitlements received by retirees under the NB Plans.

130. I swear this Affidavit by way of update for the benefit of the Court and the Applicants' stakeholders, and for no other or improper purpose.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 11<sup>th</sup> day of  
January, 2011.



Commissioner for Taking Affidavits



**GLEN McMILLAN**

# EXHIBIT “A”

# EXHIBIT "A"

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 (collectively, the  
"Applicants")**

**AFFIDAVIT OF DAVE COLES  
(Sworn August 28, 2009)**

I, Dave Coles, of the City of Ottawa, Province of Ontario, **MAKE OATH AND  
SAY:**

1. I am the President of the Communications, Energy and Paperworkers Union of Canada (the "Union"). I swear this affidavit in support of the motion for a representative order and funding in respect to current and former members of the Union, including pensioners, employed or formerly employed by the Applicants ("Current and Former Members") in the proceedings under the *Companies' Creditors Arrangement Act* ("CCAA"), the *Bankruptcy and Insolvency Act* (the "BIA") or in any other proceeding which has been or may be brought before this Honourable Court (collectively, the "Proceedings").
2. As the President of the Union, I have knowledge of the matters to which I hereinafter depose except where stated to be based on information and belief.

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***Background***

3. I have been the President of the Union for approximately three (3) years. Prior to acting in the capacity of President, I was a Vice-President of the Union for six (6) years and prior to that, an Organizer for twenty-three (23) years.
4. The Union was formed in 1992 through the merger of three smaller unions. It is a strongly democratically run organization that currently represents approximately 150,000 workers in Canada. As such, it is one of the largest trade unions in Canada representing workers in a variety of industries across this country. The Union has a strong presence in the Canadian pulp and paper industry. In addition, it represents workers in the telecommunications, gas, oil, chemical, printing, and mining industries, among others.
5. The Union represents approximately 360 bargaining unit employees employed by the Applicants at the Edmundston mill in New Brunswick. In carrying out its functions as exclusive bargaining agent, the Union negotiates and concludes collective agreements with the Applicants on behalf of its membership and works to ensure compliance with the terms set out therein.
6. The Union and its Locals maintain five collective agreements with the Applicants at the Edmundston mill in New Brunswick. All of the Edmundston collective agreements notionally expiry between June 30, 2009 and June 30, 2010. The Union and the Applicants are currently engaged in the negotiation of renewal collective agreements. A copy of each of the Edmundston collective agreements are attached as **Exhibits A to E** to this my affidavit.
7. In each of the Edmundston collective agreements attached hereto, for Locals 6N, 29, 29 Office and Clerical, 29.30 Cleaning Staff, and 4N.10, the parties have agreed that the Fraser Papers Inc., New Brunswick Hourly paid Pension Plan (Plan 2) (the "NB Pension Plan") forms part of the collective agreement. As the Local 6N collective agreement notes, this NB Pension Plan was formerly known as the "Noranda Forest Inc., Fraser Operations, New Brunswick Hourly Paid

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Pension Plan". Furthermore, all of these collective agreements contain provisions for bridging supplements to be paid for those taking early retirement, post-retirement adjustments covering periods up to 2013, and there are also generally provisions for health care coverage for retirees and surviving spouses, and for life insurance for retirees.

8. The Union and its Local also maintain two collective agreements with the Applicants covering approximately 300 employees at the Thurso mill in Quebec. These collective agreements expired on April 30, 2009. On February 13, 2009 the Applicants announced a temporary shutdown of the Thurso mill operations effective March 2, 2009. The Thurso mill is currently sitting idle while the Applicants attempt to gauge market conditions and arrange appropriate financing for its restart. A copy of each of the Thurso collective agreements are attached as **Exhibits F to G** to this my affidavit.
9. As with the Edmundston collective agreements, the Thurso collective agreements for Locals 189 and 894 contain provisions making the pension plans a part of the collective agreements (the "QC Pension Plan"). In the Local 894 collective agreement there is provision for continuing life insurance coverage for retirees.
10. All of the foregoing collective agreements set out in detail the terms and conditions governing the employment of Current Members, including, for example, details pertaining to severance and termination entitlements payable.
11. To the Union's knowledge, there are approximately 1,800 retirees altogether in the NB Pension Plan and the QC Pension who were members of the Union during their employment with the Applicants. There are retirees in Ontario, Quebec and New Brunswick. The Ontario retirees are from a Fraser Papers plant in Thorold that closed in the early to mid-1990s. They are covered by the NB Pension Plan.
12. The terms and conditions of the collective agreements negotiated by the Union have a direct impact on the benefit entitlements payable to the Applicants' hourly

- 4 -

retirees, such as pension entitlements. The Union, as the bargaining agent for the employees of those collective agreements, has extensive knowledge of the issues faced by its Former Members and retirees of the Applicants.

13. The Union maintains its relationship with retirees through Retiree Committees comprised of local area retirees, who are invited to attend their respective local annual general membership meetings. There is also a continuing contractual relationship between the Union and retirees to the extent that the Union bargains improvements to retiree pensions or benefits whenever it can in the course of negotiations, and as can be found in the collective agreements appended hereto as **Exhibits A to G**.
14. The Union maintains contact and provides information to its Current Members through regularly held local general membership meetings.

***The Applicant's CCAA Protection***

15. On June 18, 2009 the Applicants obtained an order from the Court pursuant to the CCAA staying all proceedings and claims against them (the "Initial Order").
16. I am advised and do verily believe that Fraser Papers sponsor two defined benefit pension plans applicable to the Current and Former Members: one hourly pension plan registered in the Province of New Brunswick (the "NB Pension Plan") and one hourly pension plan sponsored in the Province of Quebec (the "QC Pension Plan" or collectively, the "Pension Plans"). The NB Pension Plan has 794 active and 1,154 retired participants, and includes the Ontario retirees from the Thorold plant. As at December 31, 2008 the NB Pension Plan had a combined solvency and going concern deficit of \$60,200,000. The QC Pension Plan has 350 active and 650 retired participants. As at December 31, 2008 the QC Pension Plan had a combined solvency and going concern deficit of \$11,500,000.

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17. I am advised and do verily believe that Fraser Papers anticipate that their funding obligations in respect to the Pension Plans will increase significantly for the foreseeable future.
18. The effect of the Initial Order on the Union and its Current and Former Members has already been significant. Immediately after the Initial Order, the Applicants took the following action:
  - (i) Suspended all pension payments required to be made pursuant to provincial pension legislation intended to address the significant unfunded liability of the pension plans sponsored by the Applicants; and,
  - (ii) Suspended all Health and Welfare Trust payments out of which post-retirement health care benefits are provided.
19. The Applicants had temporarily shutdown the Thurso mill operation in Quebec in March 2009. Pursuant to an agreement between the Union and the Applicants, the severance pay obligations of the Applicants in respect to the employees formerly employed at the Thurso mill had been deferred from six weeks to twenty-two weeks in order to provide the Applicants with an opportunity to identify and implement a solution for the mill. To date, the aforementioned severance obligations have not been paid by the Applicants and the Thurso operation remains shutdown.
20. The Initial Order will also likely ultimately necessitate filing a large number of diverse and complex claims on behalf of Current and Former Members. The Union intends to facilitate and advance the Claims of its Current and Former Members.
21. The Union has played a pivotal role in communicating with the Current and Former Members regarding the Proceedings and the Impact of the Initial Order. Given the Union's localized operations, it has been effective in keeping the

- 6 -

Current and Former Members informed and updated as to the progress of the Proceedings:

***Benefits of Appointing the Union***

22. Having the Union appointed as representative for the Current and Former Members, and CaleyWray appointed as counsel, provides a reliable resource for Current and Former Members for information about the process. They can speak on behalf of the Current and Former Members to the Applicants and other stakeholders, and report back to the constituency through various means, such as newsletters, local meetings and website updates. The Union and CaleyWray can advocate on behalf of Current and Former Members in the negotiation of a Plan of Arrangement under the CCAA and can address with the Court issues that may affect the interests of the Current and Former Members.
23. At this time, Former Members of the Applicants are being, or have been, sent a letter from the Union along with a retainer agreement to have the Union act as the retiree's representative and for CaleyWray to be appointed as its counsel. Retainer agreements were not collected from the Union's Current Members as the Union is already statutorily recognized as their representative. A copy of the Former Member retainer agreement is attached as **Exhibit H** to this my affidavit.
24. The Union has retained CaleyWray to represent it as it has considerable experience with the law firm over many years. I am aware that the law firm has lawyers specializing in labour and employment law, pension and benefits, and CCAA, bankruptcy, and insolvency matters. The Union has utilized the services of the lawyers at CaleyWray in the Nortel Networks, Korex Don Valley, Quebecor, Smurfit Stone, and Grant Forest Products restructuring and insolvency proceedings.
25. I am advised by Jesse Kugler of CaleyWray and verily believe that immediately after, or as soon as is reasonably possible after, being appointed as counsel a toll-free hotline will be set up so that Current and Former Members may call and

- 7 -

obtain information about the Applicants' CCAA filings. Further, the Union and/or CaleyWray, upon being appointed representative and counsel respectively, will also set up a website link to provide detailed information to Current and Former Members about the Applicants' CCAA process, along with the answers to frequently asked questions.

26. I am advised by Jesse Kugler of CaleyWray and verily believe that if there are claims to be filed on behalf of Current and Former Members in the CCAA or in a bankruptcy, then the Monitor or Trustee, as the case may be, will not necessarily prepare and calculate employee claims but will simply wait for claimants to calculate and submit claims on their own. Many Current and Former Members may not submit claims because they do not understand the process or what needs to be done to advance their claims. Further, claims pertaining to calculation of unpaid future pension and retiree health benefits or supplementary pensions require the assistance of an actuary with access to the relevant data in order to provide an accurate calculation. This is not available to individual Current and Former Members. The failure to file any claims, or comprehensive claims, could result in such Current and Former Members not receiving the appropriate dividends from the estate in respect of their unpaid benefits or pensions.
27. In the case where a Monitor or Trustee does calculate claims, I am advised by Jesse Kugler of CaleyWray and verily believe that they may be in a conflict situation because they are both calculating and adjudicating claims on behalf of a creditor group.
28. I support the appointment of the Union as representative of all Current and Former Members and the appointment of our counsel of choice, CaleyWray as representative counsel.

29. I make this affidavit in good faith and in support of the motion to appoint the Union as representative of all Current and Former Members and CateyWray as representative counsel and for no improper purpose.

**SWORN** before me at the City of Ottawa, in the Province of Ontario, this 28<sup>th</sup> day of August, 2009.

Jamie Liew  
A Commissioner for taking affidavits.

Jamie Liew  
Galldin Liew LLP  
Suite 500, 30 Metcalfe St.  
Ottawa, ON

Dave Coles  
Dave Coles

# EXHIBIT

## RETAINER AGREEMENT

This is Exhibit H referred to in the  
affidavit of Dave Coles  
sworn before me, this 28th  
day of August 2009  
  
A COMMISSIONER FOR TAKING AFFIDAVITS

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I, (Print Name), hereby confirm that I am a former member of the Communications, Energy and Paperworkers Union of Canada (the "Union") and former employee of Fraser Papers Inc., FPS Canada Inc., Fraser Papers Holdings Inc., Fraser Paper Timber Ltd., Fraser Papers Limited and/or Fraser N.H. LLC (the "Applicants"), or the surviving spouse of such a former employee and a beneficiary under a pension plan sponsored by the one or all of the Applicants. I hereby confirm and authorize the Union to represent me in the matters further described herein.

The Union has retained the law firm of CaleyWray (the "Firm") on its own behalf and on behalf of former members of the Union and their surviving spouses to provide advice and representation in respect of the Applicants' pension plans (the "Pension Plans"), retirement and post retirement benefits, termination related entitlements (collectively, the "Benefits") in connection with the proceedings involving the Applicants under the *Companies' Creditors Arrangement Act* (the "Insolvency Proceedings").

It is understood and acknowledged that the Firm will seek to obtain from the Court an appointment to represent the interests of the Union and all former members of the Union formerly employed by the Applicants. I further understand and acknowledge that that the Firm will seek approval from the Court-appointed Monitor and the Court for the payment of the Union's legal and related expenses associated with the Insolvency Proceedings.

I also hereby retain the Firm to act as my lawyers in connection with Benefits and the Insolvency Proceedings and to represent me in any proceeding before any body in connection with the Pension Plans. I understand and acknowledge that the Union has agreed to provide day-to-day instructions to the Firm, and I agree that I am bound by those instructions. I also agree and acknowledge that this retainer may be terminated

- 2 -

by the Firm in the event that the Firm is not appointed as representative counsel in the Insolvency Proceedings.

**Protection of Privacy:** I further authorize and direct the Union and the Firm, as well as any agents retained on my behalf, including actuaries, advisors, and third party service providers, (collectively, the "Receiving Parties"), to obtain all documents and information legally available to me in respect of the Pension Plans, Benefits and the Insolvency Proceedings, including my personal information and any such information that may otherwise be subject to the protections of governing privacy and pension legislation. The Receiving Parties undertake to keep any personal information so collected in confidence and such information will be used only for the purposes of representing me and advancing my rights in respect to the foregoing.

---

Name

Signature

|                 |              |
|-----------------|--------------|
| Street Address: | City:        |
| Province:       | Postal Code: |
| Email:          | Phone:       |
| Occupation:     |              |

I am a:

|  |                         |
|--|-------------------------|
|  | Pensioner               |
|  | Deferred Vested Member  |
|  | Survivor of a Pensioner |
|  | Terminated (Cash-Out)   |

# **EXHIBIT “B”**

# EXHIBIT "B"



Justice and Consumer Affairs / Justice et Consommation

**IN THE MATTER** of the Pension Plan for New Brunswick Hourly Paid Employees of Fraser Papers Inc. (NB Reg. # 0251264);

and

**IN THE MATTER** of partial revocation of registration of an amendment and plan restatement, effective January 1, 2005.

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## ORDER OF THE SUPERINTENDENT OF PENSIONS

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Date of Order: November 25, 2010

**To:** Morneau Sobeco Limited Partnership

Attn: Mr. Paul Chang  
5151 George Street, Ste. 1700  
Halifax, NS B3J 1M5

**Copy:** Fraser Papers Inc.

Attn: Glen McMillan  
Suite 200, Brookfield Place  
181 Bay Street  
Toronto, ON M5J 2T3  
Via E-mail Only

Office of the Superintendent of Pensions /  
Bureau du surintendant des pensions

Tel/Téléphone:  
(506) 453-2055  
Fax/Télécopieur:  
(506) 457-7266

P.O. Box 6000  
Fredericton  
New Brunswick  
Canada E3B 5H1

[www.gnb.ca/0307/001e.htm](http://www.gnb.ca/0307/001e.htm)

Case postale 6000  
Frédéricton  
Nouveau-Brunswick  
Canada E3B 5H1

[www.gnb.ca/0307/001f.htm](http://www.gnb.ca/0307/001f.htm)

**FACTS:**

By letter dated April 29, 2008, Fraser Papers Inc. submitted a plan restatement which included plan amendments for the Pension Plan for New Brunswick Hourly Paid Employees of Fraser Papers Inc. - NB Reg. # 0251264 (the "Pension Plan"). This letter, received by the Office of the Superintendent of Pensions on May 5, 2008, attached the requisite documents for amending a pension plan. Specifically, the requisite filing fee, Form 2 – Application for Registration of Amendment to Pension Plan, the company resolution amending the Pension Plan, and a copy of the plan text identified as being Amended and Restated as of January 1, 2005 (the "2005 Restated Plan Text") were submitted as required by section 11 of the *Pension Benefits Act*.

The plan amendments, which were contained as part of the 261 page 2005 Restated Plan Text, were described in both Form 2 and in the company resolution as being a restatement incorporating: transfer of plan sponsorship, partial plan termination, compliance amendments, negotiated benefit improvements, membership closure under part 9, option for DC accrual for certain members, and early retirement windows. The Office of the Superintendent of Pensions reviewed the provisions of the 2005 Restated Plan Text which were identified as having been amended, and found them acceptable. The 2005 Restated Plan Text was registered by the Office of the Superintendent of Pensions by letter dated April 1, 2010.

Fraser Papers Inc. ("Fraser Papers"), the employer under the Pension Plan, was also the plan administrator. On June 18, 2009, Fraser Papers sought and was granted protection from its creditors under the *Companies' Creditors Arrangement Act*, with the requisite declaration of insolvency. Pursuant to section 52 of the *Pension Benefits Act*, if the administrator of the pension plan is the employer and the employer is insolvent, the Superintendent may act as administrator or appoint an administrator of the plan. As a result, the Superintendent of Pensions terminated Fraser Papers' function as administrator, and appointed Morneau Sobeco Limited Partnership ("Morneau Sobeco") as the plan administrator effective March 10, 2010.

By Order dated April 1, 2010, the Superintendent of Pensions ordered Morneau Sobeco to wind-up the defined benefit provisions of the Pension Plan, effective March 31, 2010. Since that time, Morneau Sobeco has been collecting data and verifying plan terms in order to determine the wind-up position of the Pension Plan and finalize a Proof of Claim on behalf of the Pension Plan in the *Companies' Creditors Arrangement Act* proceedings.

During review of the plan terms, it came to the Superintendent's attention that a significant wording change in termination benefits was included in the 2005 Restated Plan Text without being specifically mentioned in either the company

resolution amending the plan or in Form 2 – Application for Registration of Amendment to Pension Plan.

**ISSUES / INVESTIGATION:**

From both the Superintendent's analysis of the plan texts and Morneau Sobeco's analysis of the plan texts, the amended wording contained in section 6.03 of Parts 2, 3, 4, 5, 6, 8, 9, 10, and 11 of the 2005 Restated Plan Text altered the termination benefit for plan members with 20 or more years of continuous service that are under age 55 at the date of termination. The wording prior to the 2005 Restated Plan Text, which existed since the January 1, 1992 restated plan text, when combined with the early retirement provisions of the plan, appears to provide that members with 20 years of continuous service who terminated from the pension plan were entitled to an unreduced pension at age 58, regardless of their age at the date of termination. The relevant wording of the 1992, 1993 and 1998 Pension Plan texts (collectively the "1992/1998 Pension Plan documents") is contained in sections 6.04 and 8.01. The amended wording provides that members who terminate prior to age 55 must wait until age 65 to receive an unreduced pension, regardless of the amount of continuous service they have at termination.

During discussions with Morneau Sobeco, the Superintendent of Pensions was informed that Fraser Papers had indicated to Morneau Sobeco that the wording in the 1992/1998 Pension Plan documents were simply drafting errors. They indicated to Morneau Sobeco that notwithstanding the wording in the 1992/1998 Pension Plan documents, the Pension Plan had historically been administered in the manner suggested in paragraph 6.03 of the 2005 Restated Plan Text. As such, their position was that they were simply correcting a drafting error and not amending the termination provisions with the 2005 Restated Plan Text.

By letter dated October 4, 2010, the Superintendent of Pensions requested Morneau Sobeco provide her with any and all documentation or information that would demonstrate the Pension Plan had historically been administered in accordance with the 2005 Restated Plan Text. Further, she requested any documentation or information that would suggest the Pension Plan was historically administered in accordance with the 1992/1998 Pension Plan documents also be forwarded to her at the same time.

By letter dated October 20, 2010, Morneau Sobeco provided the requested information. In summary, the information provided in support of a drafting error indicated that:

1. Fraser Papers requested a legal opinion on this matter from McCarthy Tétrault on June 1, 2007. In that letter, Fraser Papers indicated the 2005 Restated Plan Text was consistent with how this benefit is provided by other companies in the industry. Fraser Papers was

unable to provide any legal opinion they may have received on this matter.

2. Fraser Papers advised two employees in 2007 they were not entitled to an unreduced pension at age 58. No grievances were filed on these matters, notwithstanding the fact at least one of these employees was closely tied with the union (having terminated to become a national union representative).
3. Fraser Papers indicated to Morneau Sobeco the Pension Plan had never been administered in accordance with the 1992/1998 Pension Plan documents.
4. Watson Wyatt (used for administration and consulting services up to circa 1995/1996) did not include the value of the benefit in their administration calculations (based on 2 calculations), nor does it appear they included it in their funding valuations.
5. It does not appear that Mercer (who performed actuarial services from 1995 to 2002) included the benefit in their funding valuations.
6. Towers Perrin, who performed consulting services from 2003 to 2010, did not include the benefit in their 2002 and 2004 funding valuations.

The information provided in Morneau Sobeco's October 20, 2010 letter which does not support a drafting error is as follows:

1. Analysis of plan calculations for members who terminated, died or had marriage breakdowns prior to age 55 but with 20 or more years of continuous service between 1995/1996 (the earliest administration files available to Morneau Sobeco) and 2003, shows termination benefits were calculated without exception based on the 1992/1998 Pension Plan documents. Specifically:
  - All ten (10) Mercer administration calculations which met the criteria for analysis (under age 55 but with 20 or more years of continuous service) determined the commuted value based on an unreduced pension at age 58.
  - Nine (9) of these ten (10) termination statements specifically indicate the member is entitled to an unreduced pension at age 58.
  - All four (4) Towers Perrin calculations from 2001 to 2003 which met the criteria for analysis are consistent with the 1992/1998 Pension Plan documents. Starting on January 1, 2004, the calculations are based on the 2005 Restated Plan Text.

- This analysis suggests the Pension Plan was administered in accordance with the 1992/1998 Pension Plan documents from at least 1995/1996 until sometime in 2003.

2. Mercer included the benefit in determining the conversion values for Plaster Rock employees in their December 31, 1996 valuation report. For members with 20 years of continuous service at the conversion date, Morneau Sobeco has confirmed the conversion value was determined based on an unreduced pension at age 58.
3. Member annual statements sent to members of the "Scaler" division from Dec. 31, 2000 to Dec. 31, 2003 are consistent with the language of the 1992/1998 Pension Plan documents.
4. There are various memos and letters from Bernard LeBlanc to certain members of the plan who would have been under age 55 at their date of termination which indicate they are entitled to an unreduced pension at age 58 as they had 20+ years of continuous service at the date of termination.
5. The March 18, 1996 Letter of Understanding between Fraser Papers and Local 160 contains the following statement on Page 5 under the heading "Unreduced Pension":
  - Therefore an employee who has 20 years of service prior to termination shall be entitled to unreduced pension at age 58.

Following receipt of the above-mentioned letter from Morneau Sobeco, the Superintendent of Pensions contacted Mr. Bernard LeBlanc, Director – Pension Administration with Fraser Papers by telephone on October 25, 2010. The Superintendent reviewed the information in support of a drafting error provided by Morneau Sobeco. Mr. LeBlanc confirmed the accuracy of this information and indicated Fraser Papers had no further documentation or information to add in support of their position. The Superintendent of Pensions also communicated that analysis performed by Morneau Sobeco indicated all termination statements prepared from approximately 1996 to 2003 for members under age 55 but with 20 or more years of continuous service were done on the basis of an unreduced retirement at age 58. Mr. LeBlanc expressed surprise at the various termination calculations done in this manner, but had no explanation for them. He reiterated that to his knowledge, the Pension Plan had never been administered in accordance with the 1992/1998 Pension Plan documents.

On November 4, 2010, the Superintendent of Pensions spoke with Glen McMillan, Chief Financial Officer of Fraser Papers. Mr. McMillan indicated that

he had only recently become aware of the issue, and asked for an explanation of what had transpired to date. The Superintendent reviewed the facts as outlined above, as well as the information provided to her by both Morneau Sobeco and Bernard LeBlanc. Mr. McMillan requested some time to speak with Fraser Papers' actuaries to determine what additional information they could provide prior to an order being issued.

On November 12, 2010, Mr. McMillan indicated to the Superintendent that he had spoken with former employees of Mercer as well as individuals with Fraser Papers, and that Fraser Papers' decision to leave Mercer was in part due to the poor administrative service they received from Mercer's. He indicated there had been calculation errors, and provided slides and meeting minutes surrounding their decision to move their actuarial valuation process from Mercer to Towers Perrin in 2002. However, none of the documentation provided referred specifically to the unreduced retirement age issue. Mr. McMillan indicated that notwithstanding the information the Superintendent had already received, Fraser Papers' position was that the pension plan terms had never granted unreduced retirement at age 58 for anybody who terminated prior to age 55. The fact that the plan had been administered in this manner for a period of time was the mistake of the administrative service provider, and did not reflect the position of Fraser Papers.

The Superintendent of Pensions also spoke with Elizabeth Brown of Hicks Morley, legal counsel to Fraser Papers, on November 15, 2010 and received a letter from Ms. Brown on November 16, 2010 outlining Fraser Papers' interpretation of applicable provisions of the Pension Plan in effect prior to the 2005 Restated Plan Text.

In short, Fraser Papers' position as articulated by Ms. Brown is that the definitions of "Normal Early Retirement Date" and "Advanced Early Retirement Date" in the 1992/1998 Pension Plan documents require a member to be at least age 55 on his termination date to be eligible for an unreduced pension at age 58. They further submit that the "appropriate" table referred to in section 8.01 of the 1992/1998 Pension Plan documents is the table found in section 6.04(b) regardless of how much service a member had at the termination date. This table would necessarily apply to all Deferred Vested Members because none will ever reach an "Advanced Early Retirement Date" as that term is defined in the 1992/1998 Pension Plan documents. Fraser Papers also conceded there may be more than one interpretation of the deferred vested section of the 1992/1998 Pension Plan documents.

Fraser Papers further submits that the decision of the union not to grieve a termination of an employee in 2007 who terminated with 20 or more years of service but who was under age 55 at the date of termination and received a termination benefit based on an unreduced pension at age 65, indicates the union was in agreement with Fraser Papers' interpretation of the Pension Plan.

Finally, Fraser Papers submits that the 2004 – 2009 collective agreement with Local 29 clearly indicates that subsidized early retirement was not available to a plan member that had not attained age 55, and applies only to members who retire directly from the company. The relevant portions of the collective agreement are as follows:

#### 67.11 Retirement Age

- a) A member who has a minimum of twenty (20) years of Continuous Service at the time of his retirement, and who is then 58 years of age or more, shall be entitled to benefits calculated in the same manner as if it were for a Normal Retirement.
- b) Effective July 1, 2009, the pension plan rules will be modified such that an active employee retiring at age 57 or more with at least 20 years of continuous service will be entitled to an unreduced pension and bridge benefit, subject to the minimum reductions imposed under the Income Tax Act (Rule of 80).
- c) Members may elect to take an early retirement pension on or after age 55 provided they have at least 20 years of Continuous Service, with a reduction of  $\frac{1}{2}\%$  for each month (6% per annum) by which such early retirement precedes the attainment of age 58, subject to the minimum reduction required by the Regulations under the Income Tax Act.

The Superintendent of Pensions spoke with both Doris Lavoie, President Local 29, and Mario Theriault, Executive Member of Local 29 on November 17, 2010 to ascertain their understanding of the Pension Plan provisions regarding entitlement for unreduced pension for terminating members. Both indicated their understanding of the collective agreement and the Pension Plan documents was that all members with 20 or more years of continuous service were entitled to an unreduced pension at age 58 regardless of their age at termination.

#### **FINDINGS:**

The Superintendent of Pensions finds the 1992/1998 Pension Plan documents granted unreduced retirement at age 58 to members with 20 or more years of continuous service. Although there could arguably be more than one interpretation of the termination benefits, it seems the most reasonable interpretation directs readers to the "appropriate table" based solely upon years of continuous service. Of note in this regard is the fact that both tables produced in sections 6.04 (a) and (b) refer to an Employee Member at his Advanced Early Retirement Date with virtually identical wording. The only distinguishing element between the two tables is whether the Employee Member had 20 years or more

of continuous service, or less than 20 years of continuous service. Further, the administrative practice indicates that on a balance of probabilities the termination benefit wording contained in the 1992/1998 Pension Plan documents was intended to grant an unreduced retirement at age 58 for all members with 20 or more years of continuous service.

The 2004-2009 collective agreement relied upon by Fraser Papers does not state whether or not a member with 20 or more years of continuous service must retire from active service to be eligible for an unreduced pension at age 58. Section 67.11(b) is the only part of the Retirement Age provision which requires retirement from active service. As such, the collective agreement does not seem to shed additional light on the intention of the 1992/1998 Pension Plan documents. Further, the 1996 Letter of Understanding between Fraser Papers and Local 160 clearly states an intention for all employees with 20 or more years of continuous service prior to termination to be entitled to an unreduced pension at age 58.

From the documentation supplied, it is clear that although the Pension Plan for New Brunswick Hourly Paid Employees of Fraser Papers Inc. was historically not valued for funding purposes on the basis of an unreduced pension at age 58 for all members with 20 or more years of continuous service, it was certainly administered on that basis without exception from 1996 until the end of 2003. This time period included two separate administrative service providers calculating benefits in this manner. The incidences of calculations and statements which reflect administration in accordance with the 1992/1998 Pension Plan documents is simply too great to accept they were the isolated mistakes of a rogue service provider.

Rather, from the documentation supplied, I find the Plan was administered in accordance with the 1992/1998 Pension Plan documents until Towers Watson took over actuarial consulting services for the plan in 2003 and raised the issue with Fraser Papers. From January 1, 2004 onwards, the plan appears to have been administered in compliance with the 2005 Restated Plan Text.

The only method of amending a pension plan is to do so in accordance with section 11 of the *Pension Benefits Act*. As a result, the change to the termination benefit wording for members with 20 or more years of continuous service found in section 6.03 of the 2005 Restated Plan Text should have been specifically identified in Form 2 and in the company resolution. This is the case regardless of whether Fraser Papers' intention was to clarify the provision, or to amend the benefit provided. As mentioned above, I find the 2005 Restated Plan Text did alter the benefit provided to terminating members with 20 or more years of continuous service, rather than just clarify this provision.

Even if the amendment had been properly identified, it would also have to comply with section 12 of the *Pension Benefits Act*. This provision renders void any

amendment that purports to reduce the amount or the commuted value of an ancillary benefit that a member or former member is receiving or for which a member has satisfied all eligibility conditions at the effective date of the amendment. As such, the change to the termination benefits for members with 20 or more years of continuous service found in section 6.03 of the 2005 Restated Plan Text, even if properly filed, could not have amended this benefit for members or former members of the plan who had already amassed 20 or more years of continuous service at the date of amendment. Further, as an adverse amendment, notice to those that could have been affected by the amendment would have had to be given pursuant to section 24 of the *Pension Benefits Act* prior to the amendment being registered.

I therefore find the amendment to the termination benefits for members with 20 or more years of continuous service contained within the 2005 Restated Plan Text, and registered by the Office of the Superintendent of Pensions on April 1, 2010, was a void amendment for all members who had already amassed 20 or more years of continuous service. For all other members, I find the filed documents and notice requirements for the above-mentioned amendment did not comply with the *Pension Benefits Act* and the regulations.

**ORDER:**

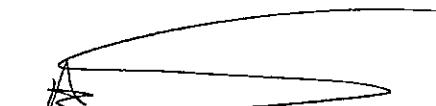
Therefore, pursuant to paragraph 13(1)(e) of the *Pension Benefits Act*, I hereby revoke the registration of that portion of the 2005 Restated Plan Text which altered the termination benefits for members with 20 or more years of continuous service. All remaining provisions of the 2005 Restated Plan Text remain valid.

Pursuant to subsection 13(4) of the *Pension Benefits Act*, this revocation operates to terminate that portion of the amendment as of January 1, 2005.

The administrator shall transmit notice of this Order to each member and former member of the plan, each trade union that represents members of the plan, and any other persons entitled to payment from the pension funds.

The Notice shall contain a brief summary of this Order, together with a general explanation of the possible consequences on the funded level of the plan.

Issued at Fredericton, New Brunswick this 25<sup>th</sup> day of November, 2010.



Angela Mazerolle Stephens  
Superintendent of Pensions

# EXHIBIT “C”

# EXHIBIT "C"

## TERM SHEET FOR GLOBAL AGREEMENT

Each of the undersigned parties agree to the following:

### **Sale of Specialty Papers Business**

1. The specialty papers business of Fraser Papers Inc. ("FP") and its affiliates under the CCAA proceeding (collectively, the "Applicants") will be sold to a new company or companies pursuant to the Asset Purchase Agreement ("APA") approved by the court on December 10, 2009.
2. Neither Brookfield Asset Management Inc. ("BAM") nor its designate under the APA ("Newco") will have any liability for any obligations or liabilities whatsoever in connection with the registered pension plan in New Brunswick for hourly employees (the "NB Hourly Plan"), the registered pension plan in Quebec for hourly employees (the "Quebec Hourly Plan") (the "NB Hourly Plan and the Quebec Hourly Plan being collectively, the "Plans") or for any termination, severance or related amounts which any current or former employee of the Applicants could assert against the Applicants.
3. FP will request that Newco: (i) allow the CEP national union to nominate one of the two independent directors to Newco's board of directors; (ii) allow the other unsecured creditors of FP to nominate the second independent director to Newco's board of directors; and (iii) ensure that the independent directors of Newco are approved by the majority of the three non-independent directors and have the same rights and responsibilities as the three non-independent directors of Newco.
4. On closing of the APA, FP will deliver an irrevocable Direction to Newco to direct that the following fixed payments be made to the Outside Trust Fund [as defined in paragraph 17(c)] on the following dates in consideration for the closing of the APA:

- (a) October 1, 2011: CDN\$437,500
- (b) March 31, 2012: CDN\$437,500
- (c) October 1, 2012: CDN\$437,500
- (d) March 31, 2013: CDN\$437,500
- (e) October 1, 2013: CDN\$437,500
- (f) March 31, 2014: CDN\$437,500
- (g) October 1, 2014: CDN\$437,500

- 2 -

- (h) March 31, 2015: CDN\$437,500
- (i) October 1, 2015: CDN\$437,500
- (j) March 31, 2016: CDN\$437,500
- (k) October 1, 2016: CDN\$437,500
- (l) March 31, 2017: CDN\$437,500
- (m) October 1, 2017: CDN\$437,500
- (n) March 31, 2018: CDN\$437,500

#### **Collective Agreements and Related Agreements**

5. All existing collective agreements with the exception of Thurso will be amended through a signed Memorandum of Settlement with each union local to delete all references to the existing defined benefit pension plans.

6. The collective agreements between CEP and FP will be amended to reflect that FP agrees to discuss with CEP the possibility of replacing the defined contribution pension plan under the existing collective agreements in New Brunswick (the "DC Plan"), with a fixed contribution pension plan for future years of service. If FP and CEP reach such agreement, FP's obligation or liability in respect of such plan shall not exceed the contribution set out in the collective agreement for the DC Plan, and FP shall have no obligation in respect of any unfunded liability or deficit of any kind now or in future.

7. CEP and FP agree that bargaining unit members in New Brunswick who are in receipt of LTD benefits at the date of the sale to Newco will remain the responsibility of FP and their LTD benefits will be provided on the basis set out in the applicable collective agreement without considering the amendments to the LTD provision of the collective agreement that are part of the collective agreement amendments referred to above. LTD benefits will continue to be paid out of the health and welfare trust.

8. All CEP locals in New Brunswick will arrange for a ratification vote and provide a favourable recommendation to unionized employees by no later than March 10, 2010. The national office of the CEP will endorse the recommendation of the locals to support ratification of the new collective agreements in accordance with this term sheet.

#### **Pension Plan and Claims**

9. The parties share the goal of taking steps to minimize the impact of the restructuring of FP on pensioners and current and former employees. For this purpose, the parties agree to the following means of addressing the NB Plans.

10. FP will assign senior management to work diligently with the CEP and Davies Ward Phillips & Vineberg LLP, court-appointed representative counsel for the unrepresented

employees and former employees (“Davies”) to pursue coverage under the Ontario Pension Benefit Guarantee Fund (“PBGF”) for salaried and unionized employees and former employees who have earned service in Ontario (the “Ontario Members”), including of the former Thorold paper mill employees, in order to mitigate the impact of any pension deficiency on those members. If a commitment is received from the PBGF, the Ontario Members will be separated from the NB Hourly Plan and a wind up for the Ontario Members will be implemented.

11. FP will make any necessary application under the PBGF to seek such coverage.
12. FP will work diligently with the CEP and Davies to request the Province of Quebec to provide members of the defined benefit pension plans registered in the Province of Quebec (the “Quebec Plans”) with the pension treatment contemplated by Section 230.0.0.1 to 230.0.11 of the Supplemental Pension Plans Act (the “SPPA”) in Quebec so that members will have the option to transfer their assets out of the Quebec Plans to a vehicle administered by the Regie des rentes du Quebec (the “Regie”) in accordance with the SPPA. FP and the CEP will also request the Province of Quebec to expand the availability and timeframe of this election beyond those members who are eligible for an immediate pension under the Quebec Plans upon termination of the plans.
13. FP will facilitate discussions between CEP and any purchaser of the Thurso facility.
14. The APA provides that Newco will establish a new defined contribution pension plan (“Newco DC Hourly Plan”) for all future service of transferred unionized employees, which will contain the same defined contribution formula that currently exists under Appendix A of the existing NB Hourly Plan. No further credited service will accrue under the NB Hourly Plan following the closing of the APA, and there will no longer be any active members contributing to the NB Hourly Plan.
15. Newco will not have any liability (including any funding or pension benefit payment obligations) in respect of the existing NB Hourly Plan, and all liabilities will remain as unsecured obligations of FP with no recourse to Newco.
16. In accordance with paragraph 17(c), the NB Hourly Plan will receive, directly or indirectly, a *pro rata* share (based on the size of the NB Hourly Plan’s claim relative to the aggregate claims of all unsecured creditors of the Applicants) of that portion of the consideration payable by Newco under the APA (49% equity in Newco and USD\$40 million promissory notes), which will be available to the Applicants’ unsecured creditors in accordance with their respective priority. The *pro rata* share of the consideration held by the NB Hourly Plan is referred to herein as the “APA Consideration”. The promissory notes comprising the APA Consideration shall have a term of eight (8) years, with all other promissory notes having a term of ten (10) years.
17. All parties request that the Province of New Brunswick (the “PNB”) and the Superintendent of Pensions for New Brunswick (the “Superintendent”) implement a structure and framework for addressing the existing deficit and claims under the NB Hourly Plan as follows:

(a) FP and CEP will jointly seek regulatory relief for the NB Hourly Plan by way of a Special Regulation that would:

- (i) exempt the NB Hourly Plan from certain funding obligations otherwise applicable on pension plan wind up under the NB Pension Benefits Act;
- (ii) if necessary, expire on the Final Wind Up Date (defined below), at which time the wind up of the NB Hourly Plan would be completed and a distribution of the available pension assets would occur;
- (iii) provide for a strict *pro rata* distribution of assets subject to each member receiving at least their own contributions with interest;
- (iv) not involve any guarantee or assurance by PNB with respect to the funded status of the NB Hourly Plan;
- (v) confirm that service and age are crystallized at the Original Wind Up Date and that earnings are frozen as at November 1, 2009;

(b) the Superintendent will order a wind up of the NB Hourly Plan effective prior to the closing of the APA and in conjunction with the Vesting Order to be obtained in the CCAA proceeding, at which time an administrator (the “Administrator”) would be appointed over the NB Hourly Plan (the “Original Wind Up Date”). The Administrator will ensure that, other than with respect to adjustments to pensions, the administration of the NB Hourly Plan is continuous and there is no interruption of benefit payments to plan members. The transfer of the NB Hourly Plan will be in accordance with the relevant New Brunswick legislation. Until an Administrator is appointed for the NB Hourly Plan, FP will retain responsibility for administering the NB Hourly Plan;

(c) the APA Consideration will be deposited into a trust fund which will be settled by FP for the sole benefit of the NB Hourly Plan and will be separate and distinct from each of the NB Hourly Plan’s pension funds (collectively, the “Outside Trust Fund”);

(d) other than ongoing pensions which will continue or commence to be paid to retirees or surviving spouses from the NB Hourly Plan, or death benefits for active members, the purchase of annuities and distribution of pension assets from the NB Hourly Plan will not occur until:

- (i) the proceeds from the APA Consideration can be contributed to the NB Hourly Plan or the trustee of the Outside Trust Fund determines and advises the Superintendent that the APA Consideration will be distributed to the NB Hourly Plan in another manner; and
- (ii) the Administrator of the NB Hourly Plan makes a decision to purchase annuities and distribute the pension assets;

but in no event will the final wind up of the NB Hourly Plan be later than April 1, 2018 (the “Final Wind Up Date”);

- 5 -

(e) subject to the oversight of the Superintendent, the Administrator will determine the percentage by which pension benefits are to be reduced, having regard to the potential value of the APA Consideration, with the opportunity for further adjustments subject to the financial position of the NB Hourly Plan;

(f) with respect to the Outside Trust Funds, the administration, appointment of trustee(s) and role and responsibilities of the trustees will be determined by the parties, subject to Court approval, and will include:

- (i) a provision to ensure that CEP has exclusive control in relation to the Outside Trust Fund for the NB Hourly Fund;
- (ii) the methodology for valuing the APA Consideration held in the Outside Trust Fund on a regular basis;
- (iii) the timing of redemption of the APA Consideration;
- (iv) voting of shares in Newco;
- (v) obligation to pay proceeds from the realization of the APA Consideration;
- (vi) reporting to unions, retirees and members; and
- (vii) the ability to retain experts and purchase fiduciary liability insurance, the funding for which will be addressed in the definitive documents.

(g) none of the PNB, the Superintendent, the Administrator of the NB Hourly Plan, the Applicants, CEP, BAM, Newco, or any trustees of the Outside Trust Fund will be liable for any decrease in the current value of the NB Hourly Plan assets at any time and for any reason other than fraud or gross negligence, and the beneficiaries of the NB Hourly Plan shall have no claim against any of those parties at any time.

#### **Other Proceedings, Releases, Further Assurances**

18. The labour board and grievance proceedings commenced by the CEP in Ontario, New Brunswick and Quebec as described in the tolling agreement dated January 8, 2010 will be withdrawn and terminated. No similar proceedings will be brought at any time relating in any way to the Applicants, the NB Hourly Plan, the defined benefit pension plan for salaried members in New Brunswick or the two defined benefit pension plans registered in the Province of Quebec (collectively, the four registered pension plans being referred to herein as the "Pension Plans") or any facts existing as at this date (whether known or unknown), and the withdrawal of the existing proceedings will operate as a complete bar to any further similar applications or proceedings.

19. CEP agrees that no arbitrator or any other decision maker or regulatory body will have jurisdiction to entertain any grievance or application or proceeding filed by the CEP, the pensioners or the employees against Newco or any affiliate of Newco with respect to the NB

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Hourly Plan, save and except for a claim for collection of an amount due and not paid pursuant to paragraph 4 of this Term Sheet.

20. Each of: (i) the Applicants' directors and officers; and (ii) BAM and its directors and officers shall be released from all claims relating to all facts and circumstances in respect of the Applicants existing as at this date (whether known or unknown) and the completion of the APA.

21. PNB, the Superintendent and the Administrator(s) of the NB Hourly Plan shall be released from all claims in respect of the NB Hourly Plan existing as at this date (whether known or unknown) and the implementation of the wind up of the NB Hourly Plan and any actions contemplated by this Term Sheet.

22. The CEP will not take a position adverse to FP or Newco with respect to any action of the pension regulators in Quebec, New Brunswick or Ontario or the Canada Revenue Agency or any other regulator or administrative body that is taken against FP or Newco as a consequence of FP and Newco fulfilling their obligations under this Term Sheet.

23. Provided the APA closes by no later than April 9, 2010, FP agrees to reimburse actual expenses incurred by CEP (including legal and actuarial fees) in connection with the negotiation of this term sheet and definitive documentation up to the maximum amount of CDN\$50,000.

24. The parties will negotiate a definitive agreement to provide for the establishment of such other trust(s) or arrangements as may be appropriate for purposes of holding and distributing the balance of any consideration that may become payable by Newco under the APA to the Applicants' unsecured creditors.

25. The parties will execute a definitive global agreement and ancillary documents for the purpose of giving effect to the terms contained herein and to more fully reflect the agreement in principle embodied in this Term Sheet, but not for the purpose of introducing any other term or substantive matter not otherwise addressed herein.

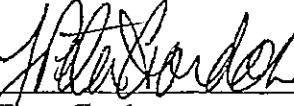
26. If any dispute arises in connection with the negotiation, execution and delivery of a definitive global agreement that cannot be resolved by the parties with the assistance of the Monitor, the parties agree that such issue can only be determined by motion brought within the CCAA proceeding.

27. This term sheet may be executed in counterparts. Each part, when taken together shall constitute one and the same agreement.

Dated at Toronto this 24<sup>th</sup> day of February, 2010.

**FRASER PAPERS INC., FPS CANADA INC., FRASER PAPERS HOLDINGS INC.,  
FRASER TIMBER LIMITED., FRASER PAPERS LIMITED, FRASER N.H. LLC**

- 7 -

  
Per: Peter Gordon  
(I have authority to bind these parties)

**THE MINISTER OF JUSTICE AND CONSUMER AFFAIRS  
FOR THE PROVINCE OF NEW BRUNSWICK**

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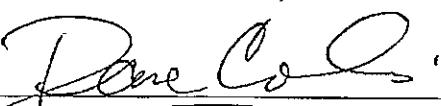
Per: Suzanne Bonnell-Burley, Q.C.  
(I have authority to bind this party)

**THE SUPERINTENDENT OF PENSIONS FOR THE PROVINCE OF NEW  
BRUNSWICK**

---

Per: Angela Mazerolle Stephens  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA**

  
~~Per:~~ Fred Wilson  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 29 (Cleaning Staff)**

---

Per: Doris Lavoie  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 29 (Mill Workers)**

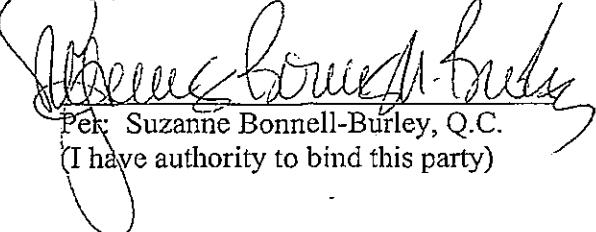
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Per: Doris Lavoie  
(I have authority to bind this party)

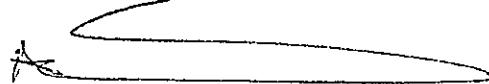
- 7 -

Per: Peter Gordon  
(I have authority to bind these parties)

**THE MINISTER OF JUSTICE AND CONSUMER AFFAIRS  
FOR THE PROVINCE OF NEW BRUNSWICK**

  
Per: Suzanne Bonnell-Burley, Q.C.  
(I have authority to bind this party)

**THE SUPERINTENDENT OF PENSIONS FOR THE PROVINCE OF NEW  
BRUNSWICK**

  
Per: Angela Mazerolle Stephens  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA**

Per: Fred Wilson  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 29 (Cleaning Staff)**

Per: Doris Lavoie  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 29 (Mill Workers)**

Per: Doris Lavoie  
(I have authority to bind this party)

---

Per: Peter Gordon  
(I have authority to bind these parties)

**THE MINISTER OF JUSTICE AND CONSUMER AFFAIRS  
FOR THE PROVINCE OF NEW BRUNSWICK**

---

Per: Suzanne Bonnell-Burley, Q.C.  
(I have authority to bind this party)

**THE SUPERINTENDENT OF PENSIONS FOR THE PROVINCE OF NEW  
BRUNSWICK**

---

Per: Angela Mazerolle Stephens  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA**

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Per: Fred Wilson  
(I have authority to bind this party)

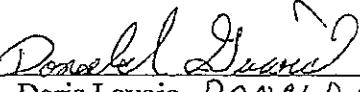
**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 29 (Cleaning Staff)**

*Dorothy Lavoie*  
Per: Doris Lavoie DONALD GIBARD  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 29 (Mill Workers)**

*Dorothy Lavoie*  
Per: Doris Lavoie DONALD GIBARD  
(I have authority to bind this party)

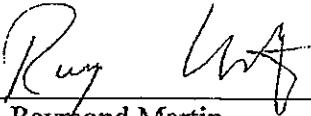
**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 29 (Office Workers)**

  
Per: Doris Lavoie DONALD GIRARD  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 6N**

  
Per: Pierre Picard  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 4N**

  
Per: Raymond Martin  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 189 (Thurso)**

Per:  
(I have authority to bind this party)

**LE SYNDICATE CANADIEN DES COMMUNICATIONS, DE L'ENERGIE ET DU  
PAPIER, SECTION LOCAL 894 (Thurso)**

Per: Christian Pilon  
(I have authority to bind this party)

- 8 -

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 29 (Office Workers)**

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Per: Doris Lavoie  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 6N**

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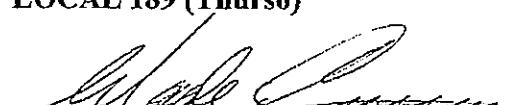
Per: Pierre Picard  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 4N**

---

Per: Raymond Martin  
(I have authority to bind this party)

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,  
LOCAL 189 (Thurso)**

  
Per: WADe CURREN  
(I have authority to bind this party)

**LE SYNDICATE CANADIEN DES COMMUNICATIONS, DE L'ENERGIE ET DU  
PAPIER, SECTION LOCAL 894 (Thurso)**

  
Per: Christian Pilon  
(I have authority to bind this party)

# EXHIBIT “D”

**D. J. Miller**

**From:** D. J. Miller  
**Sent:** April 15, 2010 10:27 AM  
**To:** 'Mazerolle Stephens, Angela (JUS)'  
**Cc:** 'Elizabeth Brown'; 'Susan Nickerson'; 'Terra Klinck'  
**Subject:** FP - Wind-Up of the NB Plans

Angela:

The closing is scheduled to occur on April 28. While we don't anticipate any delays, we won't know for sure until April 27.

Pursuant to section 12.1 of the APA, closing is deemed to occur at 12:01 a.m. on the date of Closing (April 28). Accordingly, April 28 would be the employees' first day of work with Twin Rivers. Based on your email below, I would think that option #2 is more appropriate, with the wind-up occurring on the day of closing (April 28) but with an effective date of the day prior to closing (April 27).

If we obtain any further information, or if the closing date is re-scheduled for any reason, we'll keep you advised.

D.J.

**From:** Mazerolle Stephens, Angela (JUS) [mailto:[Angela.MazerolleStephens@gnb.ca](mailto:Angela.MazerolleStephens@gnb.ca)]  
**Sent:** April 14, 2010 1:51 PM  
**To:** 'Terra Klinck'  
**Cc:** D. J. Miller; Elizabeth Brown; Susan Nickerson  
**Subject:** RE: FP - Wind-Up of the NB Plans

Terra,

I plan on ordering the wind-up of the plans, however, was unsure on the date. My understanding of the union contract is that they must have a DC plan to pay into while they are working for Fraser Papers. They start paying into the Twin Rivers plan as soon as they begin working for Twin Rivers.

With that in mind, my thought was to order the wind-up of the DC portion of the plans on one of two dates:

1. the day after the sale closing with an effective date of the day of the sale (assuming they become employees of Twin Rivers on the day following the sale and begin paying into the Twin Rivers pension plan on that date), or
2. on the day of the sale closing with an effective date of the day before the sale (assuming they become employees of Twin Rivers on the day of the sale closing and begin paying into the Twin Rivers pension plan on that date).

Unless I misunderstand when the employees become employees of Twin Rivers and therefore eligible to earn service under their pension plan, the above wind-up dates are the only ones that would not produce a gap in pension coverage.

If everyone is sure on the closing date, I can issue an Order now using that date. I was not sure how firm that closing date is, or if it is still subject to change.

**Angela Mazerolle Stephens**  
Superintendent of Pensions  
Office of the Superintendent of Pensions  
Department of Justice and Consumer Affairs

Province of New Brunswick  
 Frederick Square, Ste. 450  
 77 Westmorland Street  
 P.O. Box 6000  
 Fredericton, NB E3B 5H1  
 Ph: (506) 453-2055  
 Fax: (506) 457-7266

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**From:** Terra Klinck [mailto:[terra-klinck@hicksmorley.com](mailto:terra-klinck@hicksmorley.com)]  
**Sent:** Wednesday, April 14, 2010 12:55 PM  
**To:** Mazerolle Stephens, Angela (JUS)  
**Cc:** DJMiller@tgc.ca; Elizabeth Brown; Susan Nickerson  
**Subject:** FP - Wind-Up of the NB Plans

Hi Angela

I am writing in regards to the attached Order which provides for a partial wind-up of the NB Plans (in relation to the DB components of the plans).

I believe that all of the parties are contemplating that the NB Plans be wound up in full prior to the closing date of the corporate asset sale. Do you intend to order full wind ups of the NB Plans prior to the closing date (which is now scheduled for April 28) , or should Fraser Papers be taking this action?

Please feel free to give me a call if you want to discuss this issue further.

Thank you and best regards,

Terra



Terra L. Klinck  
[terra-klinck@hicksmorley.com](mailto:terra-klinck@hicksmorley.com)  
 Direct: 416.864.7351

Hicks Morley Hamilton Stewart Storie LLP  
 TD Tower, 66 Wellington St. W., 30th Floor, Box 371  
 Toronto, ON M5K 1K8  
 Tel: 416.362.1011 Fax: 416.362.9680

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 LAW AND ADVOCACY

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## D. J. Miller

---

**From:** Mazerolle Stephens, Angela (JUS) [Angela.MazerolleStephens@gnb.ca]  
**Sent:** April 28, 2010 4:19 PM  
**To:** D. J. Miller  
**Subject:** Re: Fraser Papers Closing.

Thanks. Let me know and I will issue the order accordingly.

-----  
 Sent from my BlackBerry Wireless Handheld

**From:** D. J. Miller <DJMiller@tgc.ca>  
**To:** Mazerolle Stephens, Angela (JUS)  
**Cc:** Elizabeth Brown <emb@hicksmorley.com>; McMillan, Glen <gmcmillan@toronto.fraserpapers.com>  
**Sent:** Wed Apr 28 17:12:01 2010  
**Subject:** RE: Fraser Papers Closing

Angela: We are in the middle of closing right now, but it is a "several hours" process. I need to confirm with counsel for CIT and Brookfield as to certain issues relating to whether closing will be effective today (our very strong preference) or tomorrow, in view of the timing for the flow of wire transfers, registration of transfer deeds on title, etc. which have not yet been initiated. I am mindful of the necessity to have the final wind-up Order issued on the closing date (effective the day prior to closing), but want to make sure that we are certain as to the actual / effective closing date. I am in discussions with those parties and will confirm very shortly.

D.J.

**From:** Mazerolle Stephens, Angela (JUS) [mailto:Angela.MazerolleStephens@gnb.ca]  
**Sent:** April 28, 2010 3:43 PM  
**To:** D. J. Miller  
**Subject:** RE: Fraser Papers Closing

D.J.,

Do you know if this is going to close today? I've heard things might be back on track....

### Angela Mazerolle Stephens

Superintendent of Pensions  
 Office of the Superintendent of Pensions  
 Department of Justice and Consumer Affairs  
 Province of New Brunswick  
 Frederick Square, Ste. 450  
 77 Westmorland Street  
 P.O. Box 6000  
 Fredericton, NB E3B 5H1  
 Ph: (506) 453-2055  
 Fax: (506) 457-7266

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**From:** D. J. Miller [mailto:[DJMiller@tgc.ca](mailto:DJMiller@tgc.ca)]  
**Sent:** Tuesday, April 27, 2010 4:16 PM  
**To:** Mazerolle Stephens, Angela (JUS)  
**Cc:** Elizabeth Brown  
**Subject:** RE: Fraser Papers - Original Executed Term Sheets

Will do. (Nothing is ever easy with this deal, is it?!)

D.J.

**From:** Mazerolle Stephens, Angela (JUS) [mailto:[Angela.MazerolleStephens@gnb.ca](mailto:Angela.MazerolleStephens@gnb.ca)]  
**Sent:** April 27, 2010 3:07 PM  
**To:** D. J. Miller  
**Cc:** Elizabeth Brown  
**Subject:** RE: Fraser Papers - Original Executed Term Sheets

Thanks D.J. In that case I will just draft an Order and have it ready to go tomorrow if and when the deal closes. Let me know when you are certain of the closing.

Thanks,  
Angie

**From:** D. J. Miller [mailto:[DJMiller@tgc.ca](mailto:DJMiller@tgc.ca)]  
**Sent:** Tuesday, April 27, 2010 4:04 PM  
**To:** Mazerolle Stephens, Angela (JUS)  
**Cc:** Elizabeth Brown  
**Subject:** RE: Fraser Papers - Original Executed Term Sheets

Angela: Thank you for the update as to signatures. I'll let you know as soon as they're received.

While we are still planning to close tomorrow, I understand that there are certain unresolved issues as between the purchaser and the Province of New Brunswick (Business New Brunswick) that must be resolved prior to closing. I am not entirely clear on what the issues are, but have made inquiries. It is therefore possible that closing may be delayed. I'm sorry that I can't provide more definitive confirmation one way or the other, but will do so as soon as I can.

D.J.

**From:** Mazerolle Stephens, Angela (JUS) [mailto:[Angela.MazerolleStephens@gnb.ca](mailto:Angela.MazerolleStephens@gnb.ca)]  
**Sent:** April 27, 2010 12:00 PM  
**To:** D. J. Miller  
**Subject:** RE: Fraser Papers - Original Executed Term Sheets

D.J.,

Suzanne and I executed these documents this morning and are sending the originals (4 of each) to you overnight. In case they do not reach you in time for closing, I am also attaching a scanned copy of the documents with our signatures to this e-mail.

Are we certain this deal is going to close tomorrow? My understanding is that the employees become Twin Rivers employees at 12:01am on April 28. If we are certain everything is going to close, I could issue the order to wind-up the DC portion of the plans today, effective today.

Angie

**Angela Mazerolle Stephens**

Superintendent of Pensions  
 Office of the Superintendent of Pensions  
 Department of Justice and Consumer Affairs  
 Province of New Brunswick  
 Frederick Square, Ste. 450  
 77 Westmorland Street  
 P.O. Box 6000  
 Fredericton, NB E3B 5H1  
 Ph: (506) 453-2055  
 Fax: (506) 457-7266

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**From:** D. J. Miller [mailto:DJMiller@tgc.ca]

**Sent:** Monday, April 26, 2010 3:24 PM

**To:** Mazerolle Stephens, Angela (JUS)

**Subject:** RE: Fraser Papers - Original Executed Term Sheets

Overnight Fedex or similar means would be ideal. We are closing in escrow tomorrow, with the actual closing on Wednesday. Many thanks.

D.J.

**From:** Mazerolle Stephens, Angela (JUS) [mailto:Angela.MazerolleStephens@gnb.ca]

**Sent:** April 26, 2010 2:23 PM

**To:** D. J. Miller

**Subject:** RE: Fraser Papers - Original Executed Term Sheets

D.J.,

Just to clarify, how do you want me to send these back to you once Suzanne and I sign them?

Angie

**Angela Mazerolle Stephens**

Superintendent of Pensions  
 Office of the Superintendent of Pensions  
 Department of Justice and Consumer Affairs  
 Province of New Brunswick  
 Frederick Square, Ste. 450  
 77 Westmorland Street  
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**From:** D. J. Miller [mailto:[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)]

**Sent:** Friday, April 23, 2010 3:39 PM

**To:** Mazerolle Stephens, Angela (JUS)

**Subject:** Fraser Papers - Original Executed Term Sheets

Angela: In preparation for closing on Wednesday, April 28, could you please arrange for the execution and return of four (4) original signed copies of each of the (i) Term Sheet for the NB Hourly Plan; (ii) cover signature page for the NB Hourly Plan; (iii) Term Sheet for the NB Salaried Plan? An execution version of each is attached to this email, together with Schedule "A" to the cover signature page for the Hourly Plan Term Sheet, which lists those documents that will be annexed as schedules. Many thanks, and please feel free to contact me if you have any questions.

Regards,

D.J.

**D.J. Miller**  
 ThorntonGroutFinnigan LLP  
 Telephone: 416-304-0559  
 Facsimile: 416-304-1313  
 Suite 3200 Canadian Pacific Tower  
 100 Wellington Street West  
 Toronto, Ontario M5K 1K7

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**D. J. Miller**

---

**From:** Mazerolle Stephens, Angela (JUS) [Angela.MazerolleStephens@gnb.ca]  
**Sent:** April 29, 2010 9:02 AM  
**To:** D. J. Miller  
**Subject:** RE: Fraser Papers Inc.

Done. I just faxed a copy of the Order to Paul Chang and Jeff Penner of Morneau Sobeco, to Glen, to yourself, and to Bernie LeBlanc of Frasers.

Angie

**From:** D. J. Miller [mailto:[DJMiller@tqf.ca](mailto:DJMiller@tqf.ca)]  
**Sent:** Thursday, April 29, 2010 1:20 AM  
**To:** Mazerolle Stephens, Angela (JUS)  
**Cc:** McMillan, Glen; Elizabeth Brown; De Cicco, Natasha  
**Subject:** Fraser Papers Inc.

Angela: All parties have exchanged documents in a closing over several hours today, but due to the late hour were unable to register the transfer deeds on title, or effect certain fund transfers until tomorrow. That will be done in the morning.

Although the completion of the closing is occurring in the morning, **all parties have confirmed that the closing is effective as of April 28, 2010 and all closing documents are dated April 28**. Accordingly, your Order for wind-up should be dated April 28 and be effective as of April 27 (one day prior to closing). If you have any questions, please call me. Thanks, Angela.

D.J.

**D.J. Miller**  
ThorntonGroutFinnigan LLP  
Telephone: 416-304-0559  
Facsimile: 416-304-1313  
Suite 3200 Canadian Pacific Tower  
100 Wellington Street West  
Toronto, Ontario M5K 1K7

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# EXHIBIT “E”

**EXHIBIT**

4 E11

Justice and Consumer Affairs Justice et Consommation



**IN THE MATTER** of the Pension Plan for New Brunswick Salaried Employees of Fraser Papers Inc. (NB Reg. # 0251256), and the Pension Plan for New Brunswick Hourly Paid Employees of Fraser Papers Inc. (NB Reg. # 0251264);

and

**IN THE MATTER** of an application by Fraser Papers Inc. under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 on June 18, 2009 and the wind-up of the above-mentioned pension plans.

---

### ORDER OF THE SUPERINTENDENT OF PENSIONS

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Date of Order: April 28, 2010

**To:** **Morneau Sobeco Limited Partnership**  
 Attn: Mr. Paul Chang  
 5151 George Street, Ste. 1700  
 Halifax, NS B3J 1M5

**Copy:** **Fraser Papers Inc.**  
 Attn: Glen McMillan  
 Suite 200, Brookfield Place  
 181 Bay Street  
 Toronto, ON M5J 2T3  
 Via Facsimile: 416-359-8606

Office of the Superintendent of Pensions /  
 Bureau du surintendant des pensions

Tel/Téléphone:  
 (506) 453-2055  
 Fax/Télécopieur:  
 (506) 457-7266

P.O. Box 6000  
 Fredericton  
 New Brunswick  
 Canada E3B 5H1

Case postale 6000  
 Fredericton  
 Nouveau-Brunswick  
 Canada E3B 5H1

[www.enb.ca/0307/001e.htm](http://www.enb.ca/0307/001e.htm)

[www.enb.ca/0307/001f.htm](http://www.enb.ca/0307/001f.htm)

**FACTS / ANALYSIS:**

By Initial Order of the Ontario Superior Court of Justice dated June 18, 2009, Fraser Papers Inc. was granted protection from its creditors and a stay of proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") until July 17, 2009. This CCAA protection and stay was extended through various motions to July 9, 2010.

Final approval of a sale transaction contemplated by an asset purchase agreement between Fraser Papers Inc., Brookfield Asset Management, and/or Twin Rivers Paper Company Inc. was fully and finally approved by the Ontario Superior Court on April 6, 2010. The documents supporting this transaction include both a Term Sheet for Global Agreement for the Pension Plan for New Brunswick Salaried Employees of Fraser Papers Inc. (the "Salaried Plan") and a Term Sheet for Global Agreement for the Pension Plan for New Brunswick Hourly Paid Employees of Fraser Papers Inc. (the "Hourly Plan"). Both term sheets contemplate the Superintendent ordering a wind-up of the respective plans effective prior to the closing of the asset purchase agreement.

The asset purchase agreement closed effective at 12:01 a.m. on April 28, 2010. As a result, there is a cessation of employer contributions and a cessation of crediting service for the defined contribution pension benefits to members under both the Salaried Plan and the Hourly Plan on April 27, 2010. Further, notwithstanding this sale of all or part of the business of Fraser Papers Inc. to Twin Rivers Paper Company Inc., pursuant to subsection 99.92(1) of the *Pension Benefits Act*, Twin Rivers Paper Company Inc. is deemed not to be a successor employer for the purposes of the pension plans.

By Order dated April 1, 2010, the Superintendent ordered the wind-up of the defined benefit provisions of both the Salaried Plan and the Hourly Plan effective March 31, 2010. As such, the only benefits which continue to accrue under these plans are defined contribution benefits. However, as contemplated in the above-mentioned term sheets and asset purchase agreement, both the Salaried Plan and the Hourly Plan must be wound-up prior to the closing of the asset purchase agreement.

**ORDER:**

Therefore, pursuant to subsection 61(1) of the *Pension Benefits Act*, I hereby Order Morneau Sobeco Limited Partnership, as the appointed administrator of the pension plans, to wind-up both the Pension Plan for New Brunswick Salaried Employees of Fraser Papers Inc., and the Pension Plan for New Brunswick Hourly Paid Employees of Fraser Papers Inc. The effective date of the wind-up for both plans shall be April 27, 2010. This Order does not amend the effective

date of wind-up for the defined benefit provisions of the pension plans, which shall remain March 31, 2010.

The administrator shall transmit notice of this Order to each member and former member of the plans, each trade union that represents members of the plan, any other persons entitled to payment from the pension funds, and to PricewaterhouseCoopers Inc. (the Court appointed Monitor in the CCAA proceedings).

The Notice shall specify the effective date of the wind-up, as well as the name and provincial registration number of the respective plan.

Issued at Fredericton, New Brunswick this 28<sup>th</sup> day of April, 2010.



Angela Mazerolle Stephens  
Superintendent of Pensions

# EXHIBIT “F”

# EXHIBIT "F"

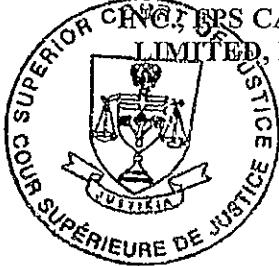
Court File No. CV-09-8241-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MADAM ) TUESDAY, THE 6TH DAY  
JUSTICE PEPALL ) OF APRIL, 2010

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./PAPIERS FRASER  
INC., FRS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER  
LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC (collectively, the  
"Applicants")



## FINAL APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicants for an order seeking final approval of the sale transaction (the "Transaction") contemplated by an asset purchase agreement between the Applicants, as vendors, and Brookfield Asset Management Inc. ("Brookfield") and/or such other Person(s) as it may designate, namely Twin Rivers Paper Company Inc. (the "Canadian Purchaser") as designated purchaser of the Purchased Assets located in Canada (the "Canadian Purchased Assets") and Twin Rivers Paper Company LLC (the "U.S. Purchaser", together with the Canadian Purchaser the "Designated Purchasers") as designated purchaser of the Purchased Assets located in the United States (the "U.S. Purchased Assets"), made as of December 22, 2009, a clean and blackline copy each of which is attached as Exhibits "I" and "J", respectively, to the affidavit of J. Peter Gordon sworn March 30, 2010 (the "Gordon Affidavit"), as amended by the first amendment to the asset purchase agreement dated as of February 26, 2010 attached as Exhibit "L" to the Gordon Affidavit and a proposed second amendment to the asset purchase agreement (the "Second Amendment") dated as of the Closing Date of the Transaction, attached

as Exhibit "M" to the Gordon Affidavit, as revised and attached in a blacklined copy as Exhibit "G" to the Affidavit of Larry Ellis sworn April 5, 2010 (the "Ellis Affidavit"), and as may be further amended, modified or restated from time to time (collectively, the "Purchase Agreement"), and vesting in the Canadian Purchaser and the U.S. Purchaser the Applicants' right, title and interest in and to the Canadian Purchased Assets and the U.S. Purchased Assets, respectively, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of the Applicants dated March 30, 2010, the Ellis Affidavit and Exhibits attached thereto, filed on this date, and the tenth report (the "Tenth Report") of PricewaterhouseCoopers Inc., in its capacity as monitor of the Applicants (the "Monitor"), the Affidavit of Paul DesRosiers sworn April 5, 2010, the Consent of the Davies Group (as defined below) to be dated April 6, 2010, filed with the Court on this date (the "Davies Consent"), and on hearing the submissions of counsel for the Applicants, counsel for the officers and directors of the Applicants, counsel for the Monitor, counsel for Brookfield, counsel for CIT Business Credit Canada Inc. ("CIT"), counsel for the Communications, Energy and Paperworkers Union of Canada (the "CEP"), counsel for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "USW"), counsel for the Province of New Brunswick ("PNB") in its various capacities including the Superintendent of Pensions for PNB (the "Superintendent") and Business New Brunswick, counsel for the court-appointed Committee Representing Unrepresented Employees and Former Employees other than those employees or former employees in the Province of Quebec (the "Davies Group"), other members of the Committee Representing Unrepresented Employees and Former Employees in the Province of Quebec, such employees and former employees being represented on this motion by the firm Paliare Roland Rosenberg LLP (the "Paliare Group"), and counsel for the Town of Madawaska ("Town") and the Madawaska Water District ("District") and no one appearing for any other person on the service list, including Regie des rentes du Quebec, Morneau Sobeco in its capacity as Administrator appointed by the Superintendent in respect of the NB Hourly Plan and the NB Salaried Plan (collectively, the "NB Administrator"), the active members of the New Brunswick Regional Council of Carpenters, Millwrights and Allied Workers, Local 2450 ("CMAW"), the Superintendent of Financial Services of Ontario ("FSCO") and the Pension Benefit Guaranty Corporation, although all properly served as

- 3 -

appears from the affidavit of service of Annette Fournier sworn March 31, 2010, and the further affidavit of service of Annette Fournier sworn April 5, 2010, filed:

1. **THIS COURT ORDERS** that all capitalized terms used but not defined in this Order shall have the meanings ascribed thereto in the Purchase Agreement. Any reference in this Order to the Purchase Agreement shall be deemed to be a reference to the Purchase Agreement as amended. In paragraphs 10, 12 and 23 of this Order, any and all references to: (a) Brookfield shall include any and all of its affiliates, (b) the Designated Purchasers shall include any assignee or transferee thereof, and (c) the Applicants shall include their respective affiliates.
2. **THIS COURT ORDERS** that the time for service of the notice of motion, the Tenth Report and motion record in respect of this motion be and it is hereby abridged and that the motion is properly returnable today and further that the requirement for service of the notice of motion and motion record herein upon interested parties, other than those served, is hereby dispensed with and that the service of the notice of motion, the Tenth Report and motion record herein as effected by the Applicants is hereby validated in all respects.
3. **THIS COURT ORDERS AND DECLARES** that the Purchase Agreement and all of its terms and conditions (including all schedules and exhibits attached thereto) and the Transaction are hereby fully and finally approved. The execution, delivery and performance of: (a) the Purchase Agreement (with such alterations and amendments as the parties thereto may agree, subject to obtaining Monitor consent in the case of any material alterations or amendments made prior to the Closing of the Transaction); (b) all agreements and other documents contemplated thereby or in furtherance thereof (the "Related Documents"), including, without limitation, the Escrow Agreement and each other Ancillary Agreement; and (c) the Transaction; by the Applicants is hereby authorized and approved.

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4. **THIS COURT ORDERS AND DECLARES** that the Applicants are hereby authorized and directed to execute and deliver all documents and agreements referred to in or contemplated by paragraph 3 of this Order and to take such additional actions and execute and deliver such bills of sale, assignments, ancillary agreements, directions, consents, certificates, licenses, acknowledgments and other documents and assurances as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to each of the Designated Purchasers, as applicable, or in furtherance of this Order and the performance of their obligations thereunder.

5. **THIS COURT ORDERS AND DECLARES** that the global agreement term sheet dated as of February 24, 2010, as amended and attached as Schedule "A" to the Order of this Court dated March 22, 2010 attached as Exhibit "O" to the Gordon Affidavit, together with the cover page with signatures and all such schedules to be appended thereto (collectively, the "NB Hourly Global Agreement"), is hereby approved and that the NB Hourly Global Agreement and the terms and conditions set out therein including, without limiting the generality of the foregoing, the wind-up mechanism of the Old FP Hourly Plan, are in the best interests of the Applicants and the other parties thereto including the members of the Old FP Hourly Plan. The execution, delivery and performance of the NB Hourly Global Agreement by all parties signatory thereto is hereby authorized and approved. All parties to the NB Hourly Global Agreement are hereby authorized and directed to take such steps as may be necessary or desirable to conclude the implementation of the terms and conditions set out therein and to execute and deliver such documents and agreements as may be necessary or desirable to implement the NB Hourly Global Agreement, including, without limitation, all such documents and agreements to be appended as schedules to the NB Hourly Global Agreement, or in furtherance of this Order, and to perform their obligations thereunder.

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6. **THIS COURT ORDERS AND DECLARES** that for greater certainty, the CEP is authorized and directed, on behalf of its current and former members, to enter into, execute and deliver such documents as may be contemplated by the NB Hourly Global Agreement, including but not limited to releases in favour of: (i) the Applicants and its directors, officers, employees and others, PNB, the Superintendent and the Administrator (the "Term Sheet Release") and (ii) Brookfield, the Canadian Purchaser, the U.S. Purchaser and their respective directors, officers, employees and others (the "APA Release") and a declaration and agreement of trust for a pension deficit funding trust for the Old FP Hourly Plan (the "Trust Agreement") to be annexed as schedules to the NB Hourly Global Agreement. The NB Hourly Global Agreement is legally binding on and effective against the current and former members of the CEP and each of its locals who are signatories thereto (collectively referred to herein as "CEP"), and the current members of the CMAW.

6A. **THIS COURT ORDERS** that, for greater certainty and notwithstanding the releases contained in this Order and in the Term Sheet Release in each case as it relates only to the parties to the Term Sheet Releases, nothing shall be taken as extinguishing any rights in favour of CEP or the trustees pursuant to the NB Hourly Global Agreement or the Trust Agreement. *84*

7. **THIS COURT ORDERS AND DECLARES** that the global agreement term sheet dated as of March 16, 2010 attached as Exhibit "P" to the Gordon Affidavit (the "NB Salaried Global Agreement"), is hereby approved and that the NB Salaried Global Agreement and the terms and conditions set out therein including, without limiting the generality of the foregoing, the wind-up mechanism of the Old FP Salaried Plan, are in the best interests of the Applicants and the other parties thereto including the members of the Old FP Salaried Plan. The execution, delivery and performance of the NB Salaried Global Agreement by the Applicants is hereby authorized and

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approved. All parties to the NB Salaried Global Agreement are hereby authorized and directed to take such steps as may be necessary or desirable to conclude the implementation of the terms and conditions set out therein and to execute and deliver all such documents and agreements as may be necessary or desirable to implement the NB Salaried Global Agreement, or in furtherance of this Order, and to perform their obligations thereunder.

**8. THIS COURT ORDERS AND DECLARES** that the Davies Consent is hereby confirmed and approved and the execution of the Davies Consent by the Representatives (as such term is defined in the Order of this Honourable Court dated September 17, 2009) on their own behalf and on behalf of the Davies Group, by its counsel, Davies Ward Phillips & Vineberg LLP ("Davies"), is hereby ratified, authorized and approved. The Davies Consent is legally binding on and effective against the Representatives and all the Represented Parties who comprise the Davies Group as defined in this Order, and the Representatives are hereby authorized to take such additional steps and execute or direct its counsel, Davies, to execute such additional documents as may be necessary or desirable in connection with, or the performance of, the Davies Consent.

**8A. THIS COURT ORDERS AND DECLARES** that the Consent of the Paliare Group dated as of April 6, 2010 (the "Paliare Consent") is hereby confirmed and approved and the execution of the Paliare Consent by the Representatives (as such term is defined in the Order of this Honourable Court dated September 17, 2009) on their own behalf and on behalf of the Paliare Group, by its counsel, Paliare Roland Rosenberg LLP ("Paliare"), is hereby ratified, authorized and approved. The Paliare Consent is legally binding on and effective against the Representatives and all the Represented Parties who comprise the Paliare Group as defined in this Order, and the Representatives are hereby authorized to take such additional steps and

- 7 -

execute or direct its counsel, Paliare, to execute such additional documents as may be necessary or desirable in connection with, or the performance of, the Paliare Consent.

9. **THIS COURT ORDERS AND DECLARES** that none of PNB, the Superintendent, the NB Administrator, the Applicants, the CEP, or any trustees of the Outside Trust Funds (as such term is defined in the NB Hourly Global Agreement and the NB Salaried Global Agreement), as well as their respective officers, directors, employees, representatives, delegates and agents, shall be or be deemed to be liable for any decrease in the current value of the Old FP Hourly Plan and/or the Old FP Salaried Plan assets at any time and for any reason whatsoever other than their fraud or gross negligence. None of the beneficiaries of the Old FP Hourly Plan and the Old FP Salaried Plan nor the NB Administrator shall have any Claims (as defined herein) whatsoever against any of the foregoing persons at any time.

10. **THIS COURT ORDERS AND DECLARES** that neither Brookfield nor any Designated Purchaser shall be a successor to any of the Applicants and neither Brookfield nor any Designated Purchaser shall assume or be deemed to assume any liabilities or obligations whatsoever of the Applicants including, without limitation, any and all liabilities and obligations in respect of, in connection with or in relation to: (a) any of the Pension Plans (including, without limitation, any funding or pension benefit payment obligations); (b) any and all termination, severance or related amounts which any current or former employee of the Applicants could at any time assert against the Applicants; (c) any and all former, current or future employees of the Applicants (other than the Transferred Employees and the Unionized Employees who become employees of the Designated Purchasers, as applicable, on Closing as provided for in the Purchase Agreement); and (d) any agreements which the Applicants may have with any person,

except for such liabilities in relation to assigned agreements as are specifically and expressly assumed as an Assumed Liability under and as provided for in the Purchase Agreement.

11. **THIS COURT ORDERS AND DECLARES** that each of the Applicants and, in each case, each of their respective directors, officers, representatives, agents, employees and delegates, shall, effective immediately upon Closing of the Transaction, be and be deemed to be irrevocably and unconditionally fully and finally released from any and all claims, obligations or liabilities whatsoever, whether known, anticipated or unknown, arising from any fact, matter or circumstance occurring or existing on or before the Closing Date in relation to or in connection with any and all facts and circumstances including in respect of the Purchase Agreement, the NB Hourly Global Agreement, the NB Salaried Global Agreement, the Transaction and the Closing thereof including, without limitation, any and all claims in respect of the Pension Plans which includes, but is not limited to, claims that might be brought against them relating to their actions as or on behalf of the administrators or sponsors of the Pension Plans, save and except for their fraud or gross negligence. For greater certainty and notwithstanding anything else contained herein, this release: (a) in favour of the Applicants' directors and officers shall not, and shall not be deemed to release the sixteen (16) outstanding claims against the directors and officers in the total amount of approximately \$181,000 that are referred to in paragraph 31 of the Tenth Report; and (b) in favour of the Applicants shall not, and shall not be deemed to release (i) any Claims filed against the Applicants that remain outstanding pursuant to the Claims Order of this Honourable Court dated July 15, 2009 (the "Claims Order"); (ii) any Restructuring Claims that arise or may be filed in accordance with the Claims Order; (iii) the Applicants' obligations under s. 18(ii) of the Initial Order; or (iv) any Excluded Claim as defined in the Claims Order, all of which shall continue to be addressed and/or finally determined as part of the claims process established under the Claims Order.

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12. **THIS COURT ORDERS AND DECLARES** that Brookfield, the Designated Purchasers, and their respective affiliates and officers, directors, employees, delegates, agents and representatives shall, effective immediately upon Closing of the Transaction, be and be deemed to be irrevocably and unconditionally fully and finally released of and from any and all claims, obligations or liabilities whatsoever arising from any event, fact, matter or circumstance occurring or existing on or before the Closing Date in relation to or in connection with the Applicants or their respective present or past businesses, properties or assets, including, without limitation, any and all claims, obligations or liabilities whatsoever, whether known, anticipated or unknown, in relation to or in connection with the Pension Plans, the Labour Board Proceedings (as defined in the Second Amendment), and the former, current or future employees of the Applicants who are not Transferred Employees or Unionized Employees who become employees of the Designated Purchasers on Closing in accordance with the terms and conditions of the Purchase Agreement.

13. **THIS COURT ORDERS AND DECLARES** that each of: (a) PNB; (b) the Superintendent; and (c) the NB Administrator and, in each case, each of their directors, officers, representatives, agents, employees and delegates, as applicable, shall be irrevocably and unconditionally fully and finally released from any and all Claims (as defined herein), whether known, anticipated or unknown, arising in respect of the Old FP Hourly Plan, the Old FP Salaried Plan, the implementation of the wind-up of the Old FP Hourly Plan and/or the Old FP Salaried Plan and any actions contemplated by the NB Hourly Global Agreement and the NB Salaried Global Agreement save and except for their fraud or gross negligence.

14. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Designated Purchasers substantially in the form attached as Schedule "A"

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hereto (the "Monitor's Certificate"), all of the Applicants' right, title, benefit, and interest in and to: (a) the Canadian Purchased Assets, including, without limitation, those assets listed in Schedule "B" attached hereto, and further including, without limitation, the real property identified and described in Schedule "C" attached hereto (the "New Brunswick Real Property"); and (b) the U.S. Purchased Assets, including, without limitation, those assets listed in Schedule "D" attached hereto, and further including, without limitation, the real property identified and described in Schedule "E" attached hereto (the "Maine Real Property"), shall vest absolutely in the Canadian Purchaser and the U.S. Purchaser, respectively, free and clear of and from any and all right, title, interest, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, pledges, options, warrants, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, other financial, proprietary or monetary claims, adverse claims, or rights of use, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, legal, equitable, possessory or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) the Charges (as defined in the initial order of the Honourable Justice Mr. Justice Morawetz dated June 18, 2009, as amended); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system pursuant to equivalent legislation in any other jurisdictions in which all or any part of the Purchased Assets are located; (iii) Claims from employees individually or under successor employer provisions of federal, state and provincial legislation; (iv) Claims in respect of the Pension Plans; (v) those Claims in respect of the New Brunswick Real Property listed on Schedule "F" hereto; (vi) those Claims in respect of the Maine Real Property listed on Schedule "G" hereto; and (vii) those Claims listed on Schedule "H" hereto (all of the above set out in subparagraphs (i), (ii), (iii), (iv), (v), (vi) and (vii) are collectively referred

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to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "I" attached hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby released, extinguished, expunged and discharged as against the Purchased Assets. Counsel for the Designated Purchasers and any agents appointed by such counsel may, immediately following the Closing of the Transaction, proceed with the discharge of such Claims and Encumbrances including, without limitation, the electronic discharge or the electronic continuance of and subsequent discharge of any financing statements, UCC registrations, mortgages or other registrations in respect thereof.

15. **THIS COURT ORDERS AND DECLARES** that notwithstanding (i) paragraphs 10, 12, and 14 of this Order and, for greater certainty, only with respect to the U.S. Purchaser and the Madawaska Claims and Encumbrances (as defined herein), the Claims and Encumbrances of the Town for real estate and personal property taxes in the aggregate amount of US\$5,907,738.17 and the District for water charges in the aggregate amount of US\$49,691.08 (collectively, the "Madawaska Taxes") relating to the Madawaska Mill (the "Madawaska Claims and Encumbrances") shall not be released, extinguished, expunged or discharged as against the Purchased Assets until the payment of the Madawaska Taxes by the Designated Purchasers. Upon such payment, the Madawaska Claims and Encumbrances shall be immediately hereby released, extinguished, expunged and discharged as against the Purchased Assets and the provisions of this Order including, without limiting the generality of the foregoing, paragraphs 10, 12, and 14 of this Order, shall have full force and effect in respect of the Madawaska Claims and Encumbrances. Notwithstanding anything in this Order to the contrary, nothing in this Order shall affect any claims of the Town with respect to unpaid real or personal property taxes, if any

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or the District with respect to any unpaid water charges, if any, or any liens with respect to such taxes or charges.

16. **THIS COURT ORDERS** that the Designated Purchasers are hereby ordered and directed to pay the amount of (i) US\$950,308.92 to the Town and US\$49,691.08 to the District within two (2) Business Days of the Closing Date; (ii) US\$1,957,429.25 to the Town on or before May 31, 2010; and (iii) US\$3,000,000 to the Town on or before June 30, 2010 on account of amounts owing to the Town and the District in respect of the Madawaska Taxes.

17. **THIS COURT ORDERS** that prior to Closing, the Town and the District shall deliver in escrow to the Designated Purchasers, counsel for the Designated Purchasers or any agents appointed by such counsel such discharges and releases in registrable form as may be necessary or desirable to discharge the Madawaska Claims and Encumbrances in respect of the Madawaska Taxes as against the Purchased Assets, which releases and discharges shall be released from escrow upon payment of the Madawaska Taxes.

18. **THIS COURT ORDERS** that upon the registration in the applicable land registry office of a transfer/deed of land or equivalent document in the applicable prescribed forms, and of an application for registration of vesting order in the applicable prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the Canadian Purchaser as the owner of the New Brunswick Real Property in fee simple, and is hereby directed to delete and expunge from title to the New Brunswick Real Property any and all Claims and Encumbrances in respect of the New Brunswick Real Property, including, without limitation, the Claims and Encumbrances listed in Schedule "F" attached hereto, but excluding the permitted encumbrances, easements and restrictive covenants in respect of the New Brunswick Real Property set out in Schedule "I" attached hereto.

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19. **THIS COURT ORDERS** that, notwithstanding the filing and/or registration of this Order with the applicable land registrar or equivalent official with respect to the New Brunswick Real Property, the Canadian Purchaser may seek further Order of this Court in the form of a supplemental vesting order, upon seven (7) days notice to any parties affected by such supplemental vesting order: (i) directing the applicable land registrar or equivalent official to enter the Canadian Purchaser as the owner of any additional New Brunswick Real Property in fee simple; (ii) supplementing the New Brunswick Real Property identified and described in Schedule "C" of this Order; (iii) directing the applicable land registrar or equivalent official to delete and expunge from title to the New Brunswick Real Property any additional Claims or Encumbrances as against the New Brunswick Real Property that are disclosed to or come to the attention of the Canadian Purchaser within the six (6) month period following the date of this Order; and (iv) supplementing the permitted encumbrances, easements and restrictive covenants affecting or relating to the New Brunswick Real Property and set out in Schedule "I" of this Order.

20. **THIS COURT ORDERS** that upon the registration in the applicable land registry office of a transfer/deed of land or equivalent document in the applicable prescribed forms, and of an application for registration of vesting order in the applicable prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the U.S. Purchaser as the owner of the Maine Real Property in fee simple, and, subject to paragraph 15 of this Order, is hereby directed to delete and expunge from title to the Maine Real Property any and all Claims and Encumbrances in respect of the Maine Real Property, including, without limitation, the Claims and Encumbrances listed in Schedule "G" attached hereto, but excluding the permitted encumbrances, easements and restrictive covenants in respect of the Maine Real Property set out in Schedule "I" attached hereto.

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21. **THIS COURT ORDERS** that, notwithstanding the filing and/or registration of this Order with the applicable land registrar or equivalent official with respect to the Maine Real Property, the U.S. Purchaser may seek further Order of this Court in the form of a supplemental vesting order, upon 21 days notice to any parties affected by such supplemental vesting order: (i) directing the applicable land registrar or equivalent official to enter the U.S. Purchaser as the owner of any additional Maine Real Property in fee simple; (ii) supplementing the Maine Real Property identified and described in Schedule "E" of this Order; (iii) directing the applicable land registrar or equivalent official to delete and expunge from title to the Maine Real Property any additional Claims or Encumbrances as against the Maine Real Property that are disclosed to or come to the attention of the U.S. Purchaser within the six (6) month period following the date of this Order; and (iv) supplementing the permitted encumbrances, easements and restrictive covenants affecting or relating to the Maine Real Property and set out in Schedule "T" of this Order.

22. **THIS COURT ORDERS** that notwithstanding paragraph 14 of this Order, the net proceeds from the sale of the Purchased Assets (the "Proceeds"), including, without limitation, the Promissory Note and the Common Shares not subject to the Escrow Agreement but excluding, for greater certainty, the cash consideration and the Preferred Shares to be distributed in accordance with paragraphs 25, 26 and 28 of this Order, shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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23. **THIS COURT ORDERS** that the Applicants shall not revoke, disclaim, terminate or rescind, in or pursuant to these proceedings or otherwise, any of the Purchase Agreement, the Ancillary Agreements, the Related Documents and any and all other agreements and documents delivered to or for the benefit of Brookfield or the Designated Purchasers in connection with the Purchase Agreement or the Transaction.

24. **THIS COURT ORDERS AND DIRECTS** that the Monitor file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

25. **THIS COURT ORDERS** that the net cash Proceeds payable to the Applicants on Closing are hereby directed to be distributed and paid by the Applicants immediately to CIT in payment of amounts owing under the CIT Financing Agreement in the amount of U.S. \$10,000,000 and to CIBC in payment of the CIBC Existing Facility, which facility is subject to a guarantee by Brookfield in favour of CIBC and a secured Amended and Restated Guarantee and Reimbursement Agreement of the Applicants in favour of Brookfield, in the amount of U.S. \$25,000,000.

26. **THIS COURT ORDERS** that the Proceeds payable to the Applicants on Closing in the form of Preferred Shares are hereby directed to be distributed by the Applicants immediately to GNB in full and final satisfaction of the amounts owing under the GNB Loan Agreement and the GNB Plaster Rock DIP Facility and that, upon delivery of the Preferred Shares, the Applicants shall be immediately and automatically released of any obligations under the GNB Loan Agreement and the GNB Plaster Rock DIP Facility.

27. **THIS COURT ORDERS** that upon completion of the Transaction and the Closing thereof, Fraser Papers Inc. ("FPI"), on behalf of itself and the other Applicants, shall hold the

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- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Applicants:
  - (i) the Purchase Agreement, the Ancillary Agreements, the Related Documents, the NB Hourly Global Agreement, the NB Salaried Global Agreement and the transactions, trusts, and actions contemplated therein;
  - (ii) the sale of the Purchased Assets to the Designated Purchasers, as applicable;
  - (iii) the entering into of the Purchase Agreement, the Ancillary Agreements, the Related Documents, the NB Hourly Global Agreement and the NB Salaried Global Agreement by any of the Applicants;
  - (iv) the vesting of title in the Purchased Assets in the Designated Purchasers, as applicable, free and clear of all Claims and Encumbrances;
  - (v) the distribution of the Proceeds as provided in this Order; and
  - (vi) the provisions of this Order,

shall be binding on any trustee in bankruptcy, receiver, interim receiver or similar party that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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31. **THIS COURT ORDERS** that PricewaterhouseCoopers Inc. is hereby authorized, empowered and directed to enter into the Escrow Agreement attached as Exhibit "Y" to the Gordon Affidavit (with such alterations and amendments as the parties thereto may agree), as Escrow Agent, and to carry out and satisfy the activities, functions and responsibilities set out in the Escrow Agreement and in addition to the rights and protections afforded PricewaterhouseCoopers Inc. as the Monitor under the CCAA or as an officer of this Court, the Escrow Agent shall incur no liability as a result of its acting as Escrow Agent under the Escrow Agreement or the carrying out of the provisions of this Order, except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

32. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario) and any equivalent legislation in any other jurisdictions in which all or any part of the Purchased Assets is located.

33. **THIS COURT ORDERS AND DECLARES** that all persons shall co-operate fully with the Applicants, the Designated Purchasers, Brookfield, their respective affiliates and the Monitor and do all such things that are necessary or desirable for the purpose of giving effect to and in furtherance of this Order, the Purchase Agreement and the Transaction.

34. **THIS COURT ORDERS AND DECLARES** that, pursuant to section 142 of the *Courts of Justice Act* (Ontario), no person shall be liable for any act done in good faith in accordance with any Order issued in this proceeding, and any person who takes any action whatsoever in reliance on this Order prior to the commencement of any appeal hereof or the expiry of any appeal period shall not be prejudiced or harmed in any manner by any such subsequent appeal.

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35. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada (including the Court of Queen's Bench of New Brunswick), in the United States or elsewhere to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies (including the Court of Queen's Bench of New Brunswick) are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

36. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.



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

APR 07 2010

PER / PAR: TV

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  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

**APPROVAL AND VESTING ORDER**

**Thornton GroutRinnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Canadian Pacific Tower  
Toronto-Dominion Centre  
Toronto, ON M5K 1K7

**Robert I. Thornton** (LSUC# 24266B 1B)  
**D.J. Miller** (LSUC# 34393P)

Tel: 416-304-1616  
Fax: 416-304-1313

Lawyers for the Applicants

# EXHIBIT “G”

**EXHIBIT "G"**

**PinkLarkin**  
LAWYERS • AVOCATS

December 2, 2010

*By E-Mail*

Ms. D.J. Miller  
 Thornton Grout Finnigan LLP  
 Suite 3200, Canadian Pacific Tower  
 100 Wellington Street West  
 P.O. Box 329, Toronto-Dominion Centre  
 Toronto, ON M5K 1K7

Dear Ms. Miller:

**Re: Fraser Papers Limited – Proposed Plan of Arrangement and Meetings Order**

We have been retained by Morneau Sobeco to advise on the operation, administration, and funding of the Pension Plan for New Brunswick Hourly Paid Employees of Fraser Papers Inc. (the "Pension Plan"), as well as the potential liabilities of previous administrators, employees and agents. As you know, Morneau Sobeco is the successor administrator to Fraser Papers and represents the interests of the Plan and the beneficiaries of Pension Plan.

Please be advised that our client strongly objects to the Release and Injunction provisions set out in Article IX of the Proposed Plan of Compromise and Arrangement and will be advising the Court of its objection and concerns. In our client's view, these provisions are overly broad. They purport to release and bar claims against anyone who ever played a role in the administration or operation of the Pension Plan. This is neither fair nor reasonable, and it bears no reasonable relationship to restructuring under the CCAA. As such it is beyond the purpose and proper scope of the CCAA.

It is my understanding that your attention has been brought to the Decision and Order of the New Brunswick Superintendent of Pensions dated November 25, 2010, in which the Superintendent revoked the registration of an amendment to the termination benefits for members with 20 or more years of continuous service contained in the 2005 Restated Plan Text, and registered by the Office of the Superintendent of Pensions on April 1, 2010. The amendment in question purported to eliminate a deferred, unreduced early retirement pension for Pension Plan members with 20 years of continuous service. As a result of the

Superintendent's Order, all benefits will need to be recalculated to take into account the additional benefit and liabilities. Unfortunately, it appears that the benefit in question was never valued in actuarial valuation reports prepared by previous actuaries, and, in turn, was never funded.

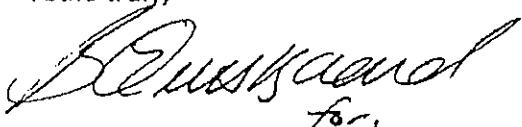
The Superintendent's Order gives rise to potential legal action, which is still being investigated, against persons who would be covered by the Release and Injunction provisions, including directors of Fraser Papers serving on the Pension Committee established under the Pension Plan who acted as agents of Fraser Papers *qua* administrator of the Pension Plan, as well as previous actuaries and other advisors and agents. In my client's view, the beneficiaries of the Pension Plan should not be further prejudiced and denied the right to pursue these potential claims.

The release of previous actuaries bears no reasonable relationship to restructuring. These actuaries have had no involvement in the CCAA proceedings and have made no contribution to the proposed Plan of Compromise and Arrangement. With respect to the directors acting as agents for the Pension Plan administrator, I note that s. 5.1(1) of the CCAA permits a compromise or arrangement of claims against directors of a company "in their capacity as directors". In *Morneau Sobeco Limited Partnership v. Aon Consulting Inc.*, [2008] O.J. No. 1022 (QL) (OCA), the Ontario Court of Appeal found a clear distinction between the role of directors and officers in their service as directors and officers of a company, and the role of directors and officers as agents of the administrator of a pension plan.

We propose that the Release and Injunction provisions of the Plan of Compromise and Arrangement be amended to carve out all claims against the previous administrator of the Pension Plan, directors serving on the Pension Committee under the Pension Plan which acted as the administrator, and all agents and advisors of the administrator, in relation to the administration, operation, funding and investment of the Pension Plan and Pension Fund.

We have received and reviewed correspondence from Mr. Swartz and Mr. Kugler concerning the extremely restrictive time frame you are proposing between the date of giving notice of the meeting of creditors and the actual holding of the meeting of creditors. Morneau Sobeco shares these concerns and also requests that the time period be extended to allow for informed and meaningful participation in the process.

Yours truly,



Ronald A. Pink, Q.C.

c. P. Chang, A. Mazerolle Stephens, J. McKenna, J. Kugler, J. Swartz,

# EXHIBIT “H”



Thornton Grout Finnigan LLP  
RESTRUCTURING + LITIGATION

EXHIBIT *H*

Canadian Pacific Tower  
Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON Canada M5K 1K7  
T 416.304.1616 F 416.304.1313

D.J. Miller  
T: 416-304-0559  
E: djmiller@tgf.ca  
File No. 1296-001

December 2, 2010

**VIA EMAIL**

Pink Larkin  
Suite 400  
1583 Hollis Street  
Halifax, Nova Scotia  
B3J 2M4

**Attention: Ronald A. Pink**

Dear Mr. Pink:

**Re: Fraser Papers Inc.**

We refer to your letter dated December 2, 2010, to which we provide this response.

Your letter advises that you have been retained by Morneau Sobeco *“to advise on the operation, administration and funding of the pension plan for New Brunswick Hourly Paid Employees of Fraser Papers Inc. (the “NB Hourly Plan”), as well as the potential liabilities of previous administrators, employees and agents”*.

To our knowledge, Morneau Sobeco was appointed by the Superintendant of Pensions for the Province of New Brunswick (the “NB Superintendant”) for the purpose of winding up the pension plan registered in that Province.

Your firm has been on the Service List in this proceeding since the Initial Order was made on June 18, 2009. In particular, your firm was on the Service List and received notice of the Applicants’ Motion returnable April 6, 2010 which resulted in an order of Madame Justice Pepall being issued on that date (the “April Order”).

The April Order was issued to, among other things, grant final approval of a sale transaction involving the Applicants’ speciality papers business. The April Order also incorporated further approval for the terms of a Global Agreement executed among various parties including the Communications Energy and Paperworkers Union of Canada (“CEP”), the NB Superintendant and the Applicants as it relates to the NB Hourly Plan. Completion of the transaction described in the April Order was expressly subject to obtaining full releases for all parties as described



Thornton Grout Finnigan LLP

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therein. Your client as Administrator of the NB Hourly Plan was the recipient of a Release executed by CEP on April 7, 2010 in furtherance of the Global Agreement and April Order.

The April Order was on notice to all parties including Morneau Sobeco and the NB Superintendent, neither of whom who opposed any of its terms. Further, the Order was made on consent of all parties in attendance.

The April Order was not appealed by any party, and is final and binding in all respects. We refer you to paragraph 11 of the April Order which provides a full and final release in favour of the Applicants, their directors, officers, representatives, agents, employees and delegates from any and all claims and liabilities, whether known, anticipated or unknown, in relation to the New Brunswick pension plans. The release contained in Paragraph 11 of the April Order includes those parties in any capacity, including as (or on behalf of) the administrators or sponsors of the pension plans.

The releases contained in Article IX of the Plan of Compromise and Arrangement (the "Plan") are entirely consistent with the releases already granted to those parties pursuant to the April Order, which continue to be binding on your client.

If Morneau Sobeco is alleging fraud or gross negligence on the part of any of the released parties under the April Order, please advise the undersigned immediately, including the basis for such allegation.

In any event, the relief sought by the Applicants on the Motion returnable December 3, 2010 is not for approval or sanction of the terms of the Plan proposed by the Applicants. Rather, it is to obtain a meeting order that permits the Applicants to call a meeting of creditors for the purposes of voting on the Plan. In the event your client has any objections to the terms of the releases, it is entitled to exercise its right to vote on the Plan. In the event the Plan is approved over any creditor's objections, they are entitled to make submissions before the court at the sanction hearing prior to the Plan becoming effective.

The flurry of correspondence that has been exchanged yesterday and today seriously undermines the Applicants' efforts to conclude a restructuring within a timeline that can produce a recovery for unsecured creditors. Morneau Sobeco has raised several issues throughout this proceeding, each of which we have managed to address. Notwithstanding the clear terms of the April Order, Morneau Sobeco appears anxious to find some potential legal action and to pursue same against some party. The purpose of the extensive releases under the April Order was to ensure that the Applicants could conclude a restructuring knowing that they would not become mired in ongoing litigation either directly, or through third party claims or cross-claims brought by other parties. For that reason, the April Order on which your client was directly on notice, specifically included representatives in any capacity and all agents of the Applicants.

The Applicants will continue to take whatever steps they believe are in the best interests of their stakeholders.



Thornton Grout Finnigan LLP

3.

Yours very truly,

Thornton Grout Finnigan LLP

A handwritten signature in black ink that appears to read "Miller".

D.J. Miller  
DJM

cc: Robert Chadwick, *Goodmans LLP*  
John McKenna, *PricewaterhouseCoopers Inc.*

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# EXHIBIT “I”

# EXHIBIT Pink Larkin

LAWYERS • AVOCATS

P.O. Box 160  
Halifax, NS B3J 2M4  
phone: (902)423-7777  
fax: (902)423-9588

## TELECOPIER COVER PAGE

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|               |                 |               |                   |
|---------------|-----------------|---------------|-------------------|
| <u>TO:</u>    | Ms. D.J. Miller | <u>FROM:</u>  | Ron Pink          |
| <u>FAX:</u>   | (416) 304-1313  | <u>PAGES:</u> | 3                 |
| <u>PHONE:</u> |                 | <u>DATE:</u>  | December 20, 2010 |

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|            |                    |                 |            |
|------------|--------------------|-----------------|------------|
| <u>RE:</u> | Fraser Papers Inc. | <u>COPY TO:</u> | Paul Chang |
|------------|--------------------|-----------------|------------|

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Please call Carol Crane at (902)423-7777 if you have any questions concerning this fax.

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**COMMENTS:**

Please note that this letter was sent by e-mail on Friday, December 17, 2010, but for some reason was not successfully delivered.

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This telecopy is directed in confidence solely to the person or company named above, may not otherwise be distributed, copied or disclosed. The contents of this telecopy may also be subject to solicitor-client privilege and all rights to that privilege are expressly claimed and not waived. If you have received this telecopy in error, please notify us immediately by telephone and return the original transmission to us by mail, or destroy the same, without making a copy. Thank you for your assistance.

# PinkLarkin

LAWYERS • AVOCATS

December 17, 2010

*By Fax: (416) 304-1313*

Ms. D.J. Miller  
Thornton Grout Finnigan LLP  
Canadian Pacific Tower  
Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON M5K 1K7

Dear Ms. Miller:

**Re: Fraser Papers Inc.**

I am writing in response to your letter of December 2, 2010.

In your letter, you refer to Pink Larkin being on the Service List in the CCAA proceeding since the Initial Order was made on June 18, 2009. Pink Larkin is on that list as legal counsel for the New Brunswick Regional Council of Carpenters, Millwrights and Allied Workers, Local 2450. Pink Larkin has never been on the Service List as legal counsel for Morneau Sobeco. Pink Larkin has never been served with, nor accepted service of, any documents in the CCAA proceeding on behalf of Morneau Sobeco.

You also state in your letter that the April Order (the Final Approval and Vesting Order dated April 6, 2010) was on notice to all parties, including Morneau Sobeco. My client does not agree. I note that the April Order refers to Morneau Sobeco as being on the service list and to Morneau Sobeco not appearing, although "properly served" as indicated in two affidavits of service of Annette Fournier. Morneau Sobeco has reviewed its records and advises me that it was never served by TGF with the materials filed in support of the April Order. Therefore, we do not agree that Morneau Sobeco is bound by that Order. If you can prove that Morneau Sobeco was served, please provide me with that proof on or before December 31, 2010.

In any event, my client does not agree with your interpretation of the release in Paragraph 11 of the April Order. Furthermore, it is our view that any potential claims against the directors for breach of fiduciary duty to the beneficiaries of the pension plans, gross negligence or fraud come within the exception in s. 5.1(2)(b) of the CCAA as being wrongful conduct by the directors.

Page | 2

I look forward to hearing from you.

Yours truly,

Ronald A. Pink, Q.C.

c. Paul Chang

*RP  
Ronald A. Pink  
R*

# EXHIBIT “J”



Thornton Grout Finnigan LLP  
RESTRUCTURING + LITIGATION

# EXHIBIT "J"

Canadian Pacific Tower  
Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON Canada M5K 1K7  
T 416.304.1616 F 416.304.1313

D.J. Miller  
T: 416-304-0559  
E: djmiller@tgf.ca  
File No. 1296-001

December 20, 2010

## VIA ELECTRONIC MAIL

Pink Larkin  
P.O. Box 160, Suite 400  
1583 Hollis Street  
Halifax, NS B3J 2M4

**Attention:** Ronald A. Pink, Q.C.

Dear Sir:

**Re:** Fraser Papers Inc.

We refer to your letter dated December 17, 2010 received on this date.

Morneau Sobeco has never served and filed a Notice of Appearance in this proceeding, or requested that it be added to the Service List, although they have received and have been on notice of every aspect of this proceeding. Notwithstanding that Morneau Sobeco has not yet served and filed a Notice of Appearance, in response to an email from this office on November 2, 2010, Morneau Sobeco indicated that it would like to be added to the list and we did so.

You are therefore correct in pointing out that the preamble to the April 6, 2010 Court Order (the "April Order") should not reference Morneau Sobeco as being on the Service List and we will make that correction at a subsequent Court attendance. However, the preamble will be amended to confirm that the Order was made on notice to Morneau Sobeco, as we have clear evidence of that fact. In addition, Morneau Sobeco has been on notice of the Order since it was issued on April 6, 2010 and has raised no issue whatsoever with respect to any aspect of the Order prior to this time.

We attach to the electronic copy of this letter, four attachments being email chains exchanged with Angela Mazerolle-Stephens, the New Brunswick Superintendent of Pensions (the "NB Superintendent"). At all relevant times prior to the issuance of the April Order, communications with both the NB Superintendent and Morneau Sobeco as Administrator appointed by the NB Superintendent were through the office of the NB Superintendent. You will note in the Email identified as Email #1 that we specifically asked the NB Superintendent if we should continue in that manner, or if we should deal directly with your client as Administrator of the pension plans. Email #1 also requests confirmation as to whether anyone on behalf of Morneau Sobeco would be attending the Court hearing on April 6, as the preamble to the draft Order attached to the



Thornton Grout Finnigan LLP

2.

email reflected the assumption that no one would be attending on behalf of Morneau Sobeco. Finally, you will note that Email #1 specifically points to the release language in the draft Order, to ensure that there is no confusion as to the relief sought.

On March 29, 2010 (prior to our serving the motion materials on the Service List, and 8 days prior to the hearing of the motion) we received an email from the NB Superintendent which is identified as Email #4 on the attached. You will note from Email #4, that the NB Superintendent forwarded comments from Morneau Sobeco following its review of the draft materials. Those comments raised no issues whatsoever with the release language in the draft April Order.

Accordingly, your client was on notice of the relief sought, was provided with a draft of the April Order and invited to provide comments, had an opportunity to do so and raised no issue with the release language and was fully aware of the references to Morneau Sobeco in the draft Order and the terms of the releases to be obtained. It is not open to your client to wait for nine months after an Order was issued on notice to it and in respect of which a \$187 million transaction was concluded, and then seek to assert that the Order does not bind Morneau Sobeco.

We refer to our telephone discussion on December 17, 2010 at which time you indicated that you would be providing the undersigned with a letter requesting specific "carve-outs" to the release language contained in Article IX of the Plan of Compromise and Arrangement filed by the Applicants. Please advise if that remains your intention.

The Applicants' pension and labour counsel, Hicks Morley, has corresponded with the NB Superintendent and Morneau Sobeco this morning, to obtain confirmation as to the date of the hearing before the Labour and Employment Board for an appeal of the NB Superintendent's Order dated November 25, 2010. We have also requested a complete copy of the Plan file and require delivery of same by 12:00 p.m. (noon) on Tuesday, December 21, 2010 in order to prepare for that hearing.

We look forward to hearing from you in respect of the above.

Yours very truly,

Thornton Grout Finnigan LLP

D.J. Miller  
DJM/gk

Enclosures

# EXHIBIT “K”

# EXHIBIT "K"



**Via Email: (i) LEB-CTE@gnb.ca (ii) mcevoy@unb.ca**

December 30, 2010

New Brunswick Labour and Employment Board  
City Centre - 435 King Street  
Fredericton, New Brunswick E3B 1E5

**Attention: Mr. John P. McEvoy**

Dear Sir:

**Subject: Fraser Papers Inc. et al**

We are the Court-appointed Monitor of Fraser Papers Inc. and its affiliates (collectively, "Fraser Papers") pursuant to proceedings commenced under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA Proceeding") before the Ontario Superior Court of Justice (Commercial List) (the "Court"). We understand from Fraser Papers that you are hearing an appeal brought before the Labour and Employment Board relating to an Order issued by the New Brunswick Superintendent of Pensions (the "Superintendent") dated November 25, 2010 (the "Pension Order").

We are writing to you in our capacity as an officer of the Court having been appointed by Court Order dated June 18, 2009. A copy of that Order and all other Orders issued in the CCAA Proceeding can be obtained by accessing the Monitor's website at [www.pwc.com/car-fraserpapers](http://www.pwc.com/car-fraserpapers).

The purpose of this letter is to ensure that you are aware of the terms of certain Court Orders made in the CCAA Proceeding, as the Pension Order that is the subject matter of the hearing does not make reference to these Orders.

On September 17, 2009, an Order was issued by the Court which confirmed that the CEP union would represent the interests of its current and former members, including pensioners and retirees. That Order was granted at the request of the CEP union. Since then, the CEP has represented its retirees in connection with all matters relating to the New Brunswick Pension Plan for Hourly Employees (the "NB Hourly Plan") to date, including addressing the deficit and wind-up of the NB Hourly Plan.

We also draw your attention to Orders dated February 24, 2010 and April 6, 2010 of the Court relating to the NB Hourly Plan. The February 24, 2010 Order of the Court approved an Agreement that had been reached among the CEP, Fraser Papers, the Province of New Brunswick and the Superintendent. That Agreement outlined the timing and manner in which the NB Hourly Plan would be wound-up and the means by which the deficit under the NB Hourly Plan would be addressed. Paragraphs 9 and 10 of the February 24, 2010 Order approving the Agreement also provide as follows:

.....

PricewaterhouseCoopers Inc.  
PO Box 82, Royal Trust Tower, Suite 3000, Toronto-Dominion Centre, Toronto, Ontario, Canada M5K 1G8  
T: +1 416 863 1133, F: +1 416 365 8215, Direct T: +1 416 941 8314, Direct F: +1 416 814 3210, [www.pwc.com/ca](http://www.pwc.com/ca)



“9. **THIS COURT** hereby requests the aid and recognition of any Court, tribunal, regulatory or administrative bodies having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such Orders and to provide such assistance to the Applicants and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that this Order shall have full force and effect in all Provinces and territories in Canada.”

On April 6, 2010 a further Order was issued by the Court to implement the terms of the Agreement referenced above among Fraser Papers, the CEP, the Province of New Brunswick and the Superintendent, and to complete a substantial portion of the restructuring of Fraser Papers. A final windup of the NB Hourly Plan was a condition to the completion of that transaction and the NB Hourly Plan was therefore wound-up as at April 27, 2010 in order to facilitate a closing of the sale transaction on April 28, 2010. The April 6, 2010 Court Order contains the same two paragraphs as set out above.

The NB Hourly Plan has been wound-up in its entirety, and the ultimate deficit owing under that pension plan represents a claim in the CCAA Proceeding through a claims process administered by the Monitor.

We wish to draw the above to your attention to the above-noted matters to ensure that you are aware of the terms of Court Orders that have been previously issued in respect of the NB Hourly Plan.

Should you wish to discuss the above, please do not hesitate to contact the undersigned at (416) 941-8314 or our counsel Rob Chadwick of Goodmans LLP at (416) 597-4285.

Yours truly,  
**PricewaterhouseCoopers Inc.**,  
 Court-Appointed Monitor of  
 Fraser Papers Inc. et al

A handwritten signature in black ink that reads "John McKenna". The signature is fluid and cursive, with "John" on the top line and "McKenna" on the bottom line.

John McKenna,  
 Senior Vice-President

cc:        Angela Mazerolle-Stephens, *Office of the Superintendent of Pensions*  
                   Mr. Glen McMillan, Fraser Papers Inc.

# EXHIBIT “L”

# EXHIBIT "L"

PROVINCE OF NEW BRUNSWICK



Labour and Employment Board

PA-003-10

IN THE MATTER OF THE *PENSION BENEFITS ACT*

AND IN THE MATTER OF A REQUEST TO REFER A DECISION  
OF THE SUPERINTENDENT OF PENSIONS

BETWEEN:

Fraser Papers Inc.

Employer

- and -

Superintendent of Pensions

Respondent

BEFORE: John P. McEvoy  
Vice Chairperson

|              |  |  |
|--------------|--|--|
| APPEARANCES: | For Fraser Papers Inc.:                                  | <i>Elizabeth M. Brown and<br/>Rachel M. Arbour</i>     |
|              | For the Superintendent of Pensions:                      | <i>Peter H. MacPhail and<br/>Frederick A. Welsford</i> |
|              | For Morneau Sobeco Limited<br>Partnership:               | <i>Ronald A. Pink, Q.C.</i>                            |
|              | For Communication, Energy and<br>Paperworkers, Local 29: | <i>Joël Michaud</i>                                    |
|              | Fraser Edmundston Retirees Association:                  | <i>Conrad Pelletier</i>                                |

DATE OF HEARING: December 29 and 30, 2010

DATE OF DECISION: January 7, 2011

## DECISION OF THE BOARD

### I. INTRODUCTION AND BACKGROUND

1. The *Pension Benefits Act*, R.S.N.B., c. P-5.1, sections 73-74 provide that, upon receipt of a Request from a person against whom an order or decision has been made or who is affected by an order, the Superintendent of Pensions shall refer her order or decision to the Labour and Employment Board and that the Board shall hear the matter so referred as soon as convenient but not later than twenty days after the referral. The Superintendent issued such an Order, with reasons for her decision on 25 November 2010 and received two requests to refer: the first, from counsel acting on behalf of Fraser Papers Inc.; the second, from Norman Pelletier and Conrad Pelletier on behalf of the Fraser Edmundston Retirees Association Pension Committee. On 17 December 2010, the Board Chairperson received the Superintendent's letter of referral, dated 15 December 2010, and the Board conducted the hearing on 29 and 30 December 2010.
2. The Superintendent's order of 25 November 2010 concerned the Pension Plan for New Brunswick Hourly Paid Employees of Fraser Papers Inc. (NB Reg. #02551264) and, in particular, the partial revocation of an amendment and plan restatement which had been forwarded to the Office of the Superintendent in 2008 and registered on 1 April 2010 with effect from 1 January 2005. The order was directed to Morneau Sobeco Limited Partnership ("Morneau Sobeco") as administrator of the pension plan and copied to Fraser Papers Inc. ("Fraser Papers"), the employer under the pension plan and former plan administrator. The basic facts which led to the order and partial revocation are as follows.
3. Fraser Papers sought protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, in June 2009 ("CCAA"). Three orders of the Ontario Superior Court of Justice (Commercial List) (Pepall J.) relating to those proceedings were received in evidence (though other orders are referenced within these three orders) *viz.* 17 September 2009, an order recognizing the Communication, Energy and Paperworkers Union of Canada ("CEP") as the representative of "current and former CEP members" in the CCAA proceedings; 24 February 2010, an order approving the "Global Agreement Term Sheet" and facilitating an asset purchase

agreement; and 6 April 2010, a final approval and vesting order in relation to the asset purchase agreement. More specifically, the 6 April 2010 order approved the “global term agreement sheet as of February 24, 2010, as amended... together with the cover page with signature and all such schedules to be appended thereto (collectively, the ‘NB Hourly Global Agreement’)” and declared the NB Hourly Global Agreement to be “legally binding on and effective against the current and former members of the CEP and each of its locals who are signatories thereto...” Apart from certain specifics provided in paragraph 17 of the NB Hourly Global Agreement per the Term Sheet, paragraph 16 provides “the NB Hourly Plan will receive, directly or indirectly, a *pro rata* share (based on the size of the NB Hourly Plan’s claim relative to the aggregate claims of all unsecured creditors of the Applicants)....” It appears from the record in this matter that, on 3 December 2010, the Ontario Superior Court of Justice (Commercial List) approved the form of a plan of arrangement and the calling of a creditors meeting to be held Monday, 10 January 2010. Hence, the significance of paragraph 17, discussed below.

4. Meanwhile, in early March 2010, the Union held a series of meetings to explain the corporate restructuring of Fraser Papers and the impact of the Global Agreement Term Sheet as approved by the 24 February 2010 order in the Ontario CCAA proceedings. A key component of the Agreement was to implement an extended 8 year wind-up of the pension plan, in lieu of an immediate wind-up, in the hope of minimizing the impact of the restructuring on retirees and current employees. The Legislative Assembly amended the *Pension Benefits Act* to authorize the Agreement in relation to the subject pension. See Bill 51, *An Act to Amend the Pension Benefits Act*, S.N.B. 2010, c. 13 (First Reading: 17 March 2010; Royal Assent: 26 March 2010).

5. During the course of those meetings, certain individuals brought to the attention of the Superintendent and of Morneau Sobeco, which was then assisting the Office of the Superintendent in relation to the Fraser Papers pension plans, claims of entitlement to a vested deferred pension and provided supporting documentation. The Superintendent then undertook a review and investigation of the pension plan. The Superintendent also exercised her authority, per the *Pension Benefits Act*, section 52, and appointed Morneau Sobeco as plan administrator effective 10 March 2010.

6. The review and investigation by the Superintendent led her to conclude that the pension plan had been modified by Fraser Papers in its 2005 Restated Plan Text in a manner that had not been disclosed in the company resolution to amend the plan or in the Form 2 document submitted to her office – Form 2 entitled “Application for Registration of Amendment to Pension Plan”. The closest that the company resolution may be suggested to allude to the amendment in issue is found in the sixth preambular paragraph which states “And Whereas the Company wishes to amend the Plan to clarify certain administrative provisions”. Form 2 will be discussed below. As stated in the Superintendent’s reasons for decision supporting her order:

...the amended wording in section 6.03... of the Restated Plan Text altered the termination benefit for plan members with 20 or more years of continuous service that are under age 55 at the date of termination. The wording prior to the 2005 Restated Plan Text, which existed since the January 1, 1992 [R]estated [P]lan [T]ext, when combined with the early retirement provisions of the plan, appears to provide that members with 20 years of continuous service who terminated from the pension plan were entitled to an unreduced pension at age 58, regardless of their age at the date of termination. The relevant wording of the 1992, 1993 and 1998 Pension Plan [T]exts is contained in sections 6.04 and 8.01. The amended wording provides that members who terminate prior to age 55 must wait until age 65 to receive an unreduced pension, regardless of the amount of continuous service they have at termination.

The Superintendent found that the amendment breached the *Pension Benefits Act*. First, pursuant to section 11 of the *Act*, it should have been expressed in both the company resolution authorizing the amendment and in the Form 2 submitted to her Office even if the intention had been only to clarify a benefit. Second, for plan members who already had 20 years of continuous service, the amendment reduced the amount or commuted value of an ancillary benefit for which they already satisfied the eligibility conditions and was, therefore, void pursuant to section 12(1) of the *Act*. The Superintendent continued:

I therefore find the amendment to the terminate of benefits for members with 20 or more years of continuous service contained within the 2005 Restated Plan Text and registered by the Office of the Superintendent of Pensions on April 1, 2010 was a void amendment for all members who had already amassed 20 or more years of continuous service. For all other members, I find the filed documents and notice requirements for the above-mentioned amendment did not comply with the *Pension Benefits Act* and the regulations.

*Order*

Therefore, pursuant to paragraph 13(1)(e) of the *Pension Benefits Act*, I hereby revoke registration of that portion of the 2005 Restated Plan Text which altered the termination benefits for members with 20 or more years of continuous service. All remaining provisions of the 2005 Restated Plan Text remain valid.

Pursuant to subsection 13(4) of the *Pension Benefits Act*, this revocation operates to terminate that portion of the amendment as of January 1, 2005.

[The notice provisions of the order are omitted.]

**II. THE HEARING**

7. The Superintendent of Pensions, Morneau Sobeco, Fraser Papers, and CEP Local 29 were recognized with standing to be heard through counsel consistent with the *Pension Benefits Act*, section 75(2) being the Superintendent, the plan administrator to whom the Superintendent's order was directed, a person who made a request that the order be referred to the Board, and a party interested in the proceedings, respectively. Recognition was also extended to the Pension Committee of the Fraser Edmundston Retirees Association, acting through Conrad Pelletier who, with Norman Pelletier on behalf of the Association, requested that the order be referred to the Board.

8. Preliminary objections to the standing of Morneau Sobeco and CEP Local 29 were dismissed because, in part, the Superintendent's order was directed to Morneau Sobeco as pension plan administrator and because CEP Local 29 represents clearly interested individuals comprising the relevant collective bargaining unit at Fraser Papers being also members of the subject pension plan. A preliminary objection to the standing of the NB Regional Council of Carpenters, Millwrights and Allied Workers was upheld in the absence of proof of evident interest but its counsel attended the hearing.

9. Following extensive opening statements, four witnesses testified at the hearing. Paul Chang, a partner at Morneau Sobeco, and a Fellow of both the Canadian Institute of Actuaries and the Society of Actuaries (U.S.), testified on the first day. He is also active with the Canadian

Institute of Actuaries as he serves on a number of its governance committees. Chang has experience as the lead Morneau Sobeco partner involved in the winding up of various entities and has been involved in the winding up of at least two other pension plans. Much of his testimony was directed at his review of the Restated Plan Texts and related documents as well as his analysis of the history of the administration of the subject pension plan.

10. The second hearing day saw the testimony of three witnesses: Angela Mazerolle Stephens, the Superintendent of Pensions; Glen McMillan, chief restructuring officer with Fraser Papers since May 2010 and formerly its chief financial officer and chief administrative officer; and, very briefly, Doris Lavoie, president of CEP Local 29.

11. Given the expedited nature of the present proceedings and the undertaking to use best efforts to issue a decision in this matter by Friday, 7 January 2011 in advance of the scheduled meeting of creditors, review of the evidence presented at the hearing will be more focussed and limited. Expediency is also fostered by the concession by Fraser Papers that the pension plans were interpreted and administered in different ways, in successive time periods, and even within a given time period. This renders it virtually unnecessary to review portions of Chang's testimony in much detail.

### **III. RELEVANT STATUTORY PROVISIONS**

12. The following provisions of the *Pension Benefits Act* have particular relevance to the matter before the Board:

1(1) In this *Act*

“administrator” means the person or persons who administer a pension plan;

“bridging benefit” means a periodic payment provided under a pension plan to a member of the pension plan for a temporary period of time after retirement for the purpose of supplementing the member’s pension benefit until the member is eligible to receive benefits under the *Old Age Security Act* (Canada) or commences to receive retirement benefits under the Canada Pension Plan or the Quebec Pension Plan;

“commuted value” means the value, calculated in the prescribed manner and as of a fixed date, of a pension, a pension benefit or an ancillary benefit;

“deferred pension” means a pension benefit, payment of which is deferred until the person entitled to the pension benefit reaches the normal retirement date under the pension plan;

“member” means a member of a pension plan;

4 This *Act* and the regulations shall not be construed to prevent the registration or administration of a pension plan and related pension fund that provide pension benefits or ancillary benefits more advantageous to members than those required by this *Act* and the regulations.

6(1) In the event of a conflict between a provision of this *Act* or the regulations and a provision of a pension plan, this *Act* and the regulations prevail.

11(1) The administrator of a pension plan shall apply to the Superintendent, within sixty days after the date on which the pension plan is amended, for registration of the amendment.

11(4) An amendment to a pension plan is not effective until an application for the registration of the amendment is made in accordance with this *Act* and the regulations.

12(1) An amendment to a pension plan is void if the amendment purports to reduce

(a) the amount or the commuted value of a pension benefit accrued under the pension plan with respect to employment before the effective date of the amendment,

(b) the amount or the commuted value of a pension or a deferred pension accrued under the pension plan, or

(c) the amount or the commuted value of an ancillary benefit that a member or former member is receiving or for which a member has satisfied all eligibility conditions at the effective date of the amendment.

13(1) The Superintendent may

(a) refuse to register a pension plan that does not comply with this *Act* and the regulations,

(b) revoke the registration of a pension plan that does not comply with this *Act* and the regulations,

(c) revoke the registration of a pension plan that is not being administered in accordance with this *Act* and the regulations,

(d) refuse to register an amendment to a pension plan if the amendment is void or if the pension plan with the amendment would cease to comply with this *Act* and the regulations, and

(e) revoke the registration of an amendment that does not comply with this *Act* and the regulations.

13(2) Registration under this *Act* of a pension plan or an amendment to a pension plan shall not be construed as proof that the plan or the amendment complies with this *Act* and the regulations.

13(3) A refusal of registration of a pension plan or a revocation of registration of a pension plan operates to terminate the pension plan as of the date specified by the Superintendent.

14(1) The administrator of a pension plan shall ensure that the pension plan and pension fund are administered in accordance with this *Act* and the regulations.

14(2) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with

(a) the filed documents in respect of which the Superintendent has issued an acknowledgment of registration...

17(1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

18(1) Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.

18(2) An administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.

24(1) If the administrator of a pension plan applies for registration of an amendment to the pension plan that may adversely affect the pension benefits, rights or obligations of a member or former member or a person entitled to payments under the pension plan, the administrator shall transmit to each such member, former member or other person a written notice containing an explanation of the amendment and inviting comments to be submitted to the administrator and the Superintendent, and the administrator shall provide to the Superintendent a copy of the notice and shall certify to the Superintendent the date on which the last such notice was transmitted.

35(1) A member of a pension plan who acquires a right to receive a pension benefit under that plan either before or after the commencement of this section is entitled, upon termination of employment after the commencement of this section and before attaining normal retirement date under the plan, to a deferred pension, calculated in accordance with the benefit formula of the pension plan, equal to

- (a) the pension benefit provided under the pension plan with respect to employment before the commencement of this section,
- (b) the pension benefit resulting from an amendment to the pension plan after the commencement of this section with respect to employment before the commencement of this section, and
- (c) the pension benefit provided under a new pension plan established after the commencement of this section with respect to employment before the commencement of this section.

13. The Board's authority in this matter is provided as follows:

76(1) If a matter has been referred to the Board under subsection 73(2), the Board may, after hearing and considering the matter, issue an order

- (a) affirming the decision or order of the Superintendent,
- (b) vacating the decision or order of the Superintendent and substituting the decision or order that, in its opinion, the Superintendent should have made, or
- (c) remitting the matter to the Superintendent for further investigation, with such directions as the Board considers appropriate,

and in every case the Board shall in writing so advise all parties to the proceeding of its disposition and the reasons for the disposition.

#### **IV. THE ISSUE(S) BEFORE THE BOARD**

14. Ultimately, the Board must decide whether to affirm or vacate the order of the Superintendent or to remit the matter for further investigation. To reach that point, it must be determined whether the Restated Pension Plan registered with the Office of the Superintendent of Insurance and in effect on 31 December 2004 entitled certain employees below age 55 years with 20 or more years of continuous service whose employment was terminated (other than by death or retirement) to a deferred pension after reaching age 55 years (and an unreduced pension at age 58). Second, and subject to any concession, it must be determined whether the Restated Pension Plan submitted to the Office in 2008 and registered in 2010 is void, in part, because it contained an undisclosed amendment which purported to reduce the amount or the commuted value of an accrued pension benefit or of an ancillary benefit as of 1 January 2005.

## V. OVERVIEW OF THE EVIDENCE

15. Chang testified that his involvement in this matter began with a phone call from the Superintendent, Angela Mazerolle Stephens, in January 2010 to discuss a variety of winding up scenarios for pension plans. There then followed an invitation to attend the meeting in Toronto which resulted in the Term Sheet for Global Agreement of 24 February 2010, discussed above. Chang's role at the meetings was to provide participants with actuarial data. To assist him in this effort, he had a copy of the 2005 Restated Plan Text and relevant past valuations completed by other actuaries. In his testimony, Chang reviewed and explained the 24 February 2010 agreement and drew attention to paragraph 17(a)(v) thereof, which refers to the "Original Wind Up Date" as the date when service and age were "crystallized" for the purposes of the pension plan and 1 November 2009 as the date earnings were frozen. He explained that existing employees are considered terminated as of the Wind Up Date which was set as 31 March 2010.

16. Chang testified about his participation at the March 2010 meetings held by CEP Local 29 in Edmundston to explain the 24 February 2010 agreement and his involvement in meetings in late March for the same purpose in Atholville and other locations – by which time, Morneau Sobeco had been appointed administrator of the subject pension plan. It was in Atholville that an attendee presented Chang with a document pertaining to entitlement to an unreduced pension at age 58.

17. Explain the role of a pension plan administrator, Chang stated that an administrator is governed by legislation (the *Pension Benefits Act*), and the plan text but not the collective agreement.

18. Chang testified in some detail concerning his interpretation and understanding of the Restated Plan Texts for 1989, 1992, 1998, and 2005, critical provisions of which are excerpted in Appendices A, B, D and E of this decision. [Amendments from one Restated Plan Text to its successor are identified in bold type.] It should be noted that the Restated Plan Texts for 1989, 1992, 1993, and 1998 commence with general provisions applicable to all pension plans

followed by separate appendices applicable for distinct groups of employees/members. For example, the 1998 Restated Plan Text includes articles 1 and 11 to 16 in its general part followed by separate appendices containing articles 2 to 10 for each distinct employee/member group. The 2008 Restated Plan Text is a more integrated document with articles 1 to 11 containing the general or common provisions followed by separate parts for each employee/member group.

19. The 1989 Plan Text defined "Normal Retirement Date" as "the first day of the month next following the attainment by the Member of age 65" [article 1.01 (t)] and "Normal Early Retirement Date" [Plan Appendix 1, Introduction, Definitions, (n)] as

the day next following the Employee Member's Termination Date provided he has not reached his Normal Retirement Date and provided further, that on said Termination Date he has completed 20 years of Continuous Service and has attained 58 years of age.

"Advanced Early Retirement Date" was defined in article 1.01(c) as

the day next following the Employee Member's Termination Date provided he has not reached his Normal Early Retirement Date and provided, further, that on said Termination Date he has attained 55 years of age and has filed written notice of his election of advanced early retirement with the Committee.

Finally, Termination Date was defined in article 1.01 (aa) as

the date on which an Employee Member's Termination of employment with the Corporation prior to January 1, 1988, and on and after that date with Fraser, shall occur whether due to his death, retirement, discharge, or interruption of Continuous Service for any reason

When read together with article 7.01 (Appendix A), it is clear that the normal retirement date under that Plan was age 65, that a deferred vested pension also commenced at age 65, and that the Plan contemplated both normal early retirement and advanced early retirement.

20. Chang identified the *Pension Benefits Act* as having come into effect on 31 December 1991, in part, to establish pension standards. One innovation was provision for a deferred vested pension if contributions were left in the plan; another was pension portability whereby a member terminating employment could transfer the commuted value into another financial vehicle. Chang identified that the deferred vested pension benefit in the 1989 Restated Plan Text was

modified in article 8.01 of the 1992 Restated Plan Text (see Appendix B) by inserting at the end of the article: "or, if he elects, at any time within 10 years prior to his normal Retirement Date but as adjusted pursuant to the appropriate table in Section 6.04." Chang also drew attention to the modification to article 6.04 which substituted "Age at Pension Commencement" for the "Age at Advanced Early Retirement Date" in the 1989 version of the Restated Plan Text. He observed that a member opting to take an advanced early retirement after age 55 was not eligible for a non-reduced pension benefit; thus, the significance of the two tables found in article 6.04 which differ in wording according to whether an employee member has or has not completed 20 years or more of continuous service. The modification to article 6.04(a), which inserted reference to article 6.02, incorporated federal income tax legislation conditions.

21. Turning to the Restated Plan Text effective on 1 January 1998 (see Appendix D), Chang focussed attention on article 8.01 - the deferred vested pension provision. This article applied to a Member (note, not an "Employee Member" as used in article 6.04) whose employment had terminated other than by reason of death and who was not entitled to receive any of the four pension benefits enumerated in the article ("a Normal Retirement Pension, an Early Retirement Pension, a Reduced Early Retirement Pension, or a Disability Retirement Pension") was thereby entitled elect one of two options. First, to choose a deferred vested pension commencing on the member's normal retirement date (being age 65 per article 1.01(nn)). Second, to elect within ten years prior to that normal retirement date (thus, age 55 to 65) to a pension benefit "adjusted pursuant to the appropriate table in Section 6.04" and subject to the conditions of the federal income tax legislation per article 6.02. Again, the critical distinction between paragraphs (a) and (b) of article 6.04 was whether or not an "Employee Member" had 20 or more years of continuous service. With 20 or more years of continuous service, an individual at age 58 was entitled to a 100% pension per article 6.04(a). The shift to "Member" in article 8.01 from "Employee Member" in 6.04 was noted. Chang further illustrated his understanding of the interaction of articles 8.01 and 6.04 by stating that an individual terminated from employment at age 48 with 22 years of continuous service would be subject to the table in paragraph (a) of article 6.04 and entitled to a 82% pension benefit at age 55 but at 100% if s/he waited to age 58.

An individual at age 48 at termination without 20 years continuous service would be subject to the table in paragraph (b) of article 6.04 and entitled to a 45% pension at age 55 and 56% at age 58. Having “20 or more years of continuous service” also entitles the individual to the bridging supplement, by virtue of article 6.05, provided such Member “elects to retire directly from the service of Fraser” and satisfies the age qualification.

22. Chang testified that, based on the plan texts, an individual with 20 or more years of continuous service was entitled to an unreduced pension at age 58 regardless of age at the date of termination. He testified that his office colleagues at Morneau Sobeco agreed with this interpretation of the plan texts.

23. Chang testified that he sought evidence on how the plans had been interpreted and applied in practice during the relevant period. He requested documentation from the official at Fraser Papers directly responsible for administration of the pension plan and reviewed pension calculations - particularly from 1995 forward. Chang explained his understanding, based on the documentation provided, that three successive firms had served Fraser Papers with plan administration/actuarial services: Watson Wyatt (“Wyatt”) circa 1992-1995/96; Mercer (“Mercer”) for administration from 1995 to 2000/01 and for actuarial services from 1995 to 2002; and Towers/EHRO (“Towers Perrin”) for administration from 2000/01 to 2010 and for actuarial (consulting) services from 2003-2010.

24. In testimony, Chang explained the pension entitlement calculations made for several individuals, identified only by initials, on the relevant documents received as exhibits. Chang produced a chart reflecting his analysis of a sample of 23 individuals whose dates of termination fell within the period 24 March 1994 to 19 May 2006 (based on the documentary material available to him). (This chart is found at Morneau Exhibits Volume 3 at Tab 33 and is entitled “Listing of Members Terminating Employment Prior to Age 55 with 20 years of Continuous Service”.) The chart references 6 Members whose cause of termination was death, 3 whose cause was marriage breakdown, and 14 whose cause was early termination other than death or

marriage breakdown. The chart records that the two calculations performed by Wyatt in 1994 and 1996 were based on the commuted value at age 58; the sample calculations performed by Mercer in 1995 (one) and in the period 1997 to 2000 (eight) consistently and explicitly based the commuted value at age 58; the one sample calculation by Fraser itself in 1998 “likely” applied the Mercer approach; the four sample calculations by Towers Perrin in the period 12 November 2002 to 28 February 2003 explicitly applied the Mercer approach of basing the commuted value at age 58; and that the seven calculations by Towers Perrin in the period 8 December 2004 to 19 May 2007 did not base the converted value on age 58. In other words, the Mercer calculations reflected an interpretation and application of the relevant Restated Plan Text as providing for an unreduced pension at age 58 for terminated employees with 20 or more years of continuous service. Towers Perrin followed this interpretation and application for the initial period of its service but switched approaches in November/December 2003.

25. What may have caused Towers Perrin to switch approaches received some attention during the Superintendent’s testimony discussed below.

26. To show a broader context, Chang also reviewed a sample of the calculations applied to 18 of about 200 employees at the employer’s then Plaster Rock operation – 12 with 20 years of continuous service and 6 with less. The reason the calculations had been made originally was that the pension scheme was being converted from a defined benefit to a defined contribution pension effective 31 December 1996. The calculations were prepared by Mercer. Chang recalculated the data and prepared a chart (Morneau Exhibits Volume 3 at Tab 42, pages 1694-95). The chart records that Mercer calculated the converted value at age 58 for all 12 employees with 20 years of continuous service and thus, according to Chang, evidently interpreted the Restated Text Plan consistent with its approach at that time (i.e. application of article 6.04(a) based on 20 years of service). Chang acknowledged, however, that the Plaster Rock situation involved a special deal specific to this conversion.

27. Chang concluded that Mercer valued the converted values consistent with his own interpretation of the Restated Plan Text. He considered the 18 sample size to be significant because the sample is close to 10% of the pool.

28. Chang also noted further supportive information found, for example, in annual pension plan information sent to plan members. An example as of 31 December 2000 (Morneau Exhibits Volume 3 at Tab 26) states, in part:

You became fully vested on January 18, 1983.

If you leave the Company before you reach age 55 and you are vested, you may elect to receive:

- A deferred pension starting from age 65; or
- A deferred pension starting as early as age 55 on a reduced basis; or
- You may elect to transfer the present value of your earned pension to a prescribed locked-in retirement savings vehicle.

....

If you are vested when you leave the Company, you may retire on or after age 55. If your pension starts before age 58 and you have at least 20 years of Continuous Service, your pension will be reduced by one-twelfth of 6% for each month your pension precedes that date. If you have less than 20 years of Continuous Service at the time of your retirement, your pension will be reduced, based upon the prescribed table in the Plan document.

Assuming you retire directly from active employment with the Company and you have at least 20 years of Continuous Service, you will also be eligible for a bridge benefit payable at the earlier of your attainment of age 65 or your death... If you retire before age 58, the bridge benefit will be reduced by 2/3 of 1% for each month that your retirement date precedes age 58.

It is to be observed that "one-twelfth of 6% for each month" is consistent with the table found in paragraph (a) of article 6.04 of the 31 December 1998 version of the Restated Plan Text (see Appendix D) which decreases the entitlement factor from 100% to 94% to 88% to 82% as applied to ages 58, 57, 56, and 55, respectively. Given the time period of this document, Chang understood it to have been prepared by Towers. Its significance lies in part in the distinction drawn in the last two paragraphs between being vested when an individual leaves the Company and retiring directly from active employment with the Company. New wording was inserted in the 2004 annual pension statement provided by Fraser Papers, to plan members as of 31 December 2004, which combined and modified the last two paragraphs:

If you leave the Company directly from active employment after reaching age 55 and you are vested, you are eligible for an early retirement pension. If your early retirement pension starts before age 58 and you have at least 20 years of Continuous Service, your pension will be reduced by one-twelfth of 6% for each month your pension commencement date precedes age 58. If you have less than 20 years of Continuous Service, your pension will be reduced, based upon the prescribed table in the Plan document.

29. Chang also reviewed pension documentation prepared when the employer sold its Atholville facility in 1996. The employer, Fraser Inc., at that time and CEP, Local 160 entered into a Letter of Understanding which stated in part:

Unreduced Pension

- An Employee who has a minimum of twenty (20) years of Continuous Service (uninterrupted with Atholville Pulp, Inc., Fraser Inc. and Alcell Technologies, Inc. at the time of his retirement[]), who is 58 years of age or more, shall be entitled to an unreduced benefit calculated in the same manner as if it were for a Normal Retirement.
- Therefore an employee who has 20 year (sic) of service prior to termination shall be entitled to an unreduced pension at age 58.

Like the arrangement at Plaster Rock, this was another special deal which the second preambular paragraph of the Letter of Understanding stated was not to be "extended to any other operations of Fraser Inc. or any other affiliated companies."

30. Chang noted email correspondence of 14 June 2007 from an actuary at Towers Perrin responding to a query from an official of Fraser Papers' human resources department, B.L., with responsibility for the pension plan. The salient portion of that email reads:

...we have determined the estimated financial impact of modifying the termination benefit in the actuarial valuations for the New Brunswick Hourly Plan 2. In particular, we have determined the impact of granting the same early retirement reduction factors that are applicable to members retiring directly from active service to members who terminate employment (prior to early retirement age) with 20 or more years of continuous service....

As you know, the issue was first raised by Towers Perrin in 2003, during our exercise of replicating the prior actuary's valuation results. As a result of our enquiries at the time, Fraser Papers confirmed that the intent was not to provide such early retirement subsidies to terminating members. All of our actuarial valuations have therefore been prepared on that basis (as were the prior actuary's valuations). It is also our understanding that the plan benefits have been determined and administered on this basis.

In this email, the Towers Perrin actuary informed Fraser Papers that the solvency impact of the benefit to members who terminate employment before early retirement age with 20 or more years

of continuous service was "roughly \$31,500,000 as at December 31, 2005." Chang identified the significance of this correspondence as recording an apparent awareness of the matter by Fraser Papers in 2003 and again in 2007 when the Towers Perrin actuary sent the quoted email – being before the 2008 submission of the Restated Plan Text made retroactive to 31 December 2005.

31. Chang discussed email correspondence between Fraser Papers and Mercer dated 15 and 18 January 2001 in which a lead actuary at Mercer responded to questions posed by the Fraser Papers official charged with responsibility for the pension plan. The questions and answers were (Exhibit 9):

You asked 2 questions regarding Plan 2 terminations:

Q1) If a member terminates before age 55, is there a right to the bridge benefit upon subsequent retirement?

A1) No. Section 6.05 describes two conditions: age 55 and 20 years continuous service and "retire directly from the service of Fraser".

Q2) If a member terminates with more than 20 yrs of service, but is under age 55,  
a) Is he entitled to retire immediately?

b) If he takes a lump sum, is the commuted value calculated from age 65? 58?

A2a) No.

Early Retirement Pension is allowed upon reaching Normal Early Retirement Date [58 + 20]; and Reduced Early Retirement Pension is allowed upon reaching Advanced Early Retirement Date [not (58 + 20), but age 55 and over].

A2b) The amount of his Deferred Vested Pension is subject to Section 6.04 a) (plan reductions) which varies by age. We typically will calculate the lump sum value at every age, and take the maximum.

The Fraser official, B.L., sought further clarification by suggesting application of article 6.02 instead of article 6.04 Chang testified that the suggestion would have resulted in all members having an unreduced pension entitlement at age 60. The Mercer actuary also rejected the suggestion.

32. Chang also testified concerning his review of the considerations which led him not to accept Fraser Paper's position that the wording of the pre-2005 Restated Plan Text, as interpreted

and applied by Mercer, should be characterized as a “drafting error” which the 2005 amendments were intended to clarify without impacting the substantive benefits intended to be conferred. These factors are summarized in a letter dated 20 October 2010 to the Superintendent of Pensions (Morneau Exhibits Volume 3 at Tab 25, Exhibit 19 at Tab 9, and reproduced in part at pages 3, 4 and 5 of 9 of the Superintendent’s reasons for decision of 25 November 2010). I will not reproduce these factors, for and against the characterization, as they are readily available in the Superintendent’s decision.

33. Finally, Chang addressed the 2008 Restated Plan Text with effect as of 1 January 2005. He was precise in stating that its effect was to require an employee/member to wait until age 65 to receive an unreduced pension rather than at age 58 as provided by article 8.01 in combination with 6.04 of the previous Restated Plan Text. He characterized this as an adverse amendment within the meaning of the *Pension Benefits Act* based on his understanding of that legislation.

34. Angela Mazerolle Stephens, the Superintendent of Pensions, has been in her present position since 2004. She explained the functions of her office and its responsibility to ensure compliance with the *Pension Benefits Act*. She identified a copy of the Form 2 entitled “Application for Registration of Amendment to Pension Plan” submitted on behalf of Fraser Papers in 2008 along with its Restated Plan Text to be retroactive to 1 January 2005. Question 3 on Form 2 required an applicant to “Briefly describe below the amendment to be registered” and Question 6 required an answer to three sub-questions:

6. Will the amendment reduce

(a) the amount or the commuted value of a pension benefit accrued under the plan with respect to employment before the effective date of the amendment?  
[ ] Yes [ ] No

(b) the amount or the commuted value of a pension or a deferred pension accrued under the plan? [ ] Yes [ ] No

(c) the amount or the commuted value of an ancillary benefit that a member or former member is receiving or for which a member has satisfied all eligibility conditions at the effective date of the amendment?  
[ ] Yes [ ] No

Once aware of an issue concerning deferred pension benefits with the subject pension plan, the Superintendent revisited the Form 2 submitted in 2008. She discerned no wording in the Question 3 response which would have brought the amendment in issue to her attention and found that the response “No” had been selected for each of the sub-parts to Question 6. While she accepted that the “No” response was appropriate in relation to sub-parts (a) and (b), she did not consider it appropriate to sub-part (c) because, in her view, the wording of article 6.03 in the submitted Restated Plan Text constituted a void amendment, within the meaning of section 12(1) of the *Act*, by limiting a member to receive a deferred pension based on age 65. This was a self-evident reduction from the benefit provided by article 8.01 in combination with 6.04 of the registered 1998 Restated Plan Text. The Superintendent testified that, in practice, a notice to beneficiaries about an adverse amendment to a pension plan is copied to her office but that she was not aware of any such notice sent by or on behalf of Fraser Papers in relation to the 2008 amendments. As a result, the Superintendent also concluded that the signed declaration portion of Form 2, specifically the statement that “4. Any person entitled to notice of this application has been given notice as required” was not true and that part 5 of the declaration, which declared the information in the application to be “true”, was also false.

35. Much of the Superintendent’s testimony focussed on her efforts, in consultation with Chang, to access relevant information about the pension plan and its administration. She recognized that some amendments to the Restated Plan Text reflected modifications agreed during collective bargaining but the subject 2008 submitted amendment was, apparently, not of that origin. The Superintendent considered the 20 October 2010 letter from Chang (Exhibit 19 at Tab 9 and Morneau Exhibits Volume 3 at Tab 25) helpful because it focussed on the history of administration of the pension plan. She disagreed with a 16 November 2010 letter received from counsel for Fraser Papers which she found more directed at a legal interpretation of the 1998 Restated Plan Text but which appeared to her somewhat contradictory because, while arguing against the benefit, it quoted article 67.11 of the 2004 Collective Agreement between Fraser Papers and CEP Local 29 which clearly stated “A member who has a minimum of twenty (20) years of Continuous Service at the time of his retirement, and who is then 58 years of age or

more, shall be entitled to benefits calculated in the same manner as if it were for a Normal Retirement.”

36. The Superintendent’s testimony brought to the fore a document entitled “NEXFOR INC., FRASER OPERATIONS, NEW BRUNSWICK HOURLY PAID PENSION PLAN: Pension Calculation Details” with ExcellerateHRO, the successor or new administrative arm of Towers Perrin, identified in the upper right corner of each page. The document is not expressly dated but bears the notation “last saved: 04/24/06 1:53 p.m.”. From the table of contents and the few pages received in evidence, it appears to be a training manual explaining pension calculations. At page 62 of 78 of this document appears the following:

| Type of Event        | Period   | Commututed Value   |
|----------------------|----------|--|
| Termination          | Pre-1992 | Formula Pension Limited by CCRA Maximum  |
| <i>Multiplied by</i> |          | A Pre-1992 deferred commuted value factor beginning at Pension Start Date (Optimal Retirement Age)*  |
| Post-1992            |          | Formula Pension Limited by CCRA Maximum  |
| <i>Multiplied by</i> |          | A Post-1991 deferred commuted value factor beginning at Pension Start Date (Optimal Retirement Age)* |

~~\* The different criteria based on continuous service used in calculating the Early retirement Reduction Factor yields different optimal retirement ages. Thus, for members with continuous service < 20 for all Appendices, the optimal Retirement Age is assumed to be age 65 and for member's with continuous service >= 20 in all Appendices except Appendix 8, \*A, and 11, the Optimal Retirement Age is assumed to be 55. For members from Appendix 8, 8A, and 11 with continuous service <= 20, the Optimal Retirement Age is assumed to be 58.~~

Effective Nov 15, 2003 as a result of Email from [named person “S.T.”] dated 07/25/03.

On termination - Optimal retirement age should be age 65 for all hourly employees regardless of service [emphasis added]

The record does not identify the position held by “S.T.” nor does the email from “S.T.” form part of the record but the Superintendent expressed her belief that “S.T.” was, at the time, an actuary at Towers Perrin though not a person known to her. The 15 November 2003 change coincides with the 2004-onward administration of the pension plan consistent with the position of the employer.

37. The Superintendent reviewed her reasons for decision and her order of 25 November, 2010. She explained that the “drafting error” characterization proffered by Fraser Papers would have been more compelling, or of more weight had it not been for the information regarding administration of the plan by Mercer which was consistent with the existence of the benefit. The Superintendent also noted that, in the various Appendices in the Pension Plan text, various appendices made explicit reference to either article 6.04 (a) or (b) as appropriate. To the Superintendent, this re-affirmed her analysis because it appeared that Fraser Papers was explicit about which paragraph applied when it wanted to do so. To illustrate, article 6.07 in Appendix 8 of the 1998 Restated Plan Text (applicable to Local 2450 of the United Brotherhood of Carpenters & Joiners of America) provided that a reduced early retirement pension for service pre-1997 shall be “computed in accordance with Section 5.02 and 5.07 reduced in accordance with the table which is set out at Section 6.04(b)”, being the Appendix 8 version of the same article found in Appendix 2 re CEP Local 29. In cross examination, counsel questioned the Superintendent about the comment in her reasons for decision that “there could arguably be more than one interpretation of the termination benefits”. She responded that this referenced the fact that more than one interpretation had been presented to her; namely, that of counsel for Fraser Papers in the letter to her (dated 16 November 2010) and that of Morneau Sobeco.

38. Glen McMillan, as chief restructuring officer, is the sole employee of Fraser Papers at this time. He identified the company’s pension plans as “significantly” underfunded by approximately \$167 million and identified the plan beneficiaries as unsecured creditors in the CCAA proceedings in Ontario. Much of his direct evidence focussed on the restructuring efforts and the CCAA proceedings including the negotiations in Toronto which produced the 24 February 2010

Term Sheet for the Global Agreement. Though a member of the pension management committee since he joined Fraser Papers on 1 July 2004 (this committee met twice per year), McMillan explained that his roles with the employer did not involve direct responsibility for the pension plans. Such responsibility was vested in the human resources official, B.L. who reported to McMillan commencing in 2007, prior to that time, the official had reported to the vice president, human resources. McMillan testified that he did not review the pension plans "in detail" at that time nor did he read the historical plan documents nor has he done so "from beginning to end" to the time of the hearing. This official, testified McMillan, was responsible for administration of the pension plan and for contact with third party administrators and actuaries - this official was the "principal person". Though this official ended employment with Fraser Papers on or about 1 November 2010, McMillan acknowledged that a continuing contractual relationship exists between the employer and this former employee.

39. McMillan identified from corporate files an apparent powerpoint presentation dated 24 October 2002 entitled "Recommendation for Change in Actuaries" and drew attention to a bullet "calculation errors" as one of the reasons for dissatisfaction with the then actuary. In cross-examination, McMillan acknowledged that another page of the presentation pointed to an estimated three years savings of \$282,000 if the change of actuaries to Towers Perrin was accepted by the company board - McMillan testified that the pension committee of the board would have approved any change in actuaries. In cross-examination, McMillan acknowledged that before this time, Towers Perrin had already taken responsibility for providing administration services for the pension plan and had done so in 1999.

40. On direct examination, counsel took McMillan through excerpts from collective agreements between Fraser Papers and CEP Local 29 in relation to each of which he noted that nothing in the language of the agreements addressed employee termination prior to early retirement age and pension entitlements. In a copy of a memorandum of agreement dated 5 May 2005 between Fraser Papers and CEP Local 29 (Fraser Papers Exhibits Volume re Collective Agreements at Tab 16), McMillan noted that the parties had agreed that as of 1 July 2009, "the

pension plan rules will be modified such that an *active* employee retiring at age 57 or more with at least 20 years of continuous service will be entitled to an unreduced pension and bridge benefit..." (emphasis added).

41. Turning to the Restated Plan Text and associated document of 2008 (retroactive to 1 January 2005), McMillan testified that Fraser Papers did not intend to change eligibility in relation to the pension plan. It was not a plan amendment; rather it was a clarification, the details of which he did not recall having been raised at the 2008 pension committee meeting which approved the amendment proposals then forwarded to the Superintendent. He described the amendments as "perfunctory and administrative in nature". He testified that he did not believe that details of the amendments were provided to the pension committee by the actuaries.

42. Questioned in cross examination about documents pertaining to the administration of the pension plan by first Mercer and then Towers Perrin before 2004, McMillan's general response consisted of "I was not aware...." This included his response to the question that the human resources official, B.L., apparently administered the plan in the same manner between 1995 and 2003. Finally, in relation to the ExcellerateHRO document (discussed at para. 36, above) and the statement that "optimal retirement should be at age 65 for all hourly employees regardless of service", McMillan testified that, to the best of his knowledge, this "new way of administering the pension plan" was not communicated to the union.

43. Doris Lavoie became president of CEP Local 29 in the spring of 2007 when his predecessor accepted a position with CEP national. Lavoie's prior experience with the union was not explored during his testimony. He participated in collective bargaining for the 2009-1012 collective agreement and in the negotiations in Toronto which produced the 24 February 2010 Term Sheet for the Global Agreement. Lavoie reiterated his understanding, based on the plan text, that the pension plan entitled employees with 20 years service an unreduced pension at the appropriate age and this was regardless of age at the date of termination from employment. Much of his brief testimony focussed on the 17 November 2010 telephone conversation Lavoie and

another union executive member had with the Superintendent and on the situations of two union members in relation to the unreduced pension benefit. Neither situation resulted in a grievance because the first was resolved when the employer granted a leave of absence and the second by the employee simply accepting the decision to deny the benefit.

## VI. POSITION OF THE PARTIES

44. The Superintendent, Morneau Sobeco, and CEP Local 29 held a common position - that the Superintendent's order of 25 November 2010 be affirmed. Counsel argued that the evidence established that the 2008 Restated Plan Text (retroactive to 1 January 2005) contained an undisclosed amendment which adversely impacted beneficiaries by purporting to reduce a benefit within the meaning of the *Pension Benefits Act*, section 12 and was, therefore, void. Further, no notice of the adverse amendment had been provided to beneficiaries as required by section 24 of the *Act*.

45. Counsel pointed to the plain meaning of the 1998 Restated Pension Text (and its predecessors) and the evidence of Chang, the only actuary to testify, that both Mercer and Towers Perrin had administered the plan consistent with the plain meaning of articles 8.01 and 6.04 in combination. Something had changed in 2004 and that was the decision communicated in the supposed 2003 email from "S.T." to modify the administration of the plan without notifying either the beneficiaries or the union and without submitting an amendment to the Superintendent within the 60 days required by section 11(1) of the *Act*. Instead, the pension plan was amended in the 2008 amendment submission without disclosure to the Superintendent.

46. Counsel pointed to the communication of annual pension statements to member employees during the relevant period which identified entitlement to an unreduced pension at age 58 with 20 years of employment service. The bridging benefit required retirement from active service ("who elects to retire directly from the service of Fraser") but the deferred unreduced pension benefit was not so qualified. Though arguing that collective agreements cannot be used to interpret the pension plan text (because of the requirement that a plan be administered with the

*Act*, regulations and filed documents per section 14(2) of the *Act*), counsel observed (as had the Superintendent in her reasons for decision) that the 2004-2009 collective agreement did not require retirement from active service as a condition for the unreduced pension at age 58. Counsel further noted that, in context, the undefined word “retire” refers in pension parlance to retire onto pension rather than requiring retirement from employment.

47. Counsel argued that characterizing articles 8.01 and 6.04 in combination as a “drafting error” did not advance the employer’s position because the *Act* does not authorize a self-help remedy by the employer to correct such an error without a proper amendment disclosed to the Superintendent and notified to beneficiaries. If characterized as an administrative error, there was no evidence that either Mercer or Towers Perrin administered the plan inappropriately. Finally, the CCAA orders in evidence do not address the issues in the present matter and there is no evidence of any impact on those orders of affirming the Superintendent’s order.

48. In separate comments, counsel for CEP Local 29 drew attention to article 2 of the 2008 Restated Plan Text (effective 1 January 2005) (see Appendix E, below) which governs construction and interpretation of the Plan Text by excluding other documents or communications from consideration, *i.e.*, the collective agreement.

49. The Retirees Association Pension Committee and Fraser Papers shared the position that the order be vacated.

50. Mr Pelletier essentially argued that one must live with the errors in the documents of others, that the amendment had been submitted to the Superintendent in 2008 and should not be questioned in 2010 after having been registered.

51. Fraser Papers stressed repeatedly what its counsel described as the fundamental point that to affirm the Superintendent’s order would be catastrophic for retirees whose pensions have already been reduced and would unravel the 24 February 2010 agreement which has been

approved in two Ontario court orders. She argued that to affirm the order would constitute a collateral attack on the 24 February 2010 agreement. Counsel urged acceptance of an interpretation of the pension plan that would not upset the *status quo* in the context of the CCAA proceedings and the corporate restructuring of Fraser Papers and stressed that the Superintendent, in her reasons for decision, had acknowledged “there could arguably be more than one interpretation”.

52. Counsel referred to collective agreements and memoranda of agreement negotiated between Fraser Papers and CEP Local 29 between 1984 and the 2009 collective agreement which expires in 2012. She observed that the language of the first collective agreement in this series required an employee seeking early retirement to retire from Fraser Papers (or its predecessors). In relation to the 1990-1993 collective agreement, counsel pointed to article 69.12 concerning early retirement, which is conditioned on 58 years of age or more and 20 years of continuous service, which she argued is understandable only as retirement from employment even though it does not explicitly refer to “active employment” or a similar expression. Subsequent collective agreements, argued counsel, did not change this understanding. The only change came in the 2009 to 2012 collective agreement per article 64.10(b) which reduces to 57 the age at which an employee with at least 20 years of continuous service is “entitled to an unreduced pension and bridge benefit”; the bridging benefit being conditioned on 20 years of continuous service.

53. Referring to the “application” provision of the 1992 Restated Plan Text, counsel noted that it states that the Plan “applies to Employees who are covered by the Labour Agreement between Fraser and Local 29....” Thus, she argued that the Plan “construction and interpretation” provision does not oust consideration of collective agreement provisions. Construction and interpretation of the Restated Plan Text must be governed by the intention of the parties which, counsel argued, is reflected in the negotiated collective agreements.

54. Counsel argued that the interpretation supported by the Superintendent and Morneau Sobeco effectively reads the phrase “at his Advanced Early Retirement Date”, which is defined to

be at minimum age 55 and not 57 or 58, out of article 6.04. It is implicit that an employee “at his Advanced Early Retirement Date” be employed with the employer at that time. Article 6.04 determines the amount of the reduced early retirement pension which, per article 6.03, is made available to “an Employee Member who *retires on his Advanced Early Retirement Date*” (emphasis added). Counsel noted that “Advanced Early Retirement Date” is not a criteria to qualify for the bridging supplement in article 6.05. Referring to the 1998 Restated Plan Text, article 8, counsel argued that no wording states that a deferred vested member is eligible to reappear at age 58, per the *Pension Benefits Act*, and receive 100% pension benefits rather than waiting to age 65. The real option for the employee member is to transfer the actualized commuted value per article 8.05. In this context, and if read as abiding by the minimum standards of the *Pension Benefits Act*, the logical choice as the “appropriate table in Section 6.04” is found in (b) with 100% at age 65.

55. Referring to judicial authority, *Dinney v. Great-West Life Assurance Co. et al*, 2009 MBCA 29 at para. 61 et seq, counsel argued for a contextual analysis which is reasonable and practical, practical and purposive, construed in light of surrounding circumstances, tested against consequences, and interpretation as a whole of the pension scheme. The circumstances are the CCAA proceedings, the corporate restructuring, and the potential windfall to eligible but not yet retired members under age 55 with at least 20 years of service.

56. Turning to the evidence concerning the administration of the plan, counsel stressed that the two calculations undertaken by Watson Wyatt in the 1995-96 era should be joined with a third identified in Exhibit 8 (a death) and those after 1 January 2004 to total 10 instances consistent with Fraser Papers’ interpretation of the plan against 14 which favour the interpretation of the Superintendent and Morneau Sobeco. Counsel asserted that the employer clarified the plan wording because of these inconsistencies; it did not rectify the plan. A mistaken administration or interpretation of the plan should not and does not create an entitlement to other members; it does not create a benefit. Counsel questioned why Morneau Sobeco had not consulted with Mercer concerning its administration of the plan.

57. The decision and order of the Superintendent failed to consider certain relevant factors including 1) the effect of her order on pensioners whose pension have already been reduced; 2) the windfall to a small group whose union did not negotiate the benefit; and 3) the impact of increasing the deficit in the winding-up proceedings for a claim which cannot be funded.

58. In reply, counsel for Morneau Sobeco noted that the Mercer calculations were analyzed by Chang so there was no need to consult Mercer directly. Counsel noted the absence of evidence concerning the "intentions of the parties" or of the employer in the 1989-1992 era when changes were contemplated and made because of the *Pension Benefits Act*. Counsel argued that *Dinney* is distinguishable as in relation to a bilateral contract whereas the pension plan in issue was effectively, unilateral. Further, the plan language in issue is unambiguous and, in any event, invites application of the *contra proferentem* principle against the employer. The "Advanced Early Retirement Date" argument in relation to article 8.01 must be rejected because it would result in no one qualifying for early retirement. Finally, what is sought is not a windfall for a small group or a disadvantage to a larger group but the proper and fair administration of the pension plan consistent with its terms.

## **VII. DECISION**

59. None of the witnesses who testified at the hearing had direct involvement in the pension plan at any point in time critical to the issues. Chang first became involved in January 2010 at the invitation of the Superintendent; Mazerolle Stephens became Superintendent and McMillan commenced working for Fraser Papers in 2004 (though Mazerolle Stephens had worked in the Office of the Superintendent for two years by that time); and Lavoie became president of CEP Local 29 in 2007. The critical points in time appear to be when Restated Plan Texts were registered with the Superintendent in 1992 and 1993; 1995-1996, when administration of the plan changed from Wyatt to Mercer; 1998-1999 when the employer had prepared and then registered with the Superintendent the 1998 Restated Plan Text; 2000-2001, when administration of the plan transferred from Mercer to Towers Perrin; and 2003-2004, when Towers Perrin apparently changed its approach to administration of the plan. One might also consider

2007-2008 when the 2005 Restated Plan Text was prepared and registered – at which point, McMillan participated in a pension committee meeting which approved amendments – in his words – “perfunctory and administrative in nature” [I pause to note the web dictionary meaning of “perfunctory: hasty and without attention to detail and done routinely and with little interest or care”] and Mazerolle Stephens received and began consideration of the proposed amendments.

60. This has been a hearing based on business records prepared by persons who did not testify and interpreted by persons not involved in their preparation. The *Evidence Act*, R.S.N.B., c. E-11 provides for the admissibility of business records:

49 A record or entry of an act, condition or event made in the regular course of a business is, in so far as relevant, admissible as evidence of the matters stated therein if the court is satisfied as to its identity and that it was made at or near the time of the act, condition or event.

The *Pension Benefits Act*, section 96(2), declares the authority of the Board to “receive and accept any evidence and information on oath, affidavit or otherwise as it in its discretion considers fit and proper, whether admissible as evidence in court or not.” In the present matter, the various documents were generally received in evidence by consent. These documents generally originated with Fraser Papers or its agents though documents such as the Superintendent’s decision and order obviously did not. See also: *Schmidt v. Air Products Canada Ltd.*, [1994] 2 S.C.R. 611 per Cory J. at p. 669 and *Dinney*, *supra*, at para. 62.

61. It may be appropriate to emphasize that this proceeding is held under the *Pension Benefits Act* and is to determine whether, as provided by that *Act*, the Superintendent’s order of 25 November 2010 should be affirmed, vacated, or remitted for further investigation. More simply put, is the order well founded or not?

62. It seems to me that the Superintendent made six critical findings: 1) that the 1998 version of the Restated Plan Text entitled a member with 20 or more years continuous service to an unreduced pension at age 58; 2) that the administrative practice was consistent with the existence of this entitlement; 3) that the 2008 version of the Restated Plan Text (effective 2005) amended

that benefit in a manner which constituted an adverse amendment rendered void by section 12 of the *Act*; 4) that Fraser Papers failed to disclose the subject amendment on its completed Form 2 and its corporate resolution; 5) that notice of the adverse amendment had not been given to beneficiaries and the Superintendent as required by section 24(1) of the *Act*; and 6) that characterization of the amendment as clarifying a “drafting error” did not clothe Fraser Papers with authority to make the amendment without following the requirements of the *Act* regarding amendments.

63. At the hearing, Fraser Papers conceded that the administrative practice was inconsistent. The evidence clearly established, through the testimony of Chang as discussed above, that Mercer administered the plan consistent with an interpretation of articles 8.01 and 6.04 as providing an unreduced pension benefit at age 58 for an employee member with 20 or more years of continuous service. Fraser Papers presented no evidence to the contrary and its concession is sufficient for present purposes to hold finding 2), above, well founded. Fraser Papers effectively conceded findings 4) and 5), above. Fraser Papers produced no evidence and did not argue that it had explicitly disclosed the subject amendment on its submitted Form 2 or in its company resolution. Finally, Fraser Papers did not challenge in testimony nor in argument finding 6), above, that the *Act* does not authorize an undisclosed amendment which corrects a self-characterized, “drafting error”, assuming that amendment is an adverse amendment.

64. In reality, Fraser Papers did not challenge finding 3), above. If, properly interpreted, the 1998 Restated Pension Text which was in effect on 31 December 2004 provided an unreduced pension benefit for members with 20 or more years of continuous service, the 2008 Restated Plan Text clearly and unambiguously adversely impacted on that benefit by delaying the effective date of that benefit to age 65, per new article 6.02, being the Normal Retirement Date. Neither in testimony nor in argument did Fraser Papers challenge finding 3), above.

65. The focus of Fraser Papers in both its cross-examination of witnesses, its direct examination of its own witness, and in argument was to deny finding 1), above, by seeking to demonstrate that the unreduced pension benefit did not exist by virtue of the Restated Plan Text

as properly interpreted. If that interpretation is correct, it would follow that the 2008 amendments may not have been an adverse amendment.

66. Article 8.01 is headed “Deferred Vested Pension”. It applies to a *member* whose employment has terminated other than due to death (in which event, there would be a death benefit) and who is not otherwise entitled to any of the listed pensions. The listed pensions are: first, the normal retirement pension which commences at age 65 as defined in article 1.01(nn); second, the early retirement pension which, per article 6.01 commences on the member’s normal early retirement date, defined in article 1.01 (mm) to be the date next following a member’s termination date, provided the member is aged 58 or more, has not reached age 65 (the normal retirement date), and has completed 20 or more years of continuous service on the termination date; third, the reduced early retirement pension per article 6.03, which is available to a member who retires on his/her advanced early retirement date, defined in article 1.01 as the date next following the employee member’s termination date and who has not reached age 65 (the normal retirement date) but is at least 55 years of age; fourth, a disability pension which, like the death benefit is specific, and not of immediate concern. A member, *not an employee member* as expressed elsewhere in the Text, has a choice: to receive a deferred vested pension i) commencing at age 65 (the normal retirement date) or ii) at any time within 10 years of age 65 (the normal retirement date) “as adjusted pursuant to the appropriate table in section 6.04....”

67. Now, it must be acknowledged that article 6.04 defined the amount of the reduced early retirement pension, per article 6.03, which is one of the pensions listed in article 8.01 for which the member must not be entitled. Thus, the reference to “the appropriate table in section 6.04” is not for the purposes of a reduced early retirement pension but for the purposes of the article 8.01 deferred vested pension. The only substantive difference between article 6.04 (a) and (b) is that the member (the terminology per article 8.01 and not “employee member” per article 6.04) has or does not have 20 years of continuous service. The reference in article 8.01 is to the “appropriate table” in article 6.04.

68. A final definition to note is that of “termination date”. It is defined in article 1.01 (fff) of the 1998 Restated Plan Text as “the date on which an Employee Member's Termination of employment with the Corporation prior to January 1, 1988, and on and after that date with Fraser, shall occur whether due to his death, retirement, discharge, or interruption of Continuous Service for any reason.” The use of “Employee Member” in this definition is logical because on a termination date caused by discharge or resignation, the individual is both an employee of Fraser Papers and a member of the pension plan. The use of “member” alone in article 8.01 is logical because the individual is obviously ending employment with Fraser Papers and considering the options for a deferred pension to commence at a future time when the individual is not an employee. The definition of “Member” in article 1.01 (hh) is not inconsistent with this plain meaning interpretation – it defines a “Member” as “an employee who shall have become a Member of the Plan...” and continues “each such Member shall remain a Member until his Termination Date *or, if later, the date his entitlement under the Plan has been discharged in full*” (emphasis added). The latter phrase serves to maintain “member” status as an individual awaits discharge of his or her deferred vested pension. In this context, I observe that “retire” is not defined in the *Act* but in the federal *Act* is defined or deemed to occur when “a member of a pension plan... commenc[es] to receive an immediate pension benefit, whether the member's employment has terminated or not” per the *Pension Benefits Standards Act, 1985*, S.C. 1985, c. 32 (2nd Supp.).

69. Accordingly, the plain meaning of article 8.01 in combination with article 6.04 (the tables) is that a member with 20 or more years of continuous service is entitled to opt to take a deferred vested pension which, if it commences at age 58, is unreduced. I do not read “continuous service” as requiring retirement direct from employment with Fraser Papers because of the explicit use of such wording elsewhere in the Plan, in article 6.05 for example in relation to the bridging supplement. This is apparently not of concern in any event because the parties’ focus has been on employees whose termination date corresponds with the sale of the Fraser Papers facility in Edmundston and not on former employees who may have elected prior to 2004 to take an deferred vested pension.

70. Fraser Papers insists on a more contextual approach to interpretation. In terms of internal context within the Restated Plan Text itself, Fraser Papers only asserted significance of the phrase "Advanced Early Retirement Date" in article 6.04. However, as mentioned above, that phrase is defined in article 1.01 as the date next following the employee member's termination date if the employee has not reached age 65 (the normal retirement date) but is at least 55 years of age. The logic of a deferred vested pension is that it commences in the future. The definition is clearly directed at employees who, as employees, are eligible to take an early retirement pension or a reduced early retirement pension which are both excluded in article 8.01. Counsel for Morneau Sobeco appears correct that Fraser Papers' interpretation would result in no one qualifying for a deferred pension, or if any, only the few. Such an interpretation would be inconsistent with the concept of a deferred pension and its portability as provided in the *Pension Benefits Act*. A member who elects a deferred pension per article 8.01 is obviously able to identify his or her Advanced Early Retirement Date so it is logical that, for the purposes of article 8.01, the phrase must be understood as a reference to a future determinable time.

71. Notwithstanding Fraser Papers' focus on contextual interpretation, it did not lead evidence as to the economic climate or the financial position of Fraser Papers circa 1991-1992 when article 8.01 was amended to its present wording (except for the last phrase added by the 1998 Restated Plan Text. Instead of the parties' (or employer's) intention when the amendments were made or the Plan Text restated, the focus of Fraser Papers' contextual approach is grounded in 2009 and 2010 with the CCAA proceedings and the sale of its assets coupled with the regrettable adverse impact on its pension beneficiaries. A Restated Plan Text is not subject to progressive interpretation - the living tree approach. It is relatively easily amended by the employer acting unilaterally (witness the number of times this pension plan has been amended). Indeed, some amendments reflect agreements negotiated with the union but others do not.

72. The context must include the fact that in the mid-1990s Fraser Papers agreed to enhance entitlements for specific groups of its employees, as discussed above, and, of course, that prior to 2004 it was administered by Mercer consistent with the interpretation found compelling by the Superintendent and Morneau Sobeco.

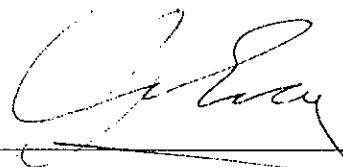
73. A final contextual point made by Fraser Papers was that, as an employer, it would not logically have intended to include in its pension plans more than the minimum standard required by the *Pension Benefits Act*. The logic of this point is perhaps too fine and, in any event, there is no evidence to support this other than taking notice of the firm Scrooge and Marley *before* the visit of the three ghosts and Marley's lament that "Humanity was my business".

74. Fraser Papers insistence on the "drafting error" characterization is unproven and not a logical conclusion from the evidence. In *Conkright et al v. Frommert et al*, decided by the United States Supreme Court on 21 April 2010 (provided by counsel for Fraser Papers but not discussed in closing argument), Roberts C.J. opens his reasons for decision of the majority with "People make mistakes. Even administrators of ERISA plans." – ERISA being *Employee Retirement Income Security Act of 1974*. Yet, even in that case the evidence of a mistake was clear and precise. That is not the present situation. Drafting errors do occur. To illustrate, both the 24 February 2010 and the 6 April 2010 orders of the Ontario Superior Court of Justice conclude with the declaration that "This Court Orders that this Order shall have full force and effect in all provinces and territories of Canada." With respect, this declaration is nonsense and would be considered by a student in a first year law school course on Constitutional Law as an affront to the internal sovereignty of the other provinces. A superior court is territorially limited in its jurisdiction and has no inherent jurisdiction to declare or order its orders to have effect in other provinces and territories. It might as well declare its orders to have full force and effect worldwide or even in the known and unknown universe. The foundation for the declaration is obviously CCAA, section 16. Thus, the declaration should read "Pursuant to the *Companies' Creditors Arrangements Act*, section 16...." The difference between the alleged "drafting error" in the Restated Plan Text and that of the Ontario Superior Court of Justice is that the former change in wording was apparently within the authority of Fraser Papers while the latter was not within the inherent authority of the Ontario court – even if prepared by professionals such as a lawyer or an actuary.

75. Notwithstanding Fraser Papers lack of challenge to the Superintendent's finding 6), above, I would find finding 6) fully justified. The *Act* sets the requirements for effecting an amendment to a registered pension plan. Amendment is not defined in the *Act* but it must refer to a modification to the wording of the plan registered with the Superintendent because of the various references to amendment in the *Act* and the requirement that a plan administrator administer it "in accordance with the filed documents..." per section 14(2) of the *Act*. There was a change in the wording with impacted / reduced a pension benefit and accordingly should have been processed by Fraser Papers explicitly and with notice to the beneficiaries. The *Act* conferred no warrant on Fraser Papers to effect a plan amendment, even if a clarification, without following the requirements of the *Act*. The alternative is to apply to a superior court for rectification of the plan as illustrated in *MTD Products Limited v. Baldin et al*, 2010 ONSC 1344, a case provided by counsel for Fraser Papers.

76. Having considered the evidence and the arguments of the parties, whether or not expressly addressed in the above reasons, I conclude that the Superintendent correctly interpreted the 1998 Restated Plan Text (and earlier Texts), the 2005 Revised Plan Text (effective 1 January 2005) and the *Act*. Accordingly, this Board affirms the 25 November 2010 order of the Superintendent in each and every one of its particulars. Accordingly, the stay in relation to that order per section 73(3) of the *Act* is lifted and of no force and effect.

Issued at Fredericton, New Brunswick, this 7<sup>th</sup> day of January 2011.



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John P. McEvoy  
Vice Chairperson  
Labour and Employment Board

**Appendix A****Restated Plan Text as of 1 January 1989**

6.03 **Reduced Early Retirement Pension.** An Employee Member who retires on his Advanced Early Retirement Date shall be entitled to receive a Reduced Early Retirement Pension. A Reduced Early Retirement Pension is a pension, commencing on the Member's Advanced Early Retirement Date, payable monthly for the life of the Member, and, subject to the provisions of Article 10 hereof, guaranteed for 60 months.

6.04 **Amount of Reduced Early Retirement Pension.** The annual amount of the Reduced Early Retirement Pension of a Member shall be equal to the Normal Retirement Pension accrued to his credit up to his Reduced Early Retirement Date, computed in accordance with Section 5.02 hereof reduced as follows:

(a) in the case of an Employee Member who at his Reduced Early Retirement Date has completed 20 years or more of Continuous Service, actuarially reduced in accordance with the following table:

| Age at Advanced<br>Early Retirement Date | Entitlement Factor |
|--|--------------------|
| 65                                       | 100%               |
| ....                                     |                    |
| 58                                       | 100%               |
| 57                                       | 92%                |
| 56                                       | 84%                |
| 55                                       | 76%                |

(b) in the case of an Employee Member who at his Reduced Early Retirement Date has completed less than 20 years of Continuous Service, actuarially reduced in accordance with the following table

| Age at Advanced<br>Early Retirement Date | Entitlement Factor |
|--|--------------------|
| 65                                       | 100%               |
| ....                                     |                    |
| 58                                       | 56%                |
| 57                                       | 52%                |
| 56                                       | 48%                |
| 55                                       | 45%                |

7.01 Deferred Vested Pension. Subject to section 7.03 hereof, a Member who has reached his Termination Date for any reason other than death and who shall not be entitled to receive a Normal Retirement Pension, an Early Retirement Pension, an Advanced Early Retirement Pension or a Disability Retirement Pension shall be entitled to receive a Deferred Vested Pension commencing on the Member's Normal Retirement Date.

**Appendix B****Restated Plan Text as of 1 January 1992**

6.03 **Reduced Early Retirement Pension.** An Employee Member who retires on his Advanced Early Retirement Date shall be entitled to receive a Reduced Early Retirement Pension. A Reduced Early Retirement Pension is a pension, commencing on the Member's Advanced Early Retirement Date, or at any date thereafter but not later than the Member's Normal Retirement Date, payable monthly for the life of the Member, and, subject to the provisions of Article 11 hereof, guaranteed for 60 months.

6.04 **Amount of Reduced Early Retirement Pension.** The annual amount of the Reduced Early Retirement Pension of a Member shall be equal to the Normal Retirement Pension accrued to his credit up to his Reduced Early Retirement Date, computed in accordance with Section 5.02 hereof reduced as follows:

(a) in the case of an Employee Member who at his Reduced Early Retirement Date has completed 20 years or more of Continuous Service, [deletion] reduced in accordance with the following table but subject always to the conditions and requirements of Section 6.02:

**Age at Pension**

| Commencement | Entitlement Factor |
|--------------|--------------------|
| 58           | 100%               |
| 57           | 92%                |
| 56           | 84%                |
| 55           | 76%                |

(b) in the case of an Employee Member who at his Reduced Early Retirement Date has completed less than 20 years of Continuous Service, [deletion] reduced in accordance with the following table

**Age at Pension**

| Commencement | Entitlement Factor |
|--------------|--------------------|
| 65           | 100%               |
| ....         |                    |
| 58           | 56%                |
| 57           | 52%                |
| 56           | 48%                |
| 55           | 45%                |

8.01 Deferred Vested Pension. Subject to section 8.03 hereof, a Member who has reached his Termination Date for any reason other than death and who shall not be entitled to receive a Normal Retirement Pension, an Early Retirement Pension, a Reduced Early Retirement Pension, or a Disability Retirement Pension shall be entitled to receive a Deferred Vested Pension commencing on the Member's Normal Retirement Date or, if he elects, at any time within 10 years prior to his normal Retirement Date but as adjusted pursuant to the appropriate table in Section 6.04.

**Appendix C****Restated Plan Text as of 1 January 1993**

6.03 **Reduced Early Retirement Pension.** An Employee Member who retires on his Advanced Early Retirement Date shall be entitled to receive a Reduced Early Retirement Pension. A Reduced Early Retirement Pension is a pension, commencing on the Member's Advanced Early Retirement Date, or at any date thereafter but not later than the Member's Normal Retirement Date, payable monthly for the life of the Member, and, subject to the provisions of Article 11 hereof, guaranteed for 60 months.

6.04 **Amount of Reduced Early Retirement Pension.** The annual amount of the Reduced Early Retirement Pension of a Member shall be equal to the Normal Retirement Pension accrued to his credit up to his Reduced Early Retirement Date, computed in accordance with Section 5.02 and 5.03 hereof reduced as follows:

(a) in the case of an Employee Member who at his Reduced Early Retirement Date has completed 20 years or more of Continuous Service, reduced in accordance with the following table but subject always to the conditions and requirements of Section 6.02:

| Age at Pension | Commencement | Entitlement Factor |
|----------------|--------------|--------------------|
|                | 58           | 100%               |
|                | 57           | 94%                |
|                | 56           | 88%                |
|                | 55           | 82%                |

(b) in the case of an Employee Member who at his Reduced Early Retirement Date has completed less than 20 years of Continuous Service, reduced in accordance with the following table:

| Age at Pension | Commencement | Entitlement Factor |
|----------------|--------------|--------------------|
|                | 65           | 100%               |
|                | ....         |                    |
|                | 58           | 56%                |
|                | 57           | 52%                |
|                | 56           | 48%                |

55

45%

8.01 Deferred Vested Pension. Subject to section 8.03 hereof, a Member who has reached his Termination Date for any reason other than death and who shall not be entitled to receive a Normal Retirement Pension, an Early Retirement Pension, a Reduced Early Retirement Pension, or a Disability Retirement Pension shall be entitled to receive a Deferred Vested Pension commencing on the Member's Normal Retirement Date or, if he elects, at any time within 10 years prior to his normal Retirement Date but as adjusted pursuant to the appropriate table in Section 6.04.

**Appendix D****Restated Plan Text as of 1 January 1998**

6.03 Reduced Early Retirement Pension. An Employee Member who retires on his Advanced Early Retirement Date shall be entitled to receive a Reduced Early Retirement Pension. A Reduced Early Retirement Pension is a pension, commencing on the Member's Advanced Early Retirement Date, or at any date thereafter but not later than the Member's Normal Retirement Date, payable monthly for the life of the Member, and, subject to the provisions of Article 11 hereof, guaranteed for 60 months.

6.04 Amount of Reduced Early Retirement Pension. The annual amount of the Reduced Early Retirement Pension of a Member shall be equal to the Normal Retirement Pension accrued to his credit up to his Reduced Early Retirement Date, computed in accordance with Section 5.02 and 5.03 hereof reduced as follows:

(a) in the case of an Employee Member who at his Advanced Early Retirement Date has completed 20 years or more of Continuous Service, reduced in accordance with the following table but subject always to the conditions and requirements of Section 6.02:

**Age at Pension**

| Commencement | Entitlement Factor |
|--------------|--------------------|
| 58           | 100%               |
| 57           | 94%                |
| 56           | 88%                |
| 55           | 82%                |

(b) in the case of an Employee Member who at his Reduced Early Retirement Date has completed less than 20 years of Continuous Service, reduced in accordance with the following table:

**Age at Pension**

| Commencement | Entitlement Factor |
|--------------|--------------------|
| 64           | 92%                |
| ....         |                    |
| 58           | 56%                |
| 57           | 52%                |
| 56           | 48%                |
| 55           | 45%                |

8.01 Deferred Vested Pension. Subject to section 8.03 hereof, a Member who has reached his Termination Date for any reason other than death and who shall not be entitled to receive a Normal Retirement Pension, an Early Retirement Pension, a Reduced Early Retirement Pension, or a Disability Retirement Pension shall be entitled to receive a Deferred Vested Pension commencing on the Member's Normal Retirement Date or, if he elects, at any time within 10 years prior to his normal Retirement Date but as adjusted pursuant to the appropriate table in Section 6.04 and subject always to the conditions and requirements of Section 6.02.

**Appendix E****Restated Plan Text as of 1 January 2005****Article 2 - Construction, Interpretation and Definitions****2.01 Construction and Interpretation**

This document, as it may be amended from time to time, constitutes the Plan. No statement in any other document or communication, whether or not such document or communication is required by Applicable pension Laws or Revenue Rules, shall create or confer any right or obligation other than set out in this document or otherwise as required by Applicable Pension Laws or Revenue Rules, nor may any such document or communication be used or relied upon to interpret or vary any terms or provisions of the Plan.

**Article 5 - Amount of Retirement Income****5.02 Normal Early Retirement**

(a) A Member who is accruing Continuous Service and who retires on his Normal Early Retirement Date shall receive an amount of retirement income commencing from the Member's Pension Commencement Date, determined as the lesser of (I) and (ii), where:

(I) is the Plan Formula determined using the Member's Normal Early Retirement Date as the Date of Determination, multiplied by the early retirement factor based on the Pension Commencement Date, in accordance with paragraph (b); and

(ii) is the Maximum Formula determined using the Member's Normal Early Retirement Date as the Date of Determination, multiplied by the early retirement factor based on the Pension Commencement Date, in accordance with paragraph (b).

(b) The early retirement factor referred to in subparagraphs (a)(I) and (a)(ii) shall be 100% less 0.25% for each month, if any, by which the Member's Pension Commencement Date precedes the earliest of:

- (I) the date the Member attains age 60;
- (ii) the date the Member completed or would have completed had the Member continued in employment after his Normal Early Retirement Date, 30 years of early retirement eligibility service, as defined under Revenue Rules; and
- (iii) the date on which the aggregate of the Member's age and early retirement

eligibility service, as defined under Revenue Rules, is, or would have been had the Member continued in employment after his Normal Early Retirement Date, equal to 80 years.

#### 5.03 Reduced Early Retirement

##### (a) *Members with 20 or More Years of Continuous Service*

A Member who is accruing Continuous Service, who retires on his Advanced Early Retirement Date and who has completed at least 20 years of Continuous Service at his Advanced Early Retirement Date shall receive an amount of retirement income commencing from the Member's Pension Commencement Date, determined as the lesser of (i) and (ii), where:

(i) is the Plan Formula determined using the Member's Advanced Early Retirement Date as the Date of Determination, multiplied by the applicable early retirement factor in the table below, based on the Member's age at his Pension Commencement Date:

| Member's Age at Pension Commencement | Early Retirement Factor (%) |
|--------------------------------------|-----------------------------|
| 58 and over                          | 100                         |
| 57                                   | 94                          |
| 56                                   | 88                          |
| 55                                   | 82                          |

Such reduction shall be at least equal to the reduction under paragraph 5.02(b).

Effective July 1, 2009, the reference to "94" in the above table shall be read as "100".

....

### Article 6 - Termination of Employment

#### 6.01 Not Vested

A Member whose employment with the Company is terminated prior to the Member's Vesting

Date, for any reason other than death or retirement, shall receive a lump sum payment equal to the Member's Required Contributions, with Interest to the Date of Determination.

6.02 Vested

(a) A Member whose employment with the Company is terminated after the Member's Vesting Date, for any reason other than death or retirement, shall receive the retirement income equal to the Plan Benefit, determined using the Member's date of termination of employment as his Date of Determination, payable in accordance with Article 3 of Part 1 and commencing on his Normal Retirement Date.

...

6.03 Earlier Commencement of Vested Pension

(a) A Member who is entitled to an amount of retirement income commencing at Normal Retirement Date under Section 6.02 and who has not attained age 55 at his date of termination of employment may elect to receive such retirement income commencing within 10 years of the Member's Normal Retirement Date. Such retirement income shall be the Actuarial Equivalent of the retirement income otherwise payable at the Normal Retirement Date.

(b) A Member who is entitled to an amount of retirement income commencing at Normal Retirement Date under Section 6.02 and who has attained at least age 55 at his date of termination of employment may elect to receive such retirement income commencing within 10 years of the Member's Normal Retirement Date, reduced to the retirement income which would have commenced at Normal Retirement Date, multiplied by the applicable early retirement factor in Section 5.02 or 5.03.

# EXHIBIT “M”

# EXHIBIT "M" FraserPapers

December 29, 2010

**TO: All creditors having claims against Fraser Papers Inc. / Papiers Fraser Inc., FPS Canada Inc., Fraser Papers Holdings Inc., Fraser Timber Limited, Fraser Papers Limited and Fraser N.H. LLC (collectively, the "Companies")**

The Companies have been operating under a Court supervised restructuring pursuant to the *Companies' Creditors Arrangement Act* ("CCAA") in Canada and under Chapter 15 of the U.S. *Bankruptcy Code* since June 18, 2009. PricewaterhouseCoopers Inc. acts as court-appointed Monitor (the "Monitor") of the Companies.

Early in December, the Monitor provided creditors with the information they need to evaluate, and ultimately vote on, a formal Plan of Compromise and Arrangement (the "Plan") presented by the Companies to their creditors. Since that time we have had a series of information sessions with creditors involving Davies Ward Phillips and Vineberg LLP ("Davies"), counsel to the Committee for Salaried Employees and Retirees ("CSER") and have responded to many questions. **This note is being sent to you to remind you that it is important that you exercise your right to vote, and that the view of the Companies and the Monitor is that you should vote in favour of the Plan.**

You should review all of the documents related to the Plan in their entirety in order to determine how you will vote. These documents include: i) the Notice of Meeting and Information Summary with respect to the Plan of Compromise and Arrangement; ii) the Consolidated Plan of Compromise and Arrangement; iii) the Proposed Form of Creditor Trust Agreement; iv) the Transaction Agreement; v) the Form of Proxy for the Meeting of Affected Creditors; vi) the Notice of Meeting of Creditors of the Applicants; and vii) the Monitor's Fifteenth Report to the Court. Each of these documents is available on the website of the Monitor, which you can access at: [www.pwc.com/car-fraserpapers](http://www.pwc.com/car-fraserpapers).

### Voting Procedures

The meeting to vote on the Plan will be held on Monday January 10, 2011 at 10:00 a.m. EST at the Hyatt Regency Toronto, 370 King Street West, Toronto, Ontario. All creditors with a claim against the Companies that has been accepted by the Monitor are invited to attend to vote in person. If you cannot attend in person, you can still exercise your vote in one of two ways.

Firstly, you can designate somebody to attend and vote for you. There is a place on the Form of Proxy for the Meeting of Affected Creditors ("Proxy") where you can write in the name of your designate, or leave the name blank in which case the Monitor will vote the claim on your behalf. You can then either direct them to vote "yes" or "no" to approve the Plan or you can allow them to vote at their discretion. You then sign the Proxy and give it to them to bring to the meeting where they will vote on your behalf.

Secondly, you can check the "yes" or "no" box in section 1 of the Proxy, sign the form and send it to the Monitor by regular mail, e-mail or fax.

Please remember that if you or your designate are not attending the meeting, the Monitor must receive your form of Proxy by 2:00 p.m. EST on January 7, 2011 in order for your Proxy to be counted. If you are mailing in your Proxy, you should ensure that you send it soon enough to allow it to be received by the Monitor by January 7, 2011.

**Plan Benefits and Implications of a "no" Vote**

The Companies, with the support of the Monitor, have worked diligently over the past 18 months to maximize the value of assets available for distribution to creditors. The Company and the Monitor believe that the Plan represents the best possible outcome for all creditors after considering all available alternatives. **The Companies and the Monitor therefore recommend that creditors vote in favour of the Plan as it provides the following benefits that will only be available if the Plan is approved:**

- total proceeds received from the Transaction that are in excess of what could be obtained through a series of piecemeal sales to third parties;
- a timely completion of the restructuring process which serves to minimize the professional fees and other costs which would otherwise have had a negative impact on the recovery for unsecured creditors; and
- greater certainty and finality for stakeholders by concluding all outstanding matters in the proceeding.

If the Plan is not approved, the result for affected creditors would be materially worse. Specifically:

- Fraser would not be able to sell its remaining U.S. assets in a single final transaction at a value that is the best possible value available resulting in fewer assets being available to distribute to creditors and a lower recovery for creditors.
- The Companies will continue to incur significant costs to professional service firms without the ability to generate any meaningful revenues. This will certainly result in lower recoveries, and possibly no recovery for affected creditors.
- The Companies and the Monitor believe that the Companies will be unable repay the DIP Loan in cash and will therefore not have sufficient cash to make the US\$500.00 Implementation Payment to each creditor having a claim, or to pay any cash to affected creditors at all, or certainly in the near-term.
- If the DIP Loan is not repaid, then the Promissory Notes and Common Shares of Twin Rivers will not be available for distribution to the Trusts, as we expect the DIP Lender will retain a charge over those assets.
- The Companies and the Monitor understand that reductions in pension payments in New Brunswick were determined, based in part, on the Promissory Notes and Common Shares being available for the benefit of affected creditors. If they are not, this could result in further reductions to pensioners in New Brunswick.

**In short, if the Plan is not approved, the recoveries for all unsecured creditors will be significantly lower. Additionally, there would be no cash amount available for distribution in the near-term.**

If you have any questions about any aspect of the Plan, you can contact the undersigned or the Monitor.

Sincerely,



Glen McMillan,  
Chief Restructuring Officer of the Companies

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  
(COMMERCIAL LIST)

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**ThorntonGroutFinnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Canadian Pacific Tower  
Toronto-Dominion Centre  
Toronto, ON M5K 1K7

**D.J. Miller** (LSUC# 34393P)  
**Kyla E.M. Mahar** (LSUC# 44182G)  
Tel: 416-304-1109  
Fax: 416-304-1313

Lawyers for the Applicants