

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re :
: **Chapter 11**
: **NEWPAGE CORPORATION, et al.,** :
: **Case No. 11-12804 (KG)**
: **Debtors.**¹ : **Jointly Administered**
: **x Related Docket No. 11**

**FINAL ORDER (I) ESTABLISHING PROCEDURES FOR
RESOLUTION OF RECLAMATION CLAIMS, (II) AUTHORIZING
DEBTORS TO RETURN GOODS, AND (III) PROHIBITING
INTERFERENCE WITH DELIVERY OF DEBTORS' GOODS**

Upon the motion dated September 7, 2011 (the "Motion"),² of NewPage Corporation ("NewPage") and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively with NewPage, the "Debtors"), for an order pursuant to sections 546, 105(a), and 362 of the Bankruptcy Code and Bankruptcy Rule 9019 (i) establishing procedures for reconciling reclamation claims (the "Reclamation Claims") asserted by Vendors (the "Reclamation Claims"), (ii) authorizing, but not directing, the Debtors to return certain goods used in the Debtors' daily operations purchased prior to the Commencement Date (collectively, the "Goods"), and (iii) prohibiting third parties from interfering with delivery of the Debtors' Goods, all as more fully described in the Motion; and the Court having entered an order on

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 otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



September 8, 2011 (the “Interim Order”), granting the relief requested in the Motion on an interim basis; and the Court having subject matter jurisdiction to consider the Motion and to grant the relief requested therein in accordance with 28 U.S.C. § 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and no trustee or examiner having been appointed in these chapter 11 cases; and on September 21, 2011, the U.S. Trustee having appointed the Statutory Committee of Unsecured Creditors (the “Creditors’ Committee”) in the above-captioned cases [Docket No. 191]; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion on a final basis (the “Hearing”); and upon the *Declaration of George F. Martin in Support of the Debtors’ First Day Motions and Applications*, the record of the Hearing, and all of the proceedings had before the Court; and any objections to the Motion having been withdrawn or overruled; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted as may be modified herein; and it is further

ORDERED that pursuant to sections 105(a), 362, and 546(c) of the Bankruptcy Code and Bankruptcy Rule 9019(b), the Debtors hereby are authorized to resolve all Reclamation Claims in accordance with the reclamation procedures set forth below (the “Reclamation Procedures”), which are hereby approved and authorized in their entirety:

- a. Any Vendor asserting a Reclamation Claim must satisfy all procedural and timing requirements under applicable state and/or

federal law and demonstrate the Vendor has satisfied all legal elements entitling it to a right of reclamation;

- b. Any Vendor asserting a Reclamation Claim must deliver a written reclamation demand (the “Reclamation Demand”) to: (i) the Debtors, NewPage Corporation, *et al.*, 8540 Gander Creek Drive, Miamisburg, OH 45342, Attn: Douglas K. Cooper, (ii) co-attorneys to the Debtors, Dewey & LeBoeuf LLP, 1301 Avenue of the Americas, New York, NY 10019, Attn: Judy G.Z. Liu, Esq., and Philip M. Abelson, Esq., (iii) co-attorneys for the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 North Market St., 17th Floor, Wilmington, DE 19801, Attn: Laura Davis Jones, Esq., (iv) counsel to JPMorgan Chase Bank, N.A., as agent for the proposed debtor in possession financing, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Marshall S. Huebner, Esq., (v) co-attorneys to the Creditors’ Committee, Paul Hastings LLP, 75 East 55th Street, New York, NY 10022, Attn: Luc A. Despina, Esq.; and 875 15th Street NW, Washington, DC 20005, Attn: Robert E. Winter, Esq., and (vi) co-attorneys to the Creditors’ Committee, Young Conaway Stargatt & Taylor LLP, 1000 West Street, 17th Floor, Wilmington, DE 19801, Attn: James L. Patton, Jr., Esq.;
- c. After review of all Reclamation Demands and no later than 120 days after the Commencement Date (the “Reclamation Notice Deadline”), the Debtors will file a notice (the “Notice”) and serve such Notice on the following parties (the “Notice Parties”): (i) the Office of the United States Trustee for the District of Delaware, (ii) co-attorneys to the Creditors’ Committee, Paul Hastings LLP, 75 East 55th Street, New York, NY 10022, Attn: Luc A. Despina, Esq.; and 875 15th Street NW, Washington, DC 20005, Attn: Robert E. Winter, Esq., and (iii) co-attorneys to the Creditors’ Committee, Young Conaway Stargatt & Taylor LLP, 1000 West Street, 17th Floor, Wilmington, DE 19801, Attn: James L. Patton, Jr., Esq.; (iv) counsel to JPMorgan Chase Bank, N.A., as agent for the proposed debtor in possession financing, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Marshall S. Huebner, Esq., and (v) the parties who made Reclamation Demands, at the addresses indicated therein. The Notice will list those Reclamation Claims and amounts, if any, that the Debtors have determined to be valid;
- d. If the Debtors fail to file the Notice by the Reclamation Notice Deadline, any holder of a Reclamation Claim may file an adversary proceeding or bring a motion on its own behalf to seek relief with respect to its Reclamation Claim, but may not file an

adversary proceeding or bring any such motion until the expiration of the Reclamation Notice Deadline;

- e. Any party who wishes to object to the information set forth in the Notice must file and serve, no later than 20 days after the Notice is filed (the “Objection Deadline”), an objection (the “Reclamation Notice Objection”) including the following information: (1) a copy of the Reclamation Demand and evidence of the date on which it was mailed to the Debtors, (ii) the name of the Debtor that ordered the Goods, (iii) copies of any purchase orders and invoices relating to the Goods, (iv) any evidence demonstrating the dates on which the Goods were shipped to and received by the Debtors, and (v) a statement describing with specificity why the Notice is incorrect and stating the legal basis, if any, for the Reclamation Notice Objection. The Reclamation Notice Objection shall be served on (i) co-attorneys to the Debtors, Dewey & LeBoeuf LLP, 1301 Avenue of the Americas, New York, NY 10019, Attn: Judy G.Z. Liu, Esq., and Philip M. Abelson, Esq., (ii) co-attorneys for the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 North Market St., 17th Floor, Wilmington, DE 19801, Attn: Laura Davis Jones, Esq., (iii) co-attorneys to the Creditors’ Committee, Paul Hastings LLP, 75 East 55th Street, New York, NY 10022, Attn: Luc A. Despina, Esq.; and 875 15th Street NW, Washington, DC 20005, Attn: Robert E. Winter, Esq., (iv) co-attorneys to the Creditors’ Committee, Young Conaway Stargatt & Taylor LLP, 1000 West Street, 17th Floor, Wilmington, DE 19801, Attn: James L. Patton, Jr., Esq., and (v) the Notice Parties;
- f. Any Reclamation Demand that is included in the Notice and is not the subject of a Reclamation Notice Objection filed and served by the Objection Deadline, shall be deemed a valid Reclamation Claim allowed or disallowed in the amount identified in the Notice; *provided, however*, that all issues relating to the treatment of any such allowed Reclamation Claim shall be reserved;
- g. Notwithstanding, and without limiting, the foregoing, the Debtors are authorized, but not required, to negotiate with any Vendor and to seek an agreement with any Vendor to resolve that Vendor’s Reclamation Claim. In the event such an agreement is reached, the Debtors shall prepare a notice of settlement (the “Settlement Notice”), and file and serve on the Notice Parties such Settlement Notice; *provided, however*, that, prior to filing and serving such Settlement Notice, the Debtors and the advisors to the Creditors’ Committee shall meet and confer to discuss such Settlement Notice. If the Debtors and the Creditors’ Committee are unable to reach a consensus on the terms of such Settlement Agreement, the Debtors’ and the Creditors’ Committee each shall have the right to

seek appropriate relief from this Court. Parties in interest shall have ten days from the date on which the Settlement Notice is filed to object to the Settlement Notice (a “Settlement Objection”);

- h. If no Settlement Objection with respect to a Settlement Notice is timely filed and served, the Reclamation Claim at issue shall be deemed valid and allowed, disallowed, or otherwise treated in accordance with the Settlement Notice without further order of the Court. If a Settlement Objection with respect to a Settlement Notice is timely filed and served, the parties may negotiate a consensual resolution of such objection to be incorporated in a stipulation filed with the Court (a “Settlement Stipulation”); *provided, however*, that, prior to filing such a Settlement Stipulation, the Debtors and the advisors to the Creditors’ Committee shall meet and confer to discuss such Settlement Stipulation. If the Debtors and the Creditors’ Committee are unable to reach a consensus on the terms of such Settlement Stipulation, the Debtors’ and the Creditors’ Committee each shall have the right to seek appropriate relief from this Court. Upon the filing of a Settlement Stipulation, the applicable Reclamation Claim shall be allowed and treated in accordance with the terms of the Settlement Stipulation without further order of the Court. If no consensual resolution of a Settlement Objection is reached within 30 days after the date of the Settlement Objection, unless such period is extended by mutual agreement of the Debtors and the party filing the Settlement Objection, the Debtors shall thereafter file a motion requesting that the Court resolve the Settlement Objection;
- i. No later than 90 days following the Objection Deadline (or such date as agreed to by the Debtors and the Vendor), the Debtors shall file a motion seeking Court determination of any Reclamation Claims subject to a pending Reclamation Notice Objection that has not been otherwise resolved. The matter shall be set for the next regularly scheduled omnibus hearing, in accordance with appropriate notice, unless another hearing date is agreed to by the parties or ordered by the Court; and
- j. Nothing in the Reclamation Procedures shall modify the automatic stay of section 362(a) of the Bankruptcy Code with respect to any Goods. Without limiting the foregoing, no Vendor shall be entitled to obtain possession of any Goods without first filing a motion with the Court for relief from the automatic stay or obtaining the prior express written consent of the Debtors and giving seven (7) days advance notice to the Creditors’ Committee. The Debtors and all other parties in interest reserve all rights to object to any such motion for relief from the automatic stay; and it is further

ORDERED that the foregoing Reclamation Procedures are the sole and exclusive method for the resolution and payment of Reclamation Claims. All Vendors are prohibited from seeking any other means for the resolution or treatment of their Reclamation Claims, including, without limitation: (i) commencing adversary proceedings against the Debtors in connection with any Reclamation Claims except as specifically provided herein; (ii) seeking to obtain possession of any Goods except as specifically provided herein; or (iii) interfering with the delivery of any Goods to the Debtors; and it is further

ORDERED that nothing contained herein or in the Motion shall limit the Debtors' ability to make payments to creditors in accordance with any other orders of this Court, regardless of whether such creditors have asserted Reclamation Claims; and it is further

ORDERED that the Debtors have not waived, and have expressly reserved, their right to assert any and all defenses to a Reclamation Demand; and it is further

ORDERED that the Debtors are authorized, but not directed, to return to Vendors Goods that were delivered prepetition, subject to the prior rights of holders of security interests in the Goods, where: (i) the Vendor timely submitted a Reclamation Demand, (ii) the Debtors accepted delivery of the Goods, (iii) the Vendor properly identified the Goods, (iv) the Debtors have determined, in accordance with the Reclamation Procedures, the Vendor holds a valid Reclamation Claim pursuant to section 546(c) of the Bankruptcy Code; and (v) the Debtors have provided notice of their intent to return such Goods to the Notice Parties, and no such party objects thereto within ten days after receipt of such notice; and it is further

ORDERED that Reclamation Demands that are determined, in accordance with the Reclamation Procedures, to be valid Reclamation Claims pursuant to the Bankruptcy Code, shall be allowed in the amount established in accordance with the Reclamation Procedures

herein; *provided*, that all issues relating to the treatment of any such allowed Reclamation Claim shall be reserved; and it is further

ORDERED that nothing in the Motion or this Order shall be deemed to constitute the postpetition assumption of any executory contract between the Debtors and any third-party; and it is further

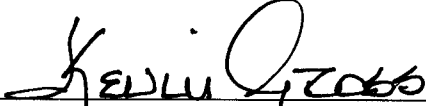
ORDERED that nothing in the foregoing (a) shall be deemed to modify or waive any of the Debtors' rights with respect to Goods requested or received from Vendors, including the Debtors' rights to: (i) cancel purchase orders (including outstanding orders), (ii) decline the acceptance of Goods; (iii) return any defective, nonconforming, or unacceptable Goods, or (iv) contest the amount of any invoice or claim on any grounds, or (b) is intended to: (x) be a promise or guarantee of payment of any claim or group of claims, or (y) modify, create, or expand any rights of Vendors under the Bankruptcy Code or otherwise; and it is further

ORDERED that to the extent that there may be any inconsistency between the terms of the interim or final order approving the proposed debtor in possession financing, if and when entered, and this Order, the terms of the interim or final order approving the proposed debtor in possession financing, as applicable, shall govern; and it is further

ORDERED that pursuant to Bankruptcy Code section 102(1), Bankruptcy Rule 6004(a) is waived, for the purposes of the Motion, and notwithstanding any applicability of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that this Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Dated: October 4, 2011
Wilmington, Delaware



The Honorable Kevin Gross
Chief Judge, United States Bankruptcy Court