

Court File No. CV-10-9042-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

BETWEEN:

G.E. CANADA EQUIPMENT FINANCING G.P.

Applicant

- AND -

NORTHERN SAWMILLS INC.

Respondent

APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF  
JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

**THIRD REPORT OF  
PRICEWATERHOUSECOOPERS INC.  
AS RECEIVER OF  
NORTHERN SAWMILLS INC.**

**July 27, 2011**

## BACKGROUND

1. On January 4<sup>th</sup>, 2011 (the “**Appointment Date**”), pursuant to an Order of this Honourable Court (the “**Northern Receivership Order**”) PricewaterhouseCoopers Inc. (“**PwC**”) was appointed as receiver (the “**Receiver**”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), over all the assets, undertakings and properties (the “**Northern Property**”) of Northern Sawmills Inc. (“**Northern**”). A copy of the Northern Receivership Order is attached hereto as **Appendix “A”**.
2. On the same date, pursuant to an Order of this Honourable Court (the “**Atikokan Receivership Order**”), PwC was also appointed as receiver, pursuant to section 243(1) of the BIA and Section 101 of the CJA, over all the assets, undertakings and properties (the “**Atikokan Property**”) of Atikokan Forest Products Ltd. (“**Atikokan**”).
3. Pursuant to an Order of this Honourable Court also made on January 4<sup>th</sup>, 2011 (the “**Northern Sale Process Order**”) attached hereto as **Appendix “B”**, the Receiver was authorized and directed to carry out and conduct a sale process in respect of the Northern Property, or any material portions thereof, substantially in accordance with the sale process (the “**Northern Sale Process**”) outlined in the Report of PwC as proposed receiver of Northern, dated December 30, 2010 (the “**Proposed Receiver's Report**”), attached hereto as **Appendix “C”**.
4. Pursuant to an Order of this Honourable Court also made on January 4<sup>th</sup>, 2011 (the “**Atikokan Sale Process Order**”), the Receiver was authorized and directed to carry out and conduct a sale process in respect of the Atikokan Property, or any material portions thereof, substantially in accordance with the sale process (the “**Atikokan Sale Process**”) outlined in the Report of PwC as proposed receiver of Atikokan, dated December 30, 2010.
5. On January 13, 2011, the Receiver filed its first report with this Honourable Court (the “**First Report**”), attached hereto, without appendices, as **Appendix “D”**, which, *inter alia*, requested this Honourable Court’s approval of the advertisement and the teaser to be

used by the Receiver in connection with the Northern Sale Process.

6. On July 14, 2011, the Receiver filed its second report with this Honourable Court (the **“Second Report”**), attached hereto, without appendices, as **Appendix “E”**, seeking this Honourable Court’s advice and direction with respect to the applicability of the *Wage Earner Protection Program Act* (**“WEPPA”**) to Northern’s former unionized employees, including:
  - i) the determination of the applicable employment termination date (the **“Employment Termination Date”**) of Northern’s former unionized employees who claim or may claim entitlements under WEPPA, including:
    - a) the impact, if any, of the deemed termination of the former unionized employees under section 56(2) of the *Ontario Employment Standards Act*;
    - b) the impact, if any, and duration of, recall rights of the former unionized employees under the applicable collective bargaining agreement;
    - c) the impact, if any, of the Termination Letters (as defined in the Second Report) executed by certain former unionized employees; and
  - ii) if any Employment Termination Date occurred prior to July 4, 2010, being more than six months prior to the Appointment Date, the Receiver sought a declaration from the Court that the Northern Receiver has no responsibilities or obligations under WEPPA with respect to such former employee.
7. The purpose of this, the Receiver’s third report (the **“Third Report”** and collectively with the Proposed Receiver’s Report, the First Report and the Second Report, the **“Reports”**) is to advise and update this Honourable Court with respect to:
  - i) the status of the Northern Sale Process, including a summary of the bids received by the Receiver in respect of the Northern Property;
  - ii) the termination of the EACOM Transaction (as hereinafter defined);

- iii) the activities undertaken by the Receiver subsequent to the termination of the EACOM Transaction with respect to the Northern Property;
- iv) the results of the review conducted by the Receiver's counsel in respect of the security granted by Northern in favour of its secured creditors; and
- v) update this Honourable Court on the Receiver's other activities to date;

And to seek an order of this Honourable Court:

- i) extending the Northern Sale Process timeline for finalizing and executing an agreement with the successful bidder up to and including July 22, 2011, *nunc pro tunc*, to allow the Receiver to complete the Northern Sale Process;
  - ii) approving the agency sale agreement (the "**Agency Sale Agreement**") between the Receiver and Maynards Industries Ltd. ("**Maynards**") relating to the liquidation of the Northern Property, as discussed below, and authorizing the Receiver to execute the Agency Sale Agreement and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction contemplated thereby;
  - iii) temporarily sealing the Bid Summary (as hereinafter defined) until completion of the sale of that portion of the Northern Property subject to the Agency Sale Agreement;
  - iv) authorizing the Receiver to release to RBC the GIC Account (as hereinafter defined) and the amount of \$85,000 held by Northern in the GIC Account;
  - v) increasing of the Receiver's borrowing limit, as set out in paragraph 20 of the Northern Receivership Order, from \$300,000 to \$400,000; and
  - vi) approving the Reports and the activities of the Receiver as described in the Reports.
8. In preparing the Third Report, the Receiver has relied upon unaudited and draft, internal financial information of Northern and Atikokan provided to it by Northern, Atikokan or by

GE. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information provided to it and expresses no opinion, or other form of assurance, in respect of the information contained therein.

9. All monetary amounts referred to herein are expressed in Canadian dollars. Capitalized terms not otherwise defined herein are as defined in the Proposed Receiver's Report.

## **SALE PROCESS UPDATE**

### **GENERAL BACKGROUND**

10. As more particularly described in the Proposed Receiver's Report, the Northern Sale Process provides for the following principal elements of, and a timeline in connection with, the advertisement of Northern and the Northern Property for sale and the solicitation of offers from prospective purchasers or liquidators (the "**Prospective Purchasers**") in connection with the proposed sale:
  - i) Not later than ten (10) business days after the Northern Sale Process was approved by this Honourable Court, namely by January 18, 2011, the Receiver was required to:
    - a) advertise Northern, the Northern Property and the Northern Sale Process in the national edition of the Globe & Mail (the "**Advertisement**");
    - b) send a teaser (the "**Teaser**") and a non-disclosure agreement ("**NDA**") to all parties identified by PwC as potentially having an interest in Northern and/or the Northern Property;
  - ii) Not later than fifteen (15) business days after the Northern Sale Process was approved by this Honourable Court, namely by January 25, 2011, the Receiver was required to establish an electronic data room containing information in respect of Northern and the Northern Property;
  - iii) The Receiver was also required to arrange site visits to allow Prospective Purchasers the opportunity to visit the Northern's premises and conduct due diligence;

- iv) The Prospective Purchasers had until 5:00 p.m. Eastern Standard time, on Wednesday, March 9, 2011 (the “Bid Deadline”) to submit binding offers;
  - v) Based on its review of the binding offers, the Receiver was required to determine the most favourable offer and proceed to finalize the asset purchase agreement with the successful offering party, subject to the approval of this Honourable Court, by March 25, 2011.
  - vi) The Receiver had the right to extend the timelines set forth above for a period of time not exceeding ten (10) business days from the dates indicated above. All other extensions or modifications of the Northern Sale Process require the approval of this Honourable Court.
- 11. Pursuant to an Order of this Honourable Court made on January 14, 2011, the forms of Advertisement and the Teaser were approved.
  - 12. On January 20, 2011, the Advertisement was published in the national edition of the Globe & Mail.
  - 13. Commencing on January 17, 2011, the Teaser and the NDA were sent to the parties who expressed an interest in participating in the Northern Sale Process. The Receiver sent a total of 18 packages containing the Teaser and the NDA to the Prospective Purchasers.
  - 14. On January 24, 2011, the Receiver established an electronic data room (the “**Data Room**”), containing information on Northern and the Northern Property. The Prospective Purchasers, who executed the NDA, were given access to the Data Room so that they could receive the necessary information in respect of Northern and the Northern Property.
  - 15. The Receiver has also been arranging site visits at the premises of Northern in order to assist the Prospective Purchasers who executed the NDA, with their due diligence efforts.
  - 16. The Receiver received a total of four (4) bids (the “**Bids**”) in respect of the Northern

Property from Prospective Purchasers, including liquidation proposals. A summary of the Bids (the **“Bid Summary”**), as amended based upon the discussions between the Receiver and the Prospective Purchasers, is attached hereto as **Appendix “F”**, which was previously provided to this Honourable Court as Confidential Appendix “A” to the second report of PwC in its **capacity** as receiver of Atikokan, dated April 18, 2011.

## **EACOM TRANSACTION**

17. Based on its review of the Bids, the Receiver, in consultation with GE, had determined that the most favourable offer for the Northern Property (the **“Successful Bid”**) was a Bid submitted by EACOM Timber Corporation (**“EACOM”**), a publicly listed, Canadian forestry company.
18. On April 29, 2011, the Receiver and EACOM executed an asset purchase agreement in respect of a transaction (the **“EACOM Transaction”**) for the purchase and sale of the Northern Property (the **“Northern APA”**). The Northern APA contained various conditions precedent for the benefit of EACOM including conditions typical for transactions of this nature and other business conditions including, but not limited to:
  - i) Within 30 days of the execution of the Northern APA, EACOM was to:
    - a) complete its due diligence review of the Purchased Assets, as defined in the Northern APA;
    - b) obtain financing to fund the total purchase price;
    - c) obtain the approval of the EACOM Transaction from its primary lender; and
  - ii) The Receiver obtaining an Approval and Vesting Order with respect to the Purchased Assets.
19. The Receiver did not immediately seek this Honourable Court’s approval of the EACOM Transaction as it elected to allow EACOM to complete its due diligence with respect to the Northern Property to ensure that the due diligence condition was satisfied prior to seeking this Honourable Court’s approval of the Northern APA.

#### TERMINATION OF THE EACOM TRANSACTION

20. Subsequent to the execution of the Northern APA, EACOM proceeded to conduct its due diligence of the Purchased Assets, as is more particularly described in the Fifth Report of PwC in its capacity as receiver of Atikokan, dated the date hereof and filed with this Honourable Court in the companion motion record.
21. On May 20, 2011, counsel to EACOM e-mailed the Receiver and advised that pursuant to the terms of the Northern APA, EACOM was not satisfied with its due diligence review of the Purchased Assets. Accordingly, EACOM elected to terminate the Northern APA in accordance with its terms.

#### CONTINUATION OF THE NORTHERN SALE PROCESS

22. Following the termination of the EACOM Transaction, as discussed above, the Receiver, in consultation with GE, recommenced the Northern Sale Process by contacting the former Prospective Purchasers, other than EACOM, who had expressed an interest in all or substantially all of the Northern Property (other than Northern's real property) inviting such Prospective Purchasers to submit revised offers for the Northern Property by June 8, 2011. At that point, the Receiver was uncertain whether the recommencement of the Northern Sale Process would yield any offers or whether the Receiver would be forced to abandon the Northern Sale Process altogether. Accordingly, the Receiver determined that seeking this Honourable Court's approval to extend the deadline for executing an asset purchase agreement with a successful bidder would be premature. The Receiver wanted to make a substantive recommendation to this Honourable Court to allow the Court to make an informed decision as to whether the deadline for executing an asset purchase agreement pursuant to the Northern Sale Process should be extended and submit the asset purchase agreement for this Honourable Court's approval at the same time.
23. In response to the Receiver recommencing the Northern Sale Process after the termination of the EACOM Transaction, the Receiver received offers from two liquidators in respect of the Northern Property (the "**Liquidation Offers**").



24. The Liquidation Offers included a proposal from Maynards (the “**Maynards’ Offer**”) and a proposal from EDS Decommissioning Canada Inc. (the “**EDS Offer**”). Both EDS and Maynards specialize in industrial asset sales, with EDS also focusing on demolition and decommissioning of industrial sites.
25. The Maynards’ Offer provided the option of an outright sale of the Northern Property to Maynards, or for Maynards to act as the Receiver’s agent overseeing a liquidation sale of the Northern Property on a “commission-only” basis or with a net minimum guarantee to the Receiver, with net proceeds of sale above a certain threshold to be shared as between the Receiver and Maynards.
26. The EDS Offer was a cash offer to purchase the Northern Property. However, the EDS Offer also contemplated the Receiver remaining in possession of the Northern real property for an additional 12-month period to allow for the completion of the liquidation and dismantling of the assets.
27. The Receiver has determined that entering into an agency arrangement with Maynards for the liquidation of the Northern Property (excluding Northern’s land), subject to a net minimum guarantee being paid to the Receiver is the most favourable alternative available to the Receiver at this time, as:
  - i) liquidating the Northern Property with Maynards will not obligate the Receiver to occupy Northern’s real property for another year, which will give rise to the incurrence of additional costs that are not justified by higher potential recoveries;
  - ii) the net minimum guarantee will provide a base line recovery to the Receiver that is only slightly less than the cash purchase options available to the Receiver from both Maynards and EDS; and
  - iii) if the auction is successful, the overall recovery for the benefit of the Northern’s estate and its stakeholders may in fact be greater than the cash offer contemplated by the EDS Offer or the Maynards Offer.

28. As set out in paragraph 13 of the Proposed Receiver's Report, and as discussed in further detail below, Lucky Star Holdings Inc. ("**Lucky Star**"), an entity related to Northern, had advised GE prior to the commencement of this receivership proceeding that it had priority over GE in respect of certain of the Northern Property, including certain "rolling stock" (the "**Disputed Collateral**"). The Receiver understands that GE takes the position that it has priority over all other secured creditors in respect of all of the Northern Property, including the Disputed Collateral.
29. The Receiver instructed its counsel, Osler, Hoskin & Harcourt LLP ("**Osler**") to review the security granted by Northern to its secured creditors. The opinions resulting from such review are described in detail below. However, as a result of its security review, Osler discovered various conflicting security documentation. Accordingly, Osler was unable to definitively determine which secured party has priority over the Disputed Collateral. Following discussions with counsel to GE and Lucky Star, the Receiver is of the view that in the context of the priority dispute in respect of the Disputed Collateral, it is important to determine the value of the Disputed Collateral so that GE and Lucky Star are able make an informed determination with respect to the resolution of the priority claims in respect of the Disputed Collateral. In the Receiver's view, a liquidation of the Northern Property by way of a public auction is the most efficient way to determine the value of the Disputed Collateral, as this will avoid the need to independently value or appraise the Disputed Collateral. The Receiver has consulted with GE and its counsel and counsel to Lucky Star with respect to the engagement of Maynards and is advised that GE and Lucky Star are both supportive of the Receiver engaging Maynards.
30. On July 22, 2011 the Receiver and Maynards finalized the Agency Sale Agreement, a redacted copy of which is attached as **Appendix "G"** hereto. An unredacted copy of the Agency Sale Agreement can be provided to this Honourable Court upon request.
31. Accordingly, based on the foregoing, the Receiver is seeking an approval of the Agency Sale Agreement by this Honourable Court and the authority to execute the Agency Sale Agreement.

## EXTENSION OF SALE PROCESS TIMELINE

32. As discussed above, pursuant to the Northern Sale Process, the Receiver has the right to extend the timelines set forth in the Northern Sale Process for a period of time not exceeding ten (10) business days without the order of this Honourable Court. Accordingly, an asset purchase agreement was required, under the Northern Sale Process, to be finalized by April 8, 2011. As described above, despite the Receiver's attempts, the original deadline for executing an asset purchase agreement with a successful bidder (which at that time was EACOM), as set out in the Northern Sale Process, was not met by the Receiver. The Northern APA was in fact executed by the Receiver and EACOM on April 29, 2011. However, as described above, all other milestones of the Northern Sale Process were complied with.
33. Given that the EACOM Transaction was ultimately terminated, as described above, the Receiver required additional time to make a determination as to whether to recommence the Northern Sale Process or to abandon it altogether. Upon the recommencement of the Northern Sale Process, as described above, the Receiver also required additional time to negotiate the Agency Sale Agreement with Maynards. The Receiver did not seek this Honourable Court's approval of an extension to the timeline set out in the Northern Sale Process once the EACOM Transaction terminated, as at that time the Receiver did not know how much time would be required to determine an alternative for the sale of the Northern Property.
34. Accordingly, the Receiver respectfully requests and recommends that this Honourable Court make an order, *nunc pro tunc*, providing for an extension of the Northern Sale Process timeline for finalizing and executing an agreement with a successful bidder up to and including July 22, 2011, the date that the Receiver and Maynards executed the Agency Sale Agreement. GE, as the major stakeholder in the Northern estate, has advised the Receiver that it is supportive of such time extension.
35. Given that the Northern Sale Process has taken longer than the Receiver initially anticipated due to the reasons set out above, the Receiver also requires additional funding to complete the transaction now achieved under the Agency Sale Agreement

and other miscellaneous matters in the administration of the Northern receivership estate. The Receiver estimates that an increase of the Receiver's borrowing limit up to \$400,000 is required. The funding of the Northern receivership will continue to be by way of advances from GE to the Receiver under the Receiver's Borrowing Certificates. The professional fees incurred by the Receiver will continue to be paid directly by GE.

## SECURITY OPINION

36. The Receiver requested that its counsel, Osler, Hoskin & Harcourt LLP ("**Osler**"), conduct a security review of the security granted by Northern in favour of GE and its related entities (collectively, the "**GE Entities**"), Royal Bank of Canada ("**RBC**"), Lucky Star Inc. ("**Lucky Star**") and Buchanan Sales Inc. ("**Buchanan Sales**") and also to review the intercreditor arrangements among the GE Entities, RBC, Lucky Star and Buchanan Sales, so that the Receiver could provide a report and make a recommendation to this Honourable Court regarding issues relating to competing claims of the GE Entities, RBC, Lucky Star and Buchanan Sales against the Northern Property, if any, and regarding issues relating to the distribution of the proceeds of sale of the Northern Property.
37. On July 25, 2011, Osler issued a security review opinion (the "**Osler Opinion**") to the Receiver stating that subject to the assumptions, qualifications and limitations contained therein, Osler is of the opinion that the security granted by Northern in favour of each of the GE Entities, RBC, Lucky Star and Buchanan Sales creates a valid security interest in favour of each of the GE Entities, RBC, Lucky Star and Buchanan Sales in the personal property described in their respective security. To the extent that Northern has rights in the personal property secured by such security or the power to transfer rights in the personal property secured thereby to the GE Entities, RBC, Lucky Star and Buchanan Sales, as applicable, such security interests, to the extent capable of perfection by possession or registration of a financing statement under the *Personal Property Security Act* (Ontario) (the "**Ontario PPSA**"), and to the extent that the Ontario PPSA applies to the perfection of such personal property, has been perfected.
38. As more particularly described in the Osler Opinion, in respect of the intercreditor

arrangements between the GE Entities, RBC, Lucky Star and Buchanan Sales, the Osler Opinion in effect states that:

- i) pursuant to various postponement agreements among the GE Entities, RBC, Lucky Star and Buchanan Sales, the security granted by Northern in favour of RBC ranks in priority to the security granted by Northern in favour of each of the GE Entities, Lucky Star and Buchanan Sales in respect of the amount of \$85,000 held by Northern in the GIC collateral account (the “**GIC Account**”) with RBC, notwithstanding the order of any registrations effected by any of the GE Entities, RBC, Lucky Star or Buchanan Sales under the Ontario PPSA in respect of Northern;
- ii) except for the personal property of Northern classified as “motor vehicle”, the security granted by Northern in favour of the GE Entities ranks in priority to the security granted by Northern in favour of Buchanan Sales in the personal property of Northern;
- iii) the security granted by Northern in favour of Buchanan Sales ranks in priority to the security granted by Northern in favour the GE Entities solely in respect of the personal property of Northern classified as “motor vehicle”; and
- iv) as between the security granted by Northern in favour of Buchanan Sales and Lucky Star, the security granted by Northern in favour of Lucky Star ranks in priority to the security granted by Northern in favour of Buchanan Sales in respect of the personal property of Northern.

39. Based on the Osler Opinion, as it relates to the security and the priority position of RBC in the GIC Account, the Receiver requests this Honourable Court’s authorization to release to RBC the GIC Account and the amount of \$85,000 held by Northern in the GIC Account.

40. As noted above, GE and Lucky Star have indicated to the Receiver that there is a dispute between them with respect to their respective priority in the Disputed Collateral. As more particularly described in the Proposed Receiver’s Report, the Receiver agreed to

review the competing security interests in and to the Disputed Collateral and work with GE and Lucky Star, and their legal counsel, to either attempt to resolve the issue consensually or, in the alternative, to seek advice and direction of this Honourable Court in resolving this matter.

41. The Osler Opinion indicates that certain security documentation executed by Northern in favour of each of the GE Entities and Lucky Star on the same day appear to be in conflict. The Osler Opinion also states that Osler was unable to determine which of the conflicting agreements govern the rank and priority of the security granted by Northern in favour of each of the GE Entities and Lucky Star and, therefore was unable to provide an opinion with respect to the disputed priority claims of GE and Lucky Star in and to the Disputed Collateral. Counsel for both GE and Lucky Star were advised accordingly.
42. Once the transaction contemplated by the Agency Sale Agreement is completed, if approved by this Honourable Court, the Receiver intends to hold the proceeds attributable to the Disputed Collateral in trust pending the resolution of the dispute between GE and Lucky Star if such resolution is reached prior to the Receiver's discharge. If the dispute between GE and Lucky Star with respect to the Disputed Collateral is not resolved prior to the Receiver's discharge, the Receiver intends to pay the proceeds attributable to the Disputed Collateral into Court prior to its discharge. With respect to the balance of the proceeds from the sale of the Northern Property, the Receiver intends to make a distribution motion before this Honourable Court.

## **RECOMMENDATION**

43. The Receiver respectfully requests and recommends for the reasons outlined above, that this Honourable Court make an Order, *inter alia*:
  - i) extending the Northern Sale Process timeline for finalizing and executing an agreement with the successful bidder up to and including July 22, 2011, *nunc pro tunc*;
  - ii) approving the Agency Sale Agreement and authorizing the Receiver to execute the Agency Sale Agreement and to take such additional steps and execute such

additional documents as may be necessary or desirable for the completion of the transaction contemplated thereby;

- iii) temporarily sealing the Bid Summary until completion of the sale of that portion of the Northern Property subject to the Agency Sale Agreement;
- iv) authorizing the Receiver to release to RBC the GIC Account and the amount of \$85,000 held by Northern in the GIC Account;
- v) increasing of the Receiver's borrowing limit, as set out in paragraph 20 of the Northern Receivership Order, to \$400,000; and
- vi) approving the Reports and the activities of the Receiver as described in the Reports.

All of which is respectfully submitted this 27<sup>th</sup> day of July, 2011.

**PricewaterhouseCoopers Inc.**

In its capacity as Receiver of  
Northern Sawmills Inc.



Greg Prince  
Senior Vice President