

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
<i>In re</i>	:	Chapter 11
NEWPAGE CORPORATION, <i>et al.</i> ,	:	Case No. 11-12804 ()
Debtors. ¹	:	Joint Administration Requested
	:	
	X	

**DEBTORS’ MOTION FOR ENTRY
OF AN ORDER AUTHORIZING THE FILING UNDER SEAL OF
PROPOSED DEBTOR-IN-POSSESSION FINANCING FEE LETTERS**

NewPage Corporation and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the “Debtors”), file this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit B, authorizing the Debtors to file under seal certain fee letters collectively attached hereto as Exhibit A (the “Fee Letters”), by and among certain of the Debtors and JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, Barclays Bank PLC, Barclays Capital, the investment banking division of Barclays Bank PLC, and Wells Fargo Capital Finance, LLC (the “Financing Parties”) executed in connection with the proposed debtor in possession financing facility (the “DIP”).² In support of this Motion, the Debtors respectfully state as follows:³

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Chillicothe Paper Inc. (6154), Escanaba Paper Company (5598), Luke Paper Company (6265), NewPage Canadian Sales LLC (5384), NewPage Consolidated Papers Inc. (8330), NewPage Corporation (6156), NewPage Energy Services LLC (1838), NewPage Group Inc. (2465), NewPage Holding Corporation (6158), NewPage Port Hawkesbury Holding LLC (8330), NewPage Wisconsin System Inc. (3332), Rumford Paper Company (0427), Upland Resources, Inc. (2996), and Wickliffe Paper Company LLC (8293). The Debtors’ corporate headquarters is located at 8540 Gander Creek Drive, Miamisburg, OH 45342.

² The Debtors are seeking authority to enter into the DIP pursuant to *Debtors’ Motion for Interim and Final Orders*



Jurisdiction

1. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are section 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 9013-1(m) and 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

Background

4. On the date hereof (the “Commencement Date”), each of the Debtors commenced a voluntary case under chapter 11 of title 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession as authorized by sections 1107(a) and 1108 of the Bankruptcy Code.

Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364: (I) Authorizing Debtors to (A) Obtain Postpetition Financing, and (B) Grant Senior Liens, Junior Liens and Superpriority Administrative Expense Status; (II) Approving Use of Cash Collateral; (III) Granting Adequate Protection to Certain Prepetition Secured Parties; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief (the “DIP Motion”), filed on the date hereof.

³ The facts and circumstances supporting this Motion are set forth in the *Declaration of Jay Epstein in Support of Debtors’ Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364: (I) Authorizing Debtors to (A) Obtain Postpetition Financing, and (B) Grant Senior Liens, Junior Liens and Superpriority Administrative Expense Status; (II) Approving Use of Cash Collateral; (III) Granting Adequate Protection to Certain Prepetition Secured Parties; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief*, filed on the date hereof (the “DIP Declaration”). [Update]

5. Contemporaneously herewith, the Debtors filed a motion seeking the joint administration of their chapter 11 cases, for procedural purposes only, pursuant to Rule 1015(b) of the Bankruptcy Rules and Rule 1015-1 of the Local Rules.

The Debtors' Businesses

A. The Company's Organization

6. The Debtors and their non-debtor subsidiaries and affiliates (the "Company") comprise the largest coated paper manufacturer in North America, based on production capacity. NewPage Group Inc. owns 100% of the common stock of NewPage Holding Corporation, which in turn owns 100% of the common stock of NewPage. NewPage is the Company's primary operating subsidiary and directly and indirectly owns the other Debtors (the "Subsidiary Debtors") and various other affiliated non-debtor entities. The Subsidiary Debtors primarily own and operate the various paper mills in the United States. Non-debtor NewPage Port Hawkesbury Corp. ("NPPH"), which is contemporaneously commencing proceedings under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "CCAA") in the Supreme Court of Nova Scotia, in Halifax, Nova Scotia, Canada (the "Canadian Court," and the filing, the "Canadian Proceeding"), primarily owns and operates a mill in Canada and manages the Debtors' Canadian operations.

B. The Company's Business

7. Headquartered in Miamisburg, Ohio, the Company's mills primarily produce coated paper, which, unlike common writing or typing paper, is typically used in magazines, magazine covers and inserts, corporate annual reports, high-end advertising brochures, direct mail advertising, coated labels, catalogs, and textbooks. While the Company

also manufactures supercalendered paper, uncoated paper, specialty labels, and newsprint, coated paper represented approximately 80% of its net sales for the year ended December 31, 2010.

Manufacturing

8. The Company operates 16 papermaking machines at paper mills located in Kentucky, Maine, Maryland, Michigan, Minnesota, and Wisconsin, with distribution centers near major print markets, including New York, Chicago, Minneapolis, and Atlanta. As of June 30, 2011, the Company had production capacity of approximately 3.6 million short tons (one short ton equals 2,000 pounds) of paper, including approximately 2.9 million short tons of coated paper, approximately 500,000 short tons of uncoated paper, and approximately 200,000 short tons of specialty paper.

Sales, Marketing, and Distribution

9. The Company sells paper products primarily in the United States and Canada, using three sales channels: (a) direct sales, which consist of sales made directly to end-use customers (primarily large companies such as publishers, printers, and retailers); (b) merchant sales, which consist of sales made to paper merchants and brokers, who in turn sell to end-use customers; and (c) specialty sales, which consist of sales made to packaging and label manufacturers. As part of its distribution chain, the Company owns one warehouse, leases space in approximately 35 warehouses, and uses third parties to ship its products by truck and rail.

Events Leading To Chapter 11

10. Several factors contributed to the commencement of these chapter 11 cases. As with any business, the Debtors' financial performance depends primarily on the demand for its products and the prices at which they can be sold. In the last few years, the Debtors have seen a significant decline in the North American demand for coated paper and,

although this decline has impacted many of the markets for the Debtors' key products, it has yet to result in a counterbalancing decrease in the production capacity trying to access those markets.

11. This decrease in demand has stemmed from a number of factors. These include a general decrease in both advertising spending and magazine/catalog circulation driven largely by the current unrest in the global economy and the preceding "great recession"; increases in the use of electronic data transmission and storage; continued expansion of the Internet as a medium for numerous advertising and marketing applications; an increased demand for electronic reading material; and increased postal rates. These factors have contributed to substantial price competition and volatility in the pulp and paper industry.

12. In addition, despite the decline in North American demand, foreign imports from Europe and Asia, driven by similar overcapacity in their own markets, continue to have a negative impact on North American coated paper suppliers. This has led to significant levels of market-related downtime and temporary shutdowns, especially during 2008 and 2009.

13. Finally, the rising costs of raw materials, including significant increases in energy, fuel and chemical costs, have also negatively impacted the Debtors' financial performance, liquidity and stability. These market factors, exacerbated by the Debtors' relatively high level of structured debt, have resulted in the Debtors seeking chapter 11 protection despite their ability to generate significant levels of EBITDA and unlevered cash flow.

14. By the second quarter of 2011, the Debtors' liquidity position became severely constrained. As a result, the Debtors began to consider various restructuring alternatives, and after considering all available options, the Debtors concluded that seeking chapter 11 relief would be in their best interests, as well as those of their creditors and other parties in interest.

15. As of July 31, 2011, the Company's aggregate workforce consisted of approximately 6,000 employees, of which approximately 70% are represented by labor unions. As of June 30, 2011, the Company's unaudited consolidated balance sheet reflected total assets of approximately \$3.4 billion and total liabilities of approximately \$4.2 billion. For the quarter ended June 30, 2011, the Company reported total gross revenue of approximately \$888 million and Adjusted EBITDA of \$32 million.

Relief Requested

16. Pursuant to the Fee Letters, the Debtors have agreed to keep the specific terms of the Fee Letters confidential. Accordingly, the Debtors respectfully request the entry of an order, substantially in the form attached hereto as Exhibit B, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Bankruptcy Rule 9018-1, authorizing the Debtors to file the Fee Letters under seal and directing that the Fee Letters shall remain under seal and confidential and not be made available to anyone without the consent of the Debtors and JPMorgan or further order from the Court. The Debtors have provided a copy of the Fee Letters, on a confidential basis, to the United States Trustee for the District of Delaware and will provide Fee Letters, upon request, to counsel and financial advisors to any statutory committee appointed in these cases on a confidential and "professionals' eyes only" basis; moreover, the estimated aggregate amount of fees and expenses payable by the Debtors in connection with the DIP are disclosed in the DIP Motion and are thereby made a matter of public record.

Basis for Relief

17. Section 105(a) of the Bankruptcy Code codifies the Court's inherent equitable powers and empowers it to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Moreover, pursuant to

section 107(b) of the Bankruptcy Code, the Court may authorize the Debtors to file the Fee Letters under seal by permitting the issuance of orders that protect entities from potential harm that may result from the disclosure of certain confidential information. 11 U.S.C. § 107(b).

Specifically, section 107(b) provides, in relevant part, that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information.

Id.

18. Rule 9018 of the Bankruptcy Rules sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Rule 9018 of the Bankruptcy Rules provides, in relevant part, that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information” Fed. R. Bankr. P. 9018.

19. Further, Rule 9018-1(b) of the Local Rules provides, in relevant part, that “[a]ny party who seeks to file documents under seal must file a motion to that effect.” Del. Bankr. L.R. 9018-1(b).

20. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” *See, e.g., Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994) (holding that a license agreement authorizing a licensee “to reproduce, manufacture, distribute, and sell videocassettes” of three films contained confidential commercial information). Rather, if the material sought to

be protected satisfies one of the categories identified in section 107(b), “the court is required to protect a requesting party and has no discretion to deny the application.” *Orion Pictures*, 21 F.3d at 27. Moreover, the resulting order should be broad (*i.e.*, “any order which justice requires”). *In re Global Crossing, Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003); Fed. R. Bankr. P. 9018. Courts are required to provide such protections “generally where open inspection may be used as a vehicle for improper purposes.” *Orion Pictures*, 21 F.3d at 27. Indeed, the “authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.” *Global Crossing*, 295 B.R. 724.

21. Commercial information does not have to rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *See Orion Pictures*, 21 F.3d at 28 (finding that section 107(b)(1) creates an exception to the general rule that court records are open to examination by the public and, under this exception, an interested party has to show only that the information it wishes to seal is “confidential and commercial” in nature).

22. Here, the terms of the Fee Letters are the product of extensive, good-faith arm’s-length negotiations. Pursuant to the Fee Letters, the Debtors agreed to keep the terms confidential. The Debtors submit that the Fee Letters contain closely-guarded proprietary and commercial information that is highly sensitive to the Financing Parties and the Debtors. As such, disclosure of the terms of the Fee Letters would cause substantial harm to the Financing Parties, create an unfair advantage to competitors, and violate the Debtors’ agreement with the Financing Parties. The fee and expense reimbursement provisions provided for in the Fee Letters primarily fall into three categories: (i) compensation for credit risk and for the Financing Parties’ risks in underwriting the facility; and (ii) compensation for the large, sophisticated team

of credit, financial, marketing, legal and other experts necessary to assist with structuring and marketing this complex, multi-tranche facility. The Financing Parties are well-established sources of bankruptcy financing and the disclosure of certain of their fees and marketing strategies threatens the very core of their business models. The Fee Letters contain detailed proprietary information describing fees to be paid in connection with the DIP, which information is customarily considered by the Financing Parties, in particular, as well as the finance lending industry, in general, to be highly-sensitive and confidential information not typically disclosed to the public or made available to other competing financial institutions. Given the highly competitive nature of the investment banking and lending industries, it is of the utmost importance that the details of the fee structures and allocations set forth in the Fee Letters be kept confidential so that competitors may not use the information contained therein to gain a strategic advantage in the marketplace. Furthermore, disclosing the market flex terms of the Fee Letters puts great pressure on the ability of the Financing Parties to effectively market and syndicate the DIP to the marketplace and could increase the aggregate cost of the DIP to the estates. Accordingly, the Debtors respectfully submit that cause exists to file the Fee Letters under seal.

23. In addition, it is common practice for financial institutions and borrowers to execute fee letters such as the Fee Letters on a confidential basis. Courts in this district have authorized the filing of similar confidential financing documents under seal in other chapter 11 cases. *See, e.g., In re Nebraska Book Co., Inc.*, Case No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011) (authorizing the debtors to file under seal DIP agreement fee letters but requiring disclosure of the aggregate fees and expenses) [Docket No. 58]; *In re Smurfit-Stone Container Corp.*, Case No. 09-10235 (BLS) (Bankr. D. Del. Feb. 14, 2010) [Docket No. 4139] (authorizing debtors to file under seal fee letter relating to exit term loan facility); *In re Champion*

Enterprises, Inc., Case No. 09-14019 (KG) (Bankr. D. Del. Nov. 17, 2009) [Docket No. 51] (authorizing the filing under seal of letters regarding engagement and fees of lenders relating to DIP financing); *In re Pliant Corp., et. al.*, Case No. 09-10443 (MFW) (Bankr. D. Del. June 11, 2009) [Docket No. 669] (authorizing the filing under seal of exit financing engagement letter containing confidential commercial information, including fee information); *In re Tribune, et. al.*, Case No. 08-13141 (KJC), (Bankr. D. Del. Dec. 10, 2008) [Docket No. 62] (authorizing the filing under seal of fee letters containing confidential information); *In re WCI Communities, Inc., et. al.*, Case No. 08-11643 (KJC) (Bankr. D. Del. Sept. 23, 2008) [Docket No. 411] (authorizing the filing under seal of a fee letter executed in connection with a proposed DIP credit facility); *In re Portola Packaging, Inc., et. al.*, Case No. 08-12001 (CSS) (Bankr. D. Del. Sept. 22, 2008) [Docket No. 135] (authorizing the filing under seal of exit financing letter of intent containing confidential commercial information); *In re Federal-Mogul Global Inc., T& N Limited, et. al.*, Case No. 01-10578 (JKF) (Bankr. D. Del. Oct. 30, 2006) [Docket No. 10861] (authorizing the filing of amended DIP facility fee letter under seal).

Notice

24. No trustee, examiner, or statutory creditors' committee has been appointed in these chapter 11 cases. Notice of this Motion has been provided by facsimile, electronic mail transmission, overnight delivery and/or hand delivery to the following parties: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to JPMorgan Chase, N.A, as agent for the proposed debtor in possession financing; (iii) counsel to Wells Fargo Capital Finance LLC, as agent for the prepetition senior secured revolver; (iv) counsel to Bank of New York Mellon, as indenture trustee for the 11.375% senior secured first-lien notes due 2014; (v) counsel to HSBC Bank USA, National Association, as indenture trustee for (a) the 10% fixed

rate senior secured second lien notes due 2012, (b) the floating rate senior secured second lien notes due 2012, (c) the 12% senior unsecured subordinated notes due 2013, (d) the floating rate senior unsecured PIK notes due 2013, and (e) the floating rate senior unsecured PIK Notes due 2015; (vi) Akin Gump Strauss Hauer & Feld, LLP, counsel to the informal group of certain holders of the 10% fixed rate senior secured second lien notes and floating rate senior secured second lien notes; (vii) Milbank, Tweed, Hadley & McCloy LLP, counsel to the ad hoc steering committee of certain holders of 11.375% senior secured first lien notes; and (viii) those creditors holding the 30 largest unsecured claims against the Debtors' estates (on a consolidated basis). The Debtors submit no other or further notice need be provided.

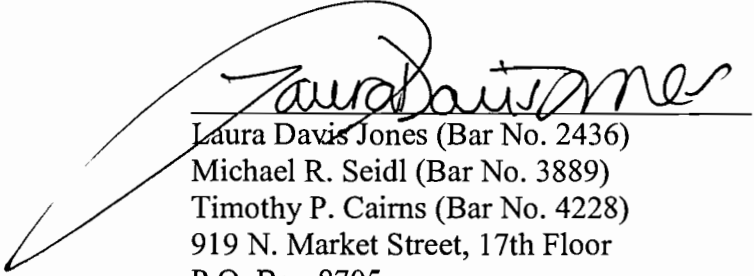
No Prior Request

25. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit B, granting the relief requested herein and such other and further relief as the Court deems appropriate.

Dated: 9/7, 2011
Wilmington, Delaware

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*Proposed Attorneys for the Debtors and Debtors
in Possession*

EXHIBIT A

To Be Filed Under Seal

EXHIBIT B

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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: **Chapter 11**
: **Case No. 11-12804 ()**
: **Joint Administration Requested**
: **Re: Docket No. __**
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In re :
NEWPAGE CORPORATION, *et al.*, :
Debtors.¹ :

**ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL
CERTAIN FEE LETTERS RELATED TO DEBTOR-IN-POSSESSION FINANCING**

Upon the motion, dated _____, 2011 (the “Motion”), of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) for entry of an order (this “Order”) authorizing the Debtors to file the Fee Letters,² attached to the Motion as Exhibit A, under seal; provided, however, that copies of the Fee Letters will be made available to the Office of the United States Trustee for the District of Delaware on a strictly confidential basis and to counsel and financial advisors to any statutory committee appointed in these chapter 11 cases on a strictly confidential and “professionals’ eyes only” basis, and further provided that the estimated aggregate amount of fees and expenses payable by the Debtors in connection with the DIP are disclosed in the DIP Motion and are thereby made a matter of public

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Chillicothe Paper Inc. (6154), Escanaba Paper Company (5598), Luke Paper Company (6265), NewPage Canadian Sales LLC (5384), NewPage Consolidated Papers Inc. (8330), NewPage Corporation (6156), NewPage Energy Services LLC (1838), NewPage Group Inc. (2465), NewPage Holding Corporation (6158), NewPage Port Hawkesbury Holding LLC (8330), NewPage Wisconsin System Inc. (3332), Rumford Paper Company (0427), Upland Resources, Inc. (2996), and Wickliffe Paper Company LLC (8293). The Debtors’ corporate headquarters is located at 8540 Gander Creek Drive, Miamisburg, OH 45342.

² Capitalized terms used but not defined herein shall have those meanings ascribed to them in the Motion.

record; and upon the DIP Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion was appropriate and no other notice need be provided; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted.
2. The Debtors are authorized to file the Fee Letters under seal pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b).
3. The Fee Letters are confidential and shall remain under seal, and shall not be made available to anyone, except that copies of the Fee Letters shall be provided to the Court, the Clerk of the Court, the Office of the United States Trustee for the District of Delaware, and to counsel and financial advisors to any statutory committee appointed in these cases (the "Committee Professionals"), and as further directed by the Court. The Office of the United States Trustee for the District of Delaware shall keep the Fee Letters and the terms thereof strictly confidential and the Committee Professionals shall keep the Fee Letters and the terms thereof strictly confidential and on a "professionals' eyes only" basis.

4. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

5. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

Date: _____, 2011
Wilmington, Delaware

United States Bankruptcy Judge