

**TAB 5**

2012 CarswellOnt 17574  
Ontario Superior Court of Justice [Commercial List]

Terrace Bay Pulp Inc., Re

2012 CarswellOnt 17574

**In the Matter of the Companies' Creditors  
Arrangement Act, R.S.C. 1985, c. C-36, as Amended**

In the Matter of a Plan of Compromise or Arrangement of Terrace Bay Pulp Inc., The Applicant

Morawetz J.

Judgment: January 25, 2012  
Docket: CV-12-9566-00CL

Counsel: Pamela L.J. Huff, Jackie Moher, Maro Flynn, for Applicant

Subject: Insolvency

APPLICATION by applicant under *Companies' Creditors Arrangement Act* for relief.

*Morawetz J.:*

1 THIS APPLICATION, made by Terrace Bay Pulp Inc. (the "*Applicant*"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "*CCAA*") was heard this day at 330 University Avenue, Toronto, Ontario.

2 ON READING the affidavit of Wolfgang Gericke sworn January 24, 2012 and the Exhibits thereto (collectively, the "*Gericke Affidavit*"), the report of Ernst & Young Inc. ("*E&Y*") as proposed Monitor dated January 24, 2012, the affidavit of Nancy Thompson sworn February 1, 2012, the Initial Order of Mr. Justice Morawetz dated January 25, 2012 (the "*Initial Order*"), the Supplemental Initial Order of Mr. Justice Morawetz dated February 2, 2012 [2012 CarswellOnt 17569 (Ont. S.C.J. [Commercial List])], the Second Supplemental Initial Order of Mr. Justice Morawetz dated February 7, 2012 [2012 CarswellOnt 17570 (Ont. S.C.J. [Commercial List])], the affidavit of Wolfgang Gericke sworn February 15, 2012, and the Second Report of E&Y in its capacity as Monitor dated February 15, 2012 and on being advised that the Province of Ontario as represented by the Minister of Northern Development and Mines (formerly the Minister of Northern Development, Mines and Forestry) (the "*Province*") does not oppose the relief sought in this Application, and on hearing the submissions of counsel for the Applicant, the Province and E&Y and on reading the consent of E&Y to act as the Monitor and on hearing the submissions of counsel for The Corporation of the Township of Terrace Bay (the "*Township*") and the Trustee (as defined in the *Gericke Affidavit*) in respect of the relief set out in paragraph 32 hereof, no one appearing for the Construction Lien Claimants (as defined in the *Gericke Affidavit*) in connection therewith, although duly served in accordance with the terms of the *Initial Order*.

**Service**

3 1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

**Application**

4 2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the *CCAA* applies.

**Plan of Arrangement**

5 3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

**Possession of Property and Operations**

6 4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

7 5. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

8 6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) payment for goods or services actually supplied to the Applicant before and following the date of this Order in connection with the repairs to and/or replacement of equipment damaged in connection with the October 31 Accident (as defined in the Gericke Affidavit) provided that the Monitor approves of each payment for goods or services provided before the date of this Order; and

(c) payment for goods or services actually supplied to the Applicant following the date of this Order.

9 7. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services, harmonized sales or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any

nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

10 8. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

#### **Restructuring**

11 9. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations,
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing.

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

#### **No Proceedings Against the Applicant or the Property**

12 10. THIS COURT ORDERS that until and including April 27, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **No Exercise of Rights or Remedies**

13 11. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities, including, without limitation, warehousemen, storers or bailees or construction lien claimants (all of the foregoing being, collectively, "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien under the *Construction Lien Act* (the "CLA"). In order to preserve the time limitations provided for by the provisions of the CLA, the Construction Lien Claimants are hereby permitted to commence actions (and where relevant, register a corresponding certificate of action) in respect of such liens in accordance with the CLA, provided that such actions will be subject to the stay imposed by this Order. Any such actions commenced under this sub-paragraph (iv) on or after February 16, 2012 must be served on the Applicant and the Monitor within 5 days of issuance by the applicable Court office.

#### **No Interference With Rights**

14 12. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by

the Applicant, and the Applicant shall be entitled to possession of its Property, wherever situate, without any interference of any kind from any Person, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **Continuation of Services**

15 13. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **Non-Derogation of Rights**

16 14. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **Proceedings Against Directors and Officers**

17 15. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

#### **Directors' and Officers' Indemnification and Charge**

18 16. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings (including in respect of any environmental condition that arose or environmental damage that occurred after the date hereof, and excluding, for greater certainty, in respect of any environmental condition that arose or environmental damage that occurred prior to the date hereof), except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

19 17. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property in an unlimited amount as security for the indemnity provided in paragraph 16 of this Order. The Directors' Charge shall have the priority set out in paragraphs 30 and 32 herein.

20 18. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 16 of this Order.

### Appointment of Monitor

21 19. THIS COURT ORDERS that E&Y is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22 20. THIS COURT ORDERS that (a) E&Y, in its sole discretion, may suspend performance of any of its remaining duties as the Monitor of the Applicant in the First CCAA Proceedings (as defined in the Gerioke Affidavit) namely Court File No. CV-09-8062-00CL, and that E&Y and the Applicant are free to seek such further and other Order, advice and directions as may be considered necessary or desirable in relation to the First CCAA Proceedings, including the remaining duties of E&Y as Monitor in those proceedings; and (b) the liabilities and obligations of the Applicant to E&Y pursuant to paragraph 23 of the Order made by this Court on July 27, 2010 in the First CCAA Proceedings remain in full force and effect, shall be paid by the Applicant and are hereby secured by the Administration Charge (as defined below).

23 21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its preparation of the Applicant's cash flow statements;
- (d) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including being at liberty to retain and utilize the services of entities related to the Monitor as may be necessary to perform its duties hereunder; and
- (h) consult with and assist the Applicant as requested in its negotiations and discussions with suppliers, customers, creditors and other stakeholders;
- (i) consult with and assist the Applicant with the Sales Process (as defined below);
- (j) perform such other duties as are required by this Order or by this Court from time to time.

24 22. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25 23. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be

environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "*Environmental Legislation*"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26 24. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

27 25. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and 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.

28 26. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis, and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant (i) any accounts outstanding relating to the preparation for this Application and (ii) retainers in the amounts of \$100,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

29 27. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30 28. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "*Administration Charge*") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings and paragraph 20 of this Order. The Administration Charge shall have the priority set out in paragraphs 30 and 32 hereof.

31 29. THIS COURT ORDERS that the Applicant is authorized to pay a retainer in the amount of \$20,000 to the independent counsel for the OHS Employees (as defined in the Gericke Affidavit.)

#### **Validity and Priority of Charges Created by this Order**

32 30. THIS COURT ORDERS that the priorities of the Directors' Charge, and the Administration Charge, as among them, shall be as follows:

First — Administration Charge (to the maximum amount of \$750,000); and

Second - Directors' Charge (in an unlimited amount).

33 31. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, or the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

34 32. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, including but not limited to the Encumbrances in favour of the Province, the Township, the Trustee and the Construction Lien Claimants, and, for greater clarity, and with the agreement of Her Majesty the Queen in Right of Ontario ("HMORO"), this Court further orders that, notwithstanding the existence and ranking of any charge against real property securing the costs of remedying any environmental condition or environmental damage referenced in section 11.8(8) of the CCAA (each and any, a "Section 11.8(8) Charge"), amounts secured by the Administration Charge shall be paid in priority to any claims of the HMORO secured by a Section 11.8(8) Charge, including from the sale proceeds of any real property subject to a Section 11.8(8) Charge.

35 33. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or the Administration Charge, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

36 34. THIS COURT ORDERS that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

#### Sales Process

37 35. THIS COURT ORDERS that the Applicant, with the assistance of the Monitor, is hereby authorized to conduct a process (the "Sales Process") for the solicitation of offers in accordance with the Sale Process Terms attached hereto as Schedule A (the "Sales Process Terms") for the sale of the Assets as defined therein, and is authorized to take such steps as are necessary or advisable in carrying out the Sales Process in accordance with the Sale Process Terms, with such modifications, amendments or extensions of time as the Applicant and the Monitor may deem appropriate in the circumstances.

38 36. THIS COURT ORDERS that the Applicant and the Monitor may obtain advice and directions from the Court with respect to the Sales Process.



39 37. THIS COURT ORDERS that the Applicant, with the assistance of the Monitor, is hereby authorized to market the Non-Business Assets (as defined in the Gericke Affidavit) in a manner determined by the Applicant, with the assistance of the Monitor, to be the most appropriate for each such Non-Business Asset.

#### **BSI Employees**

40 38. THIS COURT ORDERS that the Applicant is authorized to enter into a services agreement substantially in the form of the Temporary Services Agreement attached as Exhibit "B" to the Gericke Affidavit in respect of the BSI Employees, and the Applicant is hereby authorized to make payments to the BSI Employees as contemplated in the Gericke Affidavit.

#### **Service and Notice**

41 39. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

42 40. THIS COURT ORDERS that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

43 41. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at [www.ey.com/ca/terracebay](http://www.ey.com/ca/terracebay).

#### **General**

44 42. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

45 43. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

46 44. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

47 45. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

48 46. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order, other than paragraphs 17, 28 and 32, on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

49 47. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

#### **Schedule A — Sale Process Terms**

Terrace Bay Pulp Inc. (the "*Company*") has obtained protection from its creditors under the *Companies' Creditors Arrangement Act* (the "*CCAA Proceedings*") pursuant to the Order of the Ontario Superior Court of Justice dated January 25, 2012 (the "*Initial Order*").

In the CCAA Proceedings, the Company is authorized to commence a court-approved marketing and sales process to solicit offers to purchase the Assets or the Shares (each as defined below), pursuant to either a share sale or an asset sale (the "*Sales Process*"), on substantially the terms, conditions and procedures set out in this term sheet (collectively, the "*Sales Process Terms*"). The Initial Order approved the Sales Process and the Sales Process Terms.

Each phase of the Sales Process will be undertaken by the Company, with the assistance of Ernst & Young Inc. in its capacity as court-appointed Monitor of the Company (in such capacity, the "*Monitor*"), and in consultation with the Province of Ontario as represented by the Minister of Northern Development and Mines (formerly the Minister of Northern Development, Mines and Forestry) (the "*Province*"), and each determination made in the Sales Process by the Company will be made in consultation with the Monitor and the Province. The Monitor may consult and engage the services of its affiliates, including Ernst and Young Orenda Inc. and Ernst and Young Corporate Finance (Canada) Inc., to carry out the Sales Process.

#### **Shares or Assets To Be Sold**

The shares to be offered for sale pursuant to the Sales Process shall comprise all shares of the Company (the "*Shares*").

The assets to be offered for sale pursuant to the Sales Process shall comprise substantially all of the property, undertaking and assets of the Company used in connection with the pulp manufacturing business (the "*Business*") operated by the Company (collectively, the "*Assets*"), together with liabilities, if any, required to be assumed in connection with any purchase of the Business. The sale of the Business will be completed on or about April 16, 2012 in accordance with the timetable set out in *Schedule "A"* hereto, and shall be subject to court approval in the CCAA Proceedings.

Sales pursuant to the Sales Process will be on an "as is, where is" basis and without surviving representations and warranties of any kind, nature or description by the Company or its current shareholder, the Monitor, or any of their respective directors, officers, affiliates, employees, agents, estates, advisors, professionals or otherwise.

#### **Free and Clear Sale of Assets**

Subject to an Order of the Court, all of the right, title and interest of the Company in and to the Assets sold pursuant to the Sales Process will be sold free and clear of all liens, claims and other encumbrances of any kind ("*Claims*"), with such Claims attaching to the net proceeds of sale, except as otherwise provided in the applicable sale agreement.

#### **Role of the Monitor**

The Monitor will facilitate and advise on the Sales Process undertaken by the Company, all in accordance with these Sales Process Terms.

For greater certainty, the Monitor has assisted the Company in preparing and maintaining a data room and in preparing an initial offering summary ("*Teaser Letter*"), confidentiality agreement ("*CA*") and confidential information memorandum ("*CIM*").

The Monitor will, among other things, have responsibility for assisting the Company in managing the Sales Process, including dealing with prospective purchasers at all times prior to receipt of an Offer (as defined below). This shall include contacting prospective purchasers and providing them with the Teaser Letter and CIM (and facilitating delivery of all mailings), coordinating execution of CAs, soliciting and tracking all expressions of interest, facilitating any request for tours of the facilities, managing the process of responding to inquiries from and coordinating any presentations that may be requested by prospective purchasers.

The Province shall be provided with the updates on the status of the Sales Process on a weekly basis and otherwise as requested. The Monitor shall assist the Company in providing the Province with such updates including, among other things, the status of expressions of interest, LOIs, Qualifying LOIs and Offers, and the other activities of the Company in carrying out this Sales Process.

All requests by prospective purchasers for additional information will be made through the Monitor, who will coordinate responses with the Company.

#### **Identification of Prospective Purchasers**

The Company, with the assistance of the Monitor and in consultation with the Province, will develop a list of strategic and financial parties who might be interested in acquiring the Business.

As soon as possible following the development of the list of prospective purchasers, the Monitor will contact the prospective purchasers to determine if they are interested in acquiring the Business. The Monitor will distribute the Teaser Letter to all prospective purchasers and any other party who demonstrates an interest in acquiring the Business.

#### **Solicitation Process**

Any party who wishes to commence due diligence will be required to sign a CA, which CA shall be in form and substance satisfactory to the Company. All CAs shall inure to the benefit of any purchaser of the Business.

Any party that executes a CA (each, a "Potential Bidder") shall be provided with the following by the Monitor:

- a copy of these Sales Process Terms;
- the CIM; and
- access to the data room, containing preliminary data on the Assets and Business of the Company.

#### **Phase I — Non-Binding LOIs**

In order to be considered by the Company, each Potential Bidder will be required to submit a non-binding letter of intent ("LOI") to the Notice Parties (as defined below) on or before 5:00 pm Toronto Time on February 15, 2012, which LOI shall specify at minimum:

- the specific parties and sponsoring entities proposing to participate in the acquisition;
- the purchase price to be paid and form of consideration;
- an overview of remaining due diligence activities and timeframe for completion;
- the structure of the transaction, i.e. a share purchase or purchase of Assets and, if a purchase of Assets, the liabilities to be assumed;

- the Potential Bidder's plans for the Business, including the future anticipated role of its current management and employees;
- any conditions precedent; and
- any other material terms of the offer.

In addition, in order to be considered by the Company, an LOI must be accompanied by the most recent audited financial statements and most recent unaudited financial statements of the Potential Bidder or, if the Potential Bidder is an entity formed for the purpose of acquiring the Business, the most recent audited financial statements and most recent unaudited financial statements of the equity holders or sponsors of the Potential Bidder who will guarantee the obligations of the Potential Bidder, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Company to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the sale of the Business.

The Company, with the assistance of the Monitor and in consultation with the Province, will evaluate the LOIs based on, among other things, the ability of the Potential Bidders to complete due diligence on a timely basis as well as other buyer or investor selection criteria that may be developed by the Company. For greater certainty, the Company shall be entitled to consider offers from Potential Bidders whether or not they have provided all supplemental information required in this section.

#### **Phase II — Identification of Qualified Bidder(s); Further Due Diligence**

The Company, with the assistance of the Monitor and in consultation with the Province, shall consider each of the LOIs and determine whether to pursue a transaction on the terms set out in the applicable LOI (each, a "*Qualifying LOI*", and the related Proposed Bidder, a "*Qualified Bidder*"). Each Potential Bidder who becomes a Qualified Bidder will be advised by The Monitor on behalf of the Company on or before February 17, 2012, and will thereafter be provided with access to additional information on the Business and the Assets to supplement the information provided in Phase I, in order to permit the Qualified Bidders to complete their due diligence.

In addition, all Qualified Bidders will be invited to attend management presentations hosted by the Company, providing an overview of the Business and the Assets, along with a Q&A session. The management presentations will be held during the week of February 21, 2012.

Following the management presentations, the Company will also arrange site visits and in-depth meetings with management of the Company. Upon request and subject to the discretion of the Company, the Company will seek to arrange, facilitate and supervise direct meetings between Qualified Bidders and other key stakeholders of the Company, including labour unions, and representatives from the Province.

#### **Phase III — Submission of Offers**

All offers to purchase the Assets or Business ("*Offers*") shall be submitted on or before 5:00 pm Toronto Time on March 16, 2012, and shall be submitted to each of the Notice Parties (as defined below). Each Offer must be accompanied by:

- a cash deposit or letter of credit issued by a Schedule 1 Canadian chartered bank representing 10% of the consideration being offered;
- a projected timeline for closing the transaction; and
- a detailed list of all conditions precedent to closing.

An Offer shall be an offer for all or substantially all of the shares or Assets of the Company and, shall:

- identify the Qualified Bidder (and/or purchasing entity) and all sponsoring entities by name, and confirm corporate or other authorization to enter into transaction;

- not contain any material conditions to closing, other than those customary in such a transaction;
- include proof of financial ability to close the transaction, and shall not be conditional upon financing;
- be, in the reasonable opinion of the Monitor and the Company, likely to close on or prior to April 16, 2012 (as may be extended by the Company with the approval of the Monitor, the "Closing Date"); and
- not request or entitle the Qualified Bidder to any break-fee, termination fee, expense reimbursement or other type of compensation or payment.

All Offers must be capable of acceptance and must be irrevocable until *11:59 pm Toronto Time on the Closing Date*.

Each Offer will be considered by the Company with the assistance of the Monitor and in consultation with the Province. The Monitor, in consultation and working with the Company, may seek clarifications with respect to any Offers, and may grant reasonable extensions.

#### **Phase IV — Identification of Potential Purchaser; Consummation of Definitive Agreement**

On or before March 19, 2012, following review by the Company, the Company, with the assistance of the Monitor and in consultation with the Province, shall choose one Qualified Bidder as the potential purchaser. Deposits shall be returned to all other Qualified Bidders no later than the Closing Date.

The Company shall work to consummate a definitive agreement with the selected potential purchaser (the "Purchaser"). Upon execution and delivery of a definitive agreement (the "Accepted Offer"), the Company shall seek court approval of the transaction contemplated by the Accepted Offer, and shall cooperate with the Purchaser to satisfy all conditions precedent to closing or other closing conditions, including by arranging, facilitating and supervising meetings between the Purchaser and the Company and such other necessary parties.

The selected Purchaser shall have until *5:00 p.m. Toronto Time on April 15, 2012* to confirm or waive all remaining conditions.

#### **Acceptance of Offers and Closing**

The Company shall take such steps as may be necessary to facilitate closing of the Accepted Offer as soon as practical after all required approvals are received, on or before the Closing Date. The Company reserves the right to extend the Closing Date in order to consummate a transaction.

#### **Notice Parties**

Any documents to be sent to the Company or the Monitor under these Sales Process Terms may be sent by courier, facsimile transmission or e-mail. For the purposes of these Sales Process Terms, the term Notice Parties shall mean:

Terrace Bay Pulp Inc.

1120 Premier Way

Thunder Bay, ON P7B 6T7

Attention: Tara Sawula

Facsimile: 807-346-0453

Email: [tara@bls-tb.com](mailto:tara@bls-tb.com)

With a copy to:

Blakes, Cassels & Graydon LLP

Suite 4000, Commerce Court West

199 Bay Street

Toronto, ON M5L 1A9

Attention: Pamela Huff

Facsimile: 416-863-2653

Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

Attention: Marc Flynn

Facsimile: 416-863-2653

E-mail: [marc.flynn@blakes.com](mailto:marc.flynn@blakes.com)

Ernst & Young Inc.

in its capacity as court-appointed Monitor of Terrace Bay Pulp Inc.

Ernst & Young Tower

222 Bay Street, P.O. Box 251

Toronto ON M5K 1J7

Attention: Michael Trepanier

Facsimile: (416) 943-3300

Email: [Michael.Trepanier@ca.ey.com](mailto:Michael.Trepanier@ca.ey.com)

Attention: Alex Morrison

Facsimile: (416) 943-3300

Email: [Alex.Morrison@ca.ey.com](mailto:Alex.Morrison@ca.ey.com)

#### **Miscellaneous**

The Company, in consultation with the Monitor and the Province, may (a) amend these Sales Process Terms, including in relation to any time limits as considered necessary by the Company; (b) reject, at any time, any bid that is inadequate or insufficient, not in conformity with the Sales Process or is contrary to the best interests of the Company and its stakeholders as determined by the Company; (c) impose additional terms, conditions or requirements and otherwise seek to modify these Sales Process Terms; (d) accept bids not in conformity with these Sales Process Terms to the extent that the Company determined that doing so would benefit the Company and its Creditors; and (e) reject all bids or Offers. The Company shall be under no obligation to accept the highest or best offer, and the selection of the Accepted Offer shall be entirely in the discretion of the Company.

These Sales Process Terms do not, and shall not be interpreted to, create any contractual or other legal relationship between any Potential Bidder or Qualified Bidder and the Company, Lucky Star Holdings Inc. (or any of its subsidiaries or affiliates), the

Monitor, the Province or any of their respective directors, officers, employees, agents, estates, advisors or professionals, other than as expressly set forth in definitive agreements signed by the Company.

None of the Company, the Monitor, the Province or any of their respective directors, officers, employees, agents, estates, advisors or professionals, make any representation or warranty as to the accuracy, completeness, fitness for purpose of any information contained in any Teaser Letter, CIM or any other information whatsoever provided herein or in connection with the solicitation process, provided through due diligence or otherwise in this Sales Process, except as expressly set forth in definitive agreements executed and delivered by the Company in connection with any transaction.

**Schedule "A"**

**TIMETABLE**

(all times are Toronto Time)

	<b>Solicitation Process</b>	To be completed prior to February 15 2012
Phase I	Submission of Non-Binding LOIs	Before 5:00 p.m. on February 15, 2012
Phase II	Identification of Qualified Bidders	To be notified by Monitor on or before February 17, 2012
	Management Presentations	Week of February 21, 2012
	Further Due Diligence	Between February 17, 2012 and March 16, 2012
Phase III	Submission of Offers	Before 5:00 p.m. on March 16, 2012
Phase IV	Identification of Purchaser	On or before March 19, 2012
	Consummation of Definitive Agreement	As soon as possible following identification of Purchaser
	Target Closing Date	April 16, 2012

*Application granted.*