

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
POPE & TALBOT LTD., POPE & TALBOT, INC.,
MACKENZIE PULP LAND LTD., P&T FUNDING LTD., PENN TIMBER, INC.
POPE & TALBOT LUMBER SALES, INC., POPE & TALBOT PULP SALES U.S., INC.
POPE & TALBOT RELOCATION SERVICES, INC., P&T POWER COMPANY, AND
P&T FINANCE THREE LLC
(Collectively referred to as "P&T" or the "Company")**

MONITOR'S SIXTEENTH REPORT TO COURT

OCTOBER 29, 2009

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1 INTRODUCTION

- 1.1 On October 29, 2007 the Court granted Pope & Talbot ("P&T") protection from its creditors pursuant to the provisions of the Companies' Creditors Arrangement Act (the "CCAA"). Pursuant to the terms of the Court Order granted that day (the "Initial Order", PricewaterhouseCoopers Inc. ("PwC") was appointed Monitor.
- 1.2 On May 10, 2008, the Court appointed PwC as Receiver of all the assets and undertaking of the Company.
- 1.3 The Monitor's last Report to Court was dated May 13, 2009. That report provided a summary of the status of the Directors and Officers Claim process and presented a plan for dealing with those claims (the "Disputed Claims") which had been disallowed by the Monitor and the claimant had filed a Notice of Dispute.
- 1.4 This is the Monitor's Sixteenth Report to Court. This report is prepared to inform the Court of the current status of both unpaid claims and unresolved, disputed claims that have been made against both the Directors Charge created in the CCAA proceedings and the directors and officers insurance policies. This information is provided for the Court's consideration of the Receiver's motion to reduce the US\$ 13 million Directors' Charge Fund and permit a further distribution to Ableco Finance LLC ("Ableco"), the secured creditor herein.

2 BACKGROUND OF THE CCAA AND THE RECEIVERSHIP

- 2.1 This administration began in October 2007 with P&T making an application under the CCAA.
- 2.2 PwC has established a website at www.pwc.com/car-poptal where all materials filed with this Court by P&T and PwC, as well as any Orders granted by this Court, including the Petition and the Order, are available in electronic form to creditors and other interested parties.
- 2.3 Full details of the CCAA and receivership proceedings are set out in Appendix A.

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3 STATUS OF D&O CLAIMS AT OCTOBER 29, 2009

- 3.1 At the time of the Monitor's 15th Report, there remained \$39.032 million of unpaid claims and unresolved disputed claims. Appendix G to that report contained a summary of such amounts.
- 3.2 The present status of unpaid claims and unresolved, disputed claims is summarized in Appendix B to this report. Such claims now total \$7.827 million.
- 3.3 Canadian Wage Related Claims – Following further communication with claimants:
 - 3.3.1 It was determined that claims in the amount of \$4,311 pertained to amounts that the Receiver ought to have paid as part of its payroll costs. This has been paid by the Receiver;
 - 3.3.2 Claims totalling \$139,820 were withdrawn. These are primarily comprised of:
 - 3.3.2.1 Correction of Mackenzie hourly wage claims (\$15,093);
 - 3.3.2.2 Correction of individual salaried wage claims (\$23,867);
 - 3.3.2.3 Withdrawals of claims for further employer contributions to benefit plans (\$87,137); and,
 - 3.3.2.4 Withdrawal of a disputed, Mackenzie, salaried employee's claim of \$13,723 that was misclassified in the May 13, 2009 summary.

Copies of documents evidencing agreement between the claimant and the Monitor with respect to these adjustments are attached within Appendix C.

- 3.3.3 To date, the Receiver has paid \$716,282 of wages secured by section 81.3 of the Bankruptcy and Insolvency Act. The Receiver has identified 19 other claims totalling a further \$30,209 that will be paid once these

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salaried employees sign and return the Proof of Claim form provided to them. These payments were not funded by the D&O Charge Funds.

3.3.4 Of the \$3,533,765 of unpaid or unresolved claims in this category, apart from the issue of whether it can be proven that there were any de facto directors after November 9, 2007, the Monitor disputes only one claim, being \$277,022 of trigger bonus claims advanced by the Communications, Energy and Paperworkers of Canada, Local 1092 (the "CEPW"). Note that the Directors instructed the Monitor to disallow all unpaid trigger bonus claims, including \$31,478.02 of unpaid trigger bonuses accruing during the period April 1, 2008 to May 9, 2008.

3.4 US Wage Related Claims – All US employee D&O Claims were disallowed by the Monitor. On August 27, 2009, on application by the Monitor on notice to all former US employees that had filed Notices of Dispute, all US-wage-related claims were disallowed by Order of the Court. A copy of the Court's Order of August 27, 2009 is attached as Appendix E.

3.5 Bondholder Claim – This claim was withdrawn in May 2009 and, for certainty, was disallowed by Order of the Court on July 23, 2009 (Appendix D, paragraph 2).

3.6 Severance or Termination Claims – Disputed claims for severance have been addressed as follows:

3.6.1 Salaried employee severance claims were disallowed by Order of the Court on July 23, 2009. A copy of the Court order is attached as Appendix D.

3.6.2 The PPWC, Local 8, which is the union representing former hourly employees at Harmac, withdrew its claim for severance as against the Directors' Charge funds prior to May 2009 as part of the purchase of the plant.

3.6.3 The United Steelworkers, Local 424, representing former hourly employees at Fort St. James, withdrew its claim for severance on behalf of those employees in the amount of \$10.716 million. Refer to the

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confirming e-mail from union counsel dated October 26, 2009 attached within Appendix C.

- 3.6.4 The CEP, Local 1092, filed a D&O Claim on behalf of the former hourly employees at Mackenzie in the amount of \$6,711,788. With the CEP's consent, this claim was disallowed by Court Order dated August 28, 2009. A copy of this Order is attached as Appendix F.
- 3.6.5 The severance claim of Zenon Frikas in the amount of \$101,392 was disallowed by Order of the Court on July 23, 2009. (Refer to Appendix D, paragraph 12).
- 3.6.6 The Steelworkers, Local 423, representing workers at Grand Forks, Midway Lumber, Boundary Logging and Variance Group filed a D&O Claim totalling \$4,036,918 in respect of alleged severance obligations arising pursuant to its collective agreement and \$648,615 as group termination entitlements pursuant to the B.C. *Employment Standards Act* ("ESA"). The claim for ESA group termination was withdrawn as evidenced by an e-mail from counsel for the Steelworkers dated October 13, 2009, a copy of which is attached within Appendix C. The remaining severance claim pertains to the alleged permanent closure of the Midway sawmill. This claim has yet to be resolved.
- 3.6.7 No severance claims were advanced by United Steelworkers, Local 405, on behalf of its members formerly employed at Castlegar and Nakusp.
- 3.7 Future Benefit Claims and Pension Bridging Benefits – Following notice to affected claimants on a motion by the Monitor heard on July 23, 2009, the Court disallowed all claims for future medical benefits and pension bridging benefits except the claim of CEP Local 1092 for \$125,891 (comprised of \$67,445 of future medical benefits and \$58,446 of pension bridging benefits as detailed in a letter from counsel for the CEP Local 1092 dated July 25, 2008). A copy of the July 23, 2009 Court Order is attached as Appendix D. The CEP, Local 1092, has subsequently brought a motion seeking an Order permitting it to file an amended D&O Proof of Claim to advance a claim for future health and welfare benefits for retirees totalling \$67,445 and future pension bridging benefits totalling \$106,936.

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The hearing of that motion concluded on October 23, 2009 and judgment was reserved.

3.8 Pension Related Claims – Since May 2009, the pension claims have been resolved as follows:

3.8.1 Those claims secured by BIA section 81.5 have been paid by the Receiver to the Administrators of the Pension Plan for Permanent Salaried Employees (defined benefit) and each of the union (defined contribution) plans.

3.8.2 By Order of the Court dated July 23, 2009, the pension-related D&O Claims of all former hourly employees were disallowed.

3.8.3 Pursuant to a settlement agreement entered into by the Receiver with certain claimants (the “Settled Claimants”):

(i) the balance of pension-related claims, made by individual plan members were disallowed by Order of the Court on October 15, 2009; and,

(ii) payments totalling \$202,000 were made to the Settled Claimants from the Directors’ Charge Funds.

A copy of the Court Order of October 15, 2009 is attached as Appendix G.

3.9 Board Member Claims and Trade Creditor Claims – These claims were disallowed by Court Order dated July 23, 2009 (Appendix D, paragraph 1).

3.10 Unremitted withholdings (US payroll related) – These claims were disallowed by the Court Order dated August 27, 2009. All such claims had been advanced by former US employees who were put on notice of the August 27, 2009 hearing. (Appendix E, paragraph 1).

3.11 Other (Social Fund and Legal Fees) – Due to inadvertence, the numbers reported in the May 2009 report did not include a claim in the amount of \$20,855, advanced in relation to a Harmac social fund. The Monitor disallowed this claim

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and the claimant filed a Notice of Dispute within the required time. This claim remains unresolved. The claim for legal fees (\$4,780) was advanced by a former Canadian employee in relation his pension bridging and post retirement benefit claim. Although this claim was arguably discharged by the Order disallowing Bridging and Future Benefits, for purposes of determining the sufficiency of the funds secured under the Directors' Charge, it is indicated as unresolved.

- 3.12 BC Social Services Tax – This claim has not been disallowed and remains unpaid.
- 3.13 As indicated in Appendix B, the remaining unpaid claims and disputed claims against the Directors and Officers total approximately \$7.8 million.

4 CONCLUSIONS AND RECOMMENDATION

- 4.1 After payment of the \$202,000 to the Settled Claimants, the Receiver has retained \$12.798 million pursuant to the November 21, 2007 Amended and Restated Initial Order.
- 4.2 As explained above, the current total of unpaid and disputed claims remaining against the D&O Charge Funds is \$7.8 million (Canadian funds).
- 4.3 Ableco Finance LLC has requested that the Receiver apply to this Court for an Order reducing the Directors' Charge to \$8 million and permitting the Receiver to pay out the difference, being \$4.798 million, to Ableco.
- 4.4 The Monitor is satisfied that a reduction of the D&O Charge to \$8 million from \$13 million is justified as \$8 million is sufficient to pay all outstanding D&O Claims in the event the insurance in favour of directors and officers does not cover such claims. Further, this would be sufficient to pay anticipated legal fees of the former directors to the extent such fees are to be paid from the Director Charge Funds.
- 4.5 The Monitor therefore supports the Receiver's motion, on behalf of Ableco, that the D&O Charge be reduced to \$8 million.

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This report is respectfully submitted this 29th day of October 2009.

**PricewaterhouseCoopers Inc.
Court Appointed Monitor of
Pope & Talbot Ltd. and its affiliates**



Richard D. Pallen
Senior Vice President

