

MILBANK, TWEED, HADLEY & MCCLOY LLP

1 CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005-1413

LOS ANGELES
213-892-4000
FAX: 213-629-5063

WASHINGTON, D.C.
202-835-7500
FAX: 202-835-7586

LONDON
44-20-7615-3000
FAX: 44-20-7615-3100

FRANKFURT
49-69-71914-3400
FAX: 49-69-71914-3500

MUNICH
49-89-25559-3600
FAX: 49-89-25559-3700

212-530-5000

FAX: 212-530-5219

DENNIS F. DUNNE
PARTNER
DIRECT DIAL NUMBER
212-530-5770

BEIJING
8610-5969-2700
FAX: 8610-5969-2707

HONG KONG
852-2971-4888
FAX: 852-2840-0792

SINGAPORE
65-6428-2400
FAX: 65-6428-2500

TOKYO
813-5410-2801
FAX: 813-5410-2891

SÃO PAULO
55-11-3927-7700
FAX: 55-11-3927-7777

July 12, 2012

VIA ELECTRONIC FILING AND HAND DELIVERY

The Honorable Kevin Gross
United States Bankruptcy Court for the District of Delaware
824 N. Market Street, Sixth Floor
Wilmington, DE 19801

Re: *In re NewPage Corp., et al.*, Case No. 11-12804

Dear Chief Judge Gross:

As counsel to The Bank of New York Mellon in its capacity as Indenture Trustee (the “Indenture Trustee”) under that certain Indenture, dated as of September 30, 2009, pursuant to which NewPage Corporation (“NewPage” and, together with its affiliated debtors and debtors in possession, the “Debtors”) issued certain 11.375% Senior Secured Notes due 2014 (the “First Lien Notes”) in the amount of \$1.77 billion to the holders thereof (the “First Lien Noteholders”), we submit this letter to the Court in response to the letter submitted by counsel to the “Informal Second Lien Group” on July 10, 2012 [Docket No. 1957] (the “Letter”).

In the Letter, the Informal Second Lien Group accuses the Debtors of failing to give due consideration to the unsolicited proposal of Verso Paper Corporation (“Verso”) to acquire NewPage (the “Verso Proposal”), and attempts to convince the Court that the proposal is in the best interests of all creditors, including the First Lien Noteholders. In addition, the Informal Second Lien Group also asserts that, because the Second Lien Noteholders¹ would receive \$124 million in value under the Verso Proposal, they must receive at least as much consideration under any “stand alone” plan of reorganization of NewPage. The Letter fails,

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Letter.



111280412071200000000001

however, to disclose a number of pertinent facts that are critical to understanding the plan negotiation process as well as the motivations of the Informal Second Lien Group.

First, and most significantly, Verso is owned by the same two Second Lien Noteholders that control the Informal Second Lien Group. Not surprisingly, it is these same two Second Lien Noteholders who stand to receive nearly all of the \$124 million that the Informal Second Lien Group alleges would be provided to Second Lien Noteholders under the Verso Proposal.

Second, by their own admission, the Second Lien Noteholders are not, as a matter of law, entitled to a meaningful recovery in NewPage's chapter 11 cases. The Informal Second Lien Group's own analysis of the various plan proposals submitted to the Debtors establishes that, under any scenario, the First Lien Noteholders will not be paid in full. Accordingly, the absolute priority rule prevents the Second Lien Noteholders from receiving any recovery, other than on account of any unencumbered assets of the Debtors. Moreover, given the limited value of unencumbered assets in these cases, and the fact that any such value must be allocated to satisfy the First Lien Noteholders' senior 507(b) claims² or to any deficiency claims the First Lien Noteholders may have, the Second Lien Noteholders are entitled to little, if any, recovery from unencumbered assets.

Amazingly, the Informal Second Lien Group asserts that the Verso Proposal serves as evidence that they are entitled to receive distributions of not less than \$124 million on account of their claims. What they fail to explain is how the submission by a party of a plan proposal seeking to award itself recoveries serves as evidence of any legal entitlement whatsoever, particularly where such proposal clearly violates absolute priority. In fact, the Second Lien Noteholders are entitled to nothing more than an unsecured claim; the Debtors' plan proposal would have provided them with recoveries far greater than those they are legally entitled to receive on account their claims.

Third, contrary to the Informal Second Lien Group's assertions, the Verso Proposal cannot be confirmed because it is premised on a sale of NewPage to Verso without an appropriate auction process. As the Supreme Court recently made clear, the Debtors cannot sell their company to Verso without providing the First Lien Noteholders an opportunity to credit bid the full amount of their claims.³ Nor can such a sale take place without a marketing process pursuant to which competing bids are solicited and considered. Recognizing that such a process would plainly establish the inferiority of the Verso Proposal, the owners of Verso have determined to use their claims as Second Lien Noteholders to acquire their largest competitor at an artificially depressed price in a private sale that deprives the First Lien Noteholders of their statutorily protected right to credit bid their claims.

² *Final Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing Pursuant to 11 U. S. C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U. S. C. §§ 361, 362, 363 and 364* [ECF No. 310] ¶ 15.

³ See *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065 (2012).

The Honorable Kevin Gross

July 12, 2012

Page 3

Indeed, as owners of Verso, NewPage's chapter 11 cases present the members of the Informal Second Lien Group with both significant opportunities and risks. On the one hand, Verso's market position will be greatly improved if Verso is able to acquire NewPage's assets at fire-sale prices, or if the Debtors fail to successfully reorganize. On the other hand, Verso is significantly threatened by the possibility that NewPage will successfully reorganize under a stand alone plan and emerge from bankruptcy a stronger, healthier company with a deleveraged balance sheet. Thus, Verso stands to benefit from any delays in the Debtors' emergence from bankruptcy, and can be expected to oppose all stand alone plan proposals and any near-term restructuring.

Against this backdrop, the Informal Second Lien Group's request for the appointment of a mediator should be viewed with skepticism, as it is unlikely that the members of that group are seeking to build a consensus in these cases or would ever support a stand alone plan that distributes value in accordance with absolute priority and permits NewPage to emerge as a healthy and deleveraged company. Rather, the Informal Second Lien Group can be expected to continue advocating for paths that will benefit Verso, *as a competitor of NewPage*, by delaying the Debtors' emergence from bankruptcy and increasing opportunities for Verso to acquire the Debtors at less than full value.

Absent a court approved sale process at which the First Lien Noteholders are permitted to credit bid their claims, a stand alone plan is the only fair, equitable, and confirmable exit construct. If the Court determines, however, that mediation is the best way to achieve that goal, the Indenture Trustee requests that such mediation be carefully tailored in both duration and scope. Specifically, the Indenture Trustee respectfully submits that such mediation should be limited to a period of no more than 30 days, and should be focused on mediation of a plan resolution.

Respectfully submitted,



Dennis F. Dunne