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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

16 In re: ) Jointly Administered  
17 ) Case No.: 00-41584 N  
**CROWN VANTAGE, INC.** )  
18 **CROWN PAPER CO.,** ) Chapter 11  
19 Debtors. ) **AGREED MOTION OF LIQUIDATING**  
20 ) **TRUSTEE OF CROWN PAPER**  
21 ) **LIQUIDATING TRUST FOR (1)**  
22 ) **WITHDRAWAL OF THE**  
23 ) **REFERENCE WITH RESPECT TO**  
24 ) **MOTION TO APPROVE**  
25 ) **COMPROMISE OF CONTROVERSY**  
AND (2) ASSIGNMENT OF MOTION  
TO APPROVE COMPROMISE OF  
CONTROVERSY TO DISTRICT  
COURT PRESIDING IN RELATED  
CASES

26 Jeffrey H. Beck, Liquidating Trustee of the Crown Paper Liquidating Trust (the "Trustee")  
27 moves, pursuant to 28 U.S.C. §157 (d), Rule 5011 of the Federal Rules of Bankruptcy Procedure  
28 (the "Bankruptcy Rules"), LBR 5011-2 and Civil L.R. 3-12 for the entry of an order (1) withdrawing

1 the reference of the “*Joint Motion of Liquidating Trustee of Crown Trustee, Fort James and Certain*  
2 *Liquidating Trust Defendants Pursuant to F.R.B.P. 9019 to Approve Compromise of Controversy,*”  
3 which is attached hereto as **Exhibit A<sup>1</sup>** (the “Settlement Motion”), to the United States District Court  
4 for the Northern District of California (the “District Court”) and (2) assigning the Settlement Motion  
5 to the Honorable Maxine M. Chesney, who is presently presiding over the related proceedings which  
6 are resolved through the Settlement Motion: Case Nos. C 02-3836 MMC and C 02-3838 MMC (the  
7 “District Court Cases”). The Settlement Motion requests that the District Court enter an Order  
8 approving (a) the settlement agreement entered into on March 6, 2007 (the “Fort James Settlement  
9 Agreement”), between the Trustee and Fort James Corporation, Fort James International Holdings,  
10 Georgia-Pacific Consumer Products LP (f/k/a Fort James Operating Company) (collectively, “Fort  
11 James”), and (b) the settlement agreement entered into on March 7, 2007, between the Trustee and  
12 the Liquidating Trust Case Defendants<sup>2</sup> (the “Liquidating Trust Settlement Agreement”; the Fort  
13 James Settlement Agreement and the Liquidating Trust Settlement Agreement are collectively  
14 referred to as the “Settlement Agreements”). Approval of the Settlement Agreements will result in  
15 the dismissal of the District Court Cases. This Motion is based on the following Memorandum of  
16 Points and Authorities.

## 17 MEMORANDUM OF POINTS AND AUTHORITIES

### 18 I.

#### 19 **FACTUAL AND PROCEDURAL BACKGROUND**

##### 20 **A. The Litigation**

21 1. On March 15, 2000, Crown Paper Company and Crown Vantage, Inc. (the “Debtors”)  
22 filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the Northern District  
23 of California (the “Bankruptcy Court”).  
24

25 <sup>1</sup> For purposes of this Motion, the Settlement Motion is being attached without exhibits.

26 <sup>2</sup> Defendants PricewaterhouseCoopers LLP, McGuireWoods LLP, Merrill Lynch & Co., Inc., Merrill Lynch, Pierce,  
27 Fenner & Smith, Salomon Smith Barney, Inc., Clifford A Cutchins, Stephen E. Hare, Robert C. Williams, Houlihan  
28 Lokey Howard & Zukin, E. Lee Showalter, William V. Daniel, Joseph T. Piemont, and Ernest Leopold (the “Liquidating  
Trust Case Defendants”) support this motion and agree with the relief being sought herein. The Trustee and Defendant  
Credit Suisse Securities (USA) LLC have agreed in principle to exchange mutual releases but have not finalized their  
discussions.

1           2.       On November 19, 2001, the Bankruptcy Court confirmed, with further amendments,  
2 the Second Amended Disclosure Statement and Joint Liquidating Plan of Reorganization (the  
3 “Plan”) with an effective date of March 1, 2002. The Bankruptcy Court retained jurisdiction over  
4 the Plan and its administration.

5           3.       Jeffrey H. Beck was appointed Trustee for the Crown Paper Liquidating Trust, with  
6 the rights, powers and duties as set forth in the Plan and that certain Liquidating Trust Agreement  
7 which is a centerpiece of the Plan. Among other things, the Trustee is charged with the post-  
8 confirmation administration and prosecution against third parties of claims and causes of action that,  
9 prior to confirmation, constituted property of the Debtors’ bankruptcy estates. Under the terms of  
10 the Plan, the Trustee has all of the rights and powers of a bankruptcy trustee with regard to the  
11 assertion and enforcement of claims of the Debtors.

12           4.       Included in the causes of action which were assigned to the Liquidating Trust under  
13 the Plan are certain claims and causes of action that had been or might be asserted against Fort James  
14 and the Liquidating Trust Case Defendants arising out of the August 1995 spin-off of Crown  
15 Vantage, Inc. to shareholders of James River Corporation of Virginia, which included the transfer to  
16 Crown Paper Company of assets, liabilities and operations that had comprised a substantial part of  
17 the communication papers business of James River and the paper-based portion of James River’s  
18 food and consumer packaging business.

19           5.       The Debtors<sup>3</sup> filed suit in the case styled *Crown Paper Co. v. Fort James Corp.*, Case  
20 No. C 02-3838 MMC, and also in the case styled *Crown Paper Liquidating Trust v.*  
21 *PricewaterhouseCoopers LLP*, Case No. C 02-3836 MMC (collectively, the “Litigation”). Although  
22 the Litigation was at one time pending in the Bankruptcy Court, the reference was withdrawn by the  
23 District Court in August 2002 and the Litigation was consolidated under Case No. C 02-3836 until  
24 judgment was entered against the Trustee in Case No. C 02-3836 on July 12, 2004. The Ninth  
25 Circuit has affirmed the judgment. 198 Fed. Appx. 597 (9th Cir. 2006), *reh’g denied* (Sept. 20,  
26 2006). The Trustee filed a petition for *certiorari*, which was denied by the United States Supreme  
27

28 \_\_\_\_\_  
<sup>3</sup> The Trustee took control of the Litigation upon his appointment.

1 Court on February 26, 2007. Meanwhile, trial in Case No. C 02-3838 MMC was scheduled for  
2 February 5, 2007.

3 6. In an effort to resolve their disputes before trial, the attorneys for the Trustee and Fort  
4 James and their respective counsel engaged in extensive settlement discussions including multiple  
5 mediation sessions with the Hon. Joseph Spero, Magistrate Judge of the District Court.

6 **B. The Settlement Agreements and Request For Withdrawal of the Reference as to**  
7 **Compromise and Settlement**

8 7. The Fort James Settlement Agreement settles all disputes between the parties and  
9 includes a substantial payment by Fort James to the Trustee although Fort James otherwise denies  
10 any liability in respect of or arising out of the Litigation. As a result of the Fort James Settlement  
11 Agreement, the Trustee and the Liquidating Trust Case Defendants entered into negotiations that  
12 resulted in Liquidating Trust Settlement Agreement.

13 8. The Settlement Agreements require that the Court presiding over the Litigation hear  
14 and consider any motion to approve the Settlement Agreement. Accordingly, the Trustee, with the  
15 support of Fort James and the Liquidating Trust Case Defendants, moves the District Court to  
16 withdraw the reference of the Settlement Motion and requests that the Settlement Motion be referred  
17 to Judge Chesney, who is presiding over the Litigation pursuant to Civil L.R. 3-12.

18 9. Although the District Court has already withdrawn the reference with respect to one  
19 of the cases that is the subject of the Settlement Motion, some courts have concluded that a  
20 settlement and compromise is distinct and separate from the underlying action. *See Korngold v.*  
21 *Loyd (In re S. Med. Arts Cos., Inc.)*, 343 B.R. 250, 254-55 (10th Cir. BAP 2006). Courts have  
22 withdrawn the reference of a motion to approve a settlement of litigation where the litigation was  
23 pending in the U.S. District Court. *In re MCorp Financial, Inc., et al.*, 1994 WL 16012861 \*1 (S.D.  
24 Tex. 1994).

25 10. Pursuant to Bankruptcy Rule 5011 and LBR 5011-2, this Motion is being filed with  
26 the Clerk of the Bankruptcy Court and will be immediately transmitted to the District Court for  
27 determination. Inasmuch as the Settlement Motion is related to the pending District Court Cases, the  
28

1 Trustee requests that this Motion, and upon entry of an order granting this Motion, the Settlement  
2 Motion be heard and determined by Judge Chesney.

3 11. Pursuant to 28 U.S.C. § 157(d), district courts may withdraw the bankruptcy  
4 reference *sua sponte* or upon a motion for cause. The Trustee submits such cause exists and believes  
5 it is appropriate to withdraw the reference with respect to the consideration of the Settlement  
6 Motion.

7 12. “In determining whether cause exists, a district court should consider the efficient use  
8 of judicial resources, delay and costs to the parties, uniformity of bankruptcy administration, the  
9 prevention of forum shopping, and other related factors.” *Security Farms v. Int’l Broth. of*  
10 *Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999, 1008 (9th Cir. 1997)  *citing In re*  
11 *Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir.1993).

12 13. Cause exists to withdraw the reference in this instance because (a) withdrawal would  
13 be an efficient use of judicial resources as the settlement would be considered by the very court that  
14 presides over the Litigation, (b) it would not delay approval of the Settlement Agreements, and (c)  
15 would not result in additional cost to the parties.

16 14. Additionally, the uniform administration of the bankruptcy would not be affected in  
17 that the District Court would apply the same standards the Bankruptcy Court would use in evaluating  
18 the Settlement Agreements.

19 15. Furthermore, this request is not intended to obtain a more favorable forum. On the  
20 contrary, it is intended to have the District Court, as the court most familiar with the Litigation,  
21 evaluate the reasonableness of the Settlement Agreements.

22 16. Inasmuch as the Litigation involves non-core matters, the Bankruptcy Court could  
23 consider such matters, but they are subject to *de novo* review by the District Court and unnecessary  
24 costs will be avoided by a single proceeding in the District Court. *See Security Farms*, 124 F.3d at  
25 1009 (9th Cir. 1997).

26 17. The Settlement Motion describes with particularity the grounds upon which the  
27 Trustee believes the Settlement Agreements should be authorized and approved, and it will be filed  
28 and served promptly upon the District Court’s ruling on this Motion.

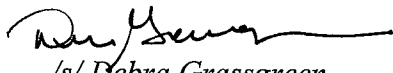
1 18. Notice of this Motion has been served on all parties in the Litigation and on all parties  
2 on the All Notice List as set forth in the *Order Establishing Case Management Procedures and*  
3 *Hearing Schedule*, entered April 28, 2000 (Docket #133). In addition, Sections 3.1(w) and 8.12 of  
4 the Liquidating Trust Agreement provide that notice to holders of beneficial interests in the Crown  
5 Paper Liquidating Trust ("Trust Beneficiaries") may be made by posting notice to a web site  
6 established and maintained by the Trustee, www.crownpapertrust.com. The Trustee, therefore, has  
7 served this motion on Trust Beneficiaries by posting it on the trust web site. Pursuant to Bankruptcy  
8 Rule 5011, LBR 5011-2 and Civil L.R. 3-12, no hearing is required on this Motion. The Trustee  
9 requests that the District Court approve such notice as good and sufficient.

10 II.  
11 CONCLUSION

12 The Trustee respectfully requests that (1) this Motion be assigned to District Court Judge  
13 Chesney for determination and (2) the District Court enter an order, in the form attached hereto as  
14 **Exhibit B**, withdrawing the reference to the Bankruptcy Court to permit the District Court to hear  
15 and determine the Settlement Motion.

16 Dated: March 27, 2007

PACHULSKI STANG ZIEHL YOUNG JONES  
& WEINTRAUB LLP

17  
18 By   
/s/ Debra Grassgreen  
Debra Grassgreen  
John D. Fiero

19  
20 -and-

21 BILZIN SUMBERG BAENA PRICE &  
22 AXELROD LLP  
23 Scott Baena  
David W. Trench

24 -and-

25 BEUS GILBERT PLLC  
26 Leo R. Beus  
Albert J. Morrison

27 Attorneys for Liquidating Trustee  
28

# **EXHIBIT A**

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5 Attorneys for Defendants  
6 Fort James Corporation and Related Entities

7 Leo R. Beus/Ariz. Bar No. 002687 (Pro hac vice)  
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11 Attorneys for Liquidating Trustee

12  
13  
14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**

17 In re:  
18 CROWN VANTAGE, INC.,  
19 Debtor.

20 Employer I.D. #54-1752384

21 \_\_\_\_\_  
22 CROWN PAPER LIQUIDATING TRUST,  
23 Plaintiff,

24 v.

25 PRICEWATERHOUSECOOPERS LLP f/k/a/  
COOPERS & LYBRAND, et al.

26 Defendants.  
27 \_\_\_\_\_  
28

) Case Nos.: C02-3836 MMC  
) C02-3838 MMC

) **JOINT MOTION OF LIQUIDATING**  
) **TRUSTEE OF CROWN TRUST AND**  
) **FORT JAMES PURSUANT TO F.R.B.P.**  
) **9019 TO APPROVE COMPROMISE**  
) **OF CONTROVERSY;**  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES, DECLARATION OF**  
) **JEFFREY H. BECK IN SUPPORT**  
) **THEREOF**

) Date: \_\_\_\_\_, 2007

) Time: \_\_\_\_\_ a.m.

) Courtroom: 7 (19<sup>th</sup> Floor

) Judge: Hon. Maxine M. Chesney

1 CROWN PAPER COMPANY; CROWN  
2 VANTAGE, INC., JEFFREY H. BECK, Liquidating  
3 Trustee; and CROWN PAPER LIQUIDATING  
TRUST,

4 Plaintiffs,

5 v.

6 FORT JAMES CORPORATION, f/k/a JAMES  
7 RIVER CORPORATION OF VIRGINIA;  
8 FORT JAMES OPERATING COMPANY; FORT  
9 JAMES FIBER COMPANY, f/k/a JAMES RIVER  
INTERNATIONAL HOLDINGS, LTD., f/k/a  
JAMES RIVER INTERNATIONAL HOLDINGS,  
LTD.,

10 Defendants.  
11

12  
13 Plaintiffs Jeffrey H. Beck, Liquidating Trustee, Crown Paper Liquidating Trust, Crown  
14 Vantage, Inc, and Crown Paper Co, (collectively, the "Liquidating Trustee"), and defendants Fort  
15 James Corporation, Fort James International Holdings, Ltd., and Georgia-Pacific Consumer Products  
16 LP (f/k/a Fort James Operating Company) (collectively, "Fort James"), move this Court to (i)  
17 approve the Settlement Agreement entered into on March 6, 2007, between the Trustee and Fort  
18 James (the "Fort James Settlement Agreement"), the Settlement Agreement entered into between the  
19 Trustee and certain Liquidating Trust Case Defendants<sup>1</sup> (the "Liquidating Trust Settlement  
20 Agreement") and the Settlement Agreement entered into between the Trustee and Credit Suisse  
21 Securities (USA) (the "Credit Suisse Settlement Agreement"); the Liquidating Trust Settlement  
22 Agreement, the Fort James Settlement Agreement and the Credit Suisse Settlement Agreement being  
23 collectively referred to as the "Settlement Agreements", and (ii) enter an Approval Order in the form

24  
25 <sup>1</sup> Defendants PricewaterhouseCoopers LLP, McGuireWoods LLP, Merrill Lynch & Co., Inc., Merrill Lynch, Pierce,  
26 Fenner & Smith, Salomon Smith Barney, Inc., Clifford A Cutchins, Stephen E. Hare, Robert C. Williams, Houlihan  
27 Lokey Howard & Zukin, E. Lee Showalter, William V. Daniel, Joseph T. Piemont, and Ernest Leopold (the "Liquidating  
28 Trust Case Defendants") are not joining as signing parties to this motion but have authorized the Plaintiffs and  
Defendants to file this motion on their behalf. The Liquidating Trust Case Defendants and Credit Suisse Securities  
(USA) agree with the relief being sought herein. Plaintiffs and Defendant Credit Suisse Securities (USA) LLC have  
agreed in principle to exchange mutual releases but Credit Suisse has not signed a formal settlement agreement yet.  
Those defendants that are parties to the Liquidating Trust Settlement Agreement are listed in Exhibit "A" attached to the  
Fort James Settlement Agreement.

1 attached hereto as Exhibit 1.

2 This Motion is based on the Notice of Motion, the Memorandum of Points and Authorities  
3 set forth herein, the Declaration of Jeffrey H. Beck, the records and pleadings on file in these cases  
4 and such further oral and documentary evidence as may be presented at or prior to any hearing on  
5 this Motion.

6  
7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I.**

9 **FACTUAL AND PROCEDURAL BACKGROUND**

10 **A. The Bankruptcy Case and the Litigation**

11 1. On March 15, 2000, Crown Paper Company and Crown Vantage, Inc. (the "Debtors")  
12 filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the Northern District  
13 of California. (the "Bankruptcy Court").

14 2. On November 19, 2001, the Bankruptcy Court confirmed, with further amendments,  
15 the Second Amended Disclosure Statement and Joint Liquidating Plan of Reorganization (the  
16 "Plan") as to which the Effective Date<sup>2</sup> was March 1, 2002 (Exhibit 2), and the Court retained  
17 jurisdiction over the Plan and its administration.

18 3. Under the terms of the Plan, Jeffrey H. Beck is the Trustee for the Crown Paper  
19 Liquidating Trust, with the rights, powers and duties as set forth in the Plan and the Liquidating  
20 Trust Agreement. In addition, the Plan established the Liquidating Trust Committee consisting of  
21 three members which are Beneficiaries of the Liquidating Trust. A true and correct copy of the  
22 Liquidating Trust Agreement is attached as Exhibit 3. Among other things, the Trustee is charged  
23 with the post-confirmation administration and prosecution against third parties of claims and causes  
24 of action that, prior to the Effective Date, constituted property of the Debtors' bankruptcy estates.  
25 Under the terms of the Plan, the Trustee has all of the rights and powers of a bankruptcy trustee with  
26 regard to the assertion and enforcement of claims of the Debtors. Pursuant to the Plan and the  
27 Liquidating Trust Agreement, the Trustee has the authority to enter into the Settlement Agreements

28 \_\_\_\_\_  
<sup>2</sup> Unless otherwise specified herein, all capitalized terms shall have the meanings provided therefor in the Plan.

1 with the consent of the Liquidating Trust Committee subject to approval of the Court.

2 4. Included in the Causes of Action which were assigned to the Liquidating Trust under  
3 the Plan are certain claims and causes of action that had been or might be asserted against Fort James  
4 and the Liquidating Trust Case Defendants arising out of the August 1995 spin off transaction.

5 5. As anticipated in the Plan, the Trustee employed the law firms of Beus Gilbert PLLC  
6 (“Beus Gilbert”) and Steyer, Lowenthal, Boodrookas, Alvarez & Smith LLP (“Steyer Lowenthal”)  
7 to investigate and prosecute Causes of Action against Fort James and the Liquidating Trust Case  
8 Defendants. The Trustee submits that Beus Gilbert and Steyer Lowenthal have substantial  
9 experience and expertise in the representation of fiduciaries in bankruptcy cases.

10 6. The Trustee filed suit against Fort James in the case now known as *Crown Paper Co.*  
11 *v. Fort James Corp.*, Case No. C 02-3838 MMC, and against the Liquidating Trust Case Defendants  
12 in *Crown Paper Liquidating Trust v. PricewaterhouseCoopers LLP*, Case No. C 02-3836 MMC  
13 (collectively, the “Litigation”). Although the Litigation was at one time pending in the Bankruptcy  
14 Court, the reference was withdrawn and the Litigation was transferred to the United States District  
15 Court for the Northern District of California (“District Court”) in August 2002, and consolidated  
16 under C 02-3836 until judgment was entered against the Trustee on the Litigation against the  
17 Liquidating Trust Defendants in C 02-3836, on July 12, 2004. The Ninth Circuit has affirmed that  
18 judgment. 198 Fed. Appx. 597 (9th Cir. 2006), *reh'g denied* (Sept. 20, 2006). The Trustee filed a  
19 Petition for Certiorari with the United States Supreme Court which was denied on February 26,  
20 2007. Meanwhile, trial was scheduled for February 5, 2007 in C 02-3838 MMC.

21 7. Fort James is represented by Sheppard, Mullin, Richter & Hampton LLP, a nationally  
22 recognized law firm with substantial experience and expertise in defending claims against  
23 corporations. The Liquidating Trust Case Defendants are also represented by nationally recognized  
24 law firms with similar experience and expertise.

25 8. Fort James and the Liquidating Trust Case Defendants deny that their conduct in any  
26 way caused any damage to the Debtors.

27 **B. The Settlement Agreements and Request for Approval of Compromise and Settlement**

28 9. In an effort to resolve their disputes before trial, the attorneys for the Trustee and Fort

1 James and their respective clients engaged in extensive settlement discussions. These discussions  
2 included multiple sessions with the Hon. Joseph Spero, Magistrate Judge of the District Court, and  
3 direct negotiation between the parties and counsel.

4 10. The settlement discussions resulted in the Fort James Settlement Agreement to settle  
5 all disputes by the payment by Fort James to the Trustee of the Settlement Amount (which is defined  
6 in the Fort James Settlement Agreement as the sum of \$55 million, plus interest at the rate of 4.25%  
7 per annum from February 12, 2007 until the time of payment upon Court approval of this  
8 settlement), the execution of mutual releases between the Plaintiffs and the Fort James Released  
9 Parties (as such term is defined in the Fort James Settlement Agreement) and the full and complete  
10 resolution of all claims against the Fort James Released Parties arising out of their prior dealings  
11 with the Debtors. As a result of the settlement between the Trustee and Fort James, settlement  
12 discussions ensued between the Trustee the Liquidating Trust Case Defendants and Credit Suisse  
13 Securities (USA). Those negotiations resulted in the Settlement Agreements. Exhibit 4, Exhibit 5  
14 and Exhibit 6 are true and correct copies of the Fort James Settlement Agreement, Liquidating Trust  
15 Settlement Agreement and the Credit Suisse Settlement Agreement respectively that memorialize the  
16 settlements.

17 11. The claims of the Trustee against the Fort James Released Parties, including the  
18 Liquidating Trust Case Defendants and Credit Suisse Securities (USA), are disputed as to liability,  
19 causation and damages. Thus, the Settlement Agreements expressly acknowledge that the Fort  
20 James Released Parties, including the Liquidating Trust Case Defendants and Credit Suisse  
21 Securities (USA), deny any liability to the Debtors or to the Trustee and that the payment of money  
22 and performance of other obligations set forth in the Settlement Agreements shall not be construed  
23 as an admission of any allegation, fact, liability or any act of wrongdoing. The Fort James  
24 Settlement Agreement provides the Fort James Released Parties with comprehensive, full and  
25 complete finality with regard to any and all claims that could be asserted against the Fort James  
26 Released Parties as a result of their prior dealings with the Debtors or their respective bankruptcy  
27 estates. Indeed, the assurance, as would be evidenced by the Approval Order, that the Fort James  
28 Released Parties are settling or having dismissed all claims against them arising from or relating to

1 their prior conduct and dealing with the Debtors or their respective bankruptcy estates is critical to  
2 Fort James' decision to settle with the Trustee and pay the Settlement Amount for the benefit of the  
3 Debtors' estates and to release their claims against the Crown Released Parties (as such term is  
4 defined in the Settlement Agreements).

5 12. Beus Gilbert and Steyer Lowenthal were employed by the Trustee to prosecute the  
6 Litigation on a contingent fee basis; however, the Trustee remains responsible for costs and expenses  
7 of the Litigation, which the Trustee and counsel believe would be substantial if the case proceeded to  
8 trial. The Trustee also believes that trial of the Litigation will be complex, protracted and time-  
9 consuming. Moreover, McGuire Woods LLP, one of the Liquidating Trust Case Defendants, has  
10 asserted a claim for substantial attorneys' fees and costs which it has agreed to waive under the  
11 Settlement Agreements and Credit Suisse Securities (USA) is releasing its lien on the Crown Paper  
12 Liquidating Trust. Other Defendants, including Fort James, have asserted claims for costs, fees, and  
13 other relief from the Trust. In view of these considerations, and taking into account the inherent  
14 uncertainties of litigation, the Trustee believes that the receipt, by the Trustee, of the Settlement  
15 Amount, and other consideration provided in the Settlement Agreements, in full satisfaction of  
16 claims against the Fort James Released Parties, including the Liquidating Trust Case Defendants and  
17 Credit Suisse Securities (USA), is a fair and reasonable compromise and that the proposed  
18 Settlement Agreements are in the best interests of the Debtors, their estates and creditors.

19 13. This Court has conducted proceedings, is familiar with and has jurisdiction with  
20 respect to the Litigation. As indicated above, this Court has proceeded in C-02-3838 MMC and C-  
21 02-3836 MMC pursuant to a withdrawal of reference from the Bankruptcy Court. Consideration of  
22 approval of a compromise of a controversy is governed by the Bankruptcy Court as provided for  
23 under Fed. R. Bankr. P. 9019. In light of the foregoing, the Trustee has moved this Court to  
24 withdraw the reference to the Bankruptcy Court of consideration of the compromise and settlement  
25 which is the subject of the Settlement Agreements. The Trustee and Fort James request that the  
26 Court approve the Settlement Agreements and enter the Approval Order in the form attached as  
27 Exhibit 1 approving the settlements on the terms and conditions set forth in the Settlement  
28 Agreements attached as Exhibits 4, 5, and 6.



1 *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S.  
2 414 (1968), under the Act, in order to approve a proposed settlement, a court must have found that  
3 the settlement was "fair and equitable" based on an "educated estimate of the complexity, expense,  
4 and likely duration of . . . litigation, the possible difficulties of collecting on any judgment which  
5 might be obtained and all other factors relevant to a full and fair assessment of the wisdom of the  
6 proposed compromise." *Id.* at 435. The Supreme Court also stated that "[b]asic to this process in  
7 every instance, of course, is the need to compare the terms of the compromise with the likely  
8 rewards of litigation." *Id.* at 424.

9 More recently, the Ninth Circuit Court of Appeals has held that, in considering a proposed  
10 compromise, the Court must evaluate (i) the probability of success in the litigation; (ii) the  
11 difficulties, if any to be encountered in the matter of collection; (iii) the complexity of the litigation  
12 involved, and the expense, inconvenience and delay necessarily attending to it; and (iv) the  
13 paramount interest of the creditors and a proper deference to their reasonable views in the premises.  
14 *See Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir.), *cert. denied sub nom.*,  
15 *Martin v. Robinson*, 479 U.S. 854 (1986). *Accord, Woodson v. Fireman's Fund Insur. Co. (In re*  
16 *Woodson)*, 839 F.2d 610, 620 (9<sup>th</sup> Cir. 1988); *CAM/RPC Elecs. v. Robertson (In re MGS Mktg.)*,  
17 111 B.R. 264, 267 (Bankr. 9<sup>th</sup> Cir. 1990).

18 A court, however, should not substitute its own judgment for the sound business judgment  
19 of a trustee. *Matter of Carla Leather, Inc.*, *supra*, at 465. In reviewing a proposed settlement, the  
20 Court is not "to decide the numerous questions of law and fact ... but rather to canvass the issues and  
21 see whether the settlement falls below the lowest point in the range of reasonableness." *In re W. T.*  
22 *Grant & Co.*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied, Cosoff v. Rodman*, 464 U.S. 822. A  
23 "mini-trial" on the merits of the underlying cause of action is not required and should not be  
24 undertaken by the Court. *In re Blair*, 538 F.2d 849 (9th Cir. 1976); *In re Walsh Construction, Inc.*,  
25 669 F.2d 1325 (9th Cir. 1982). Public policy favors the pretrial settlement of complex litigation.  
26 *Ahern v. Cent. Pac. Freight Lines*, 846 F.2d 47, 48 (9th Cir. 1988). The approval of a proposed  
27 compromise negotiated by a trustee "is an exercise of discretion that should not be overturned except  
28 in cases of abuse leading to a result that is neither in the best interest of the estate nor fair and

1 equitable for the creditors.” *In re MGS Mktg.*, 111 B.R. 264, 266-67 (Bankr. P. 9th Cir. 1990).<sup>3</sup>

2 1. Probability of Success

3 The probability of success in any litigation is uncertain. In this case, Fort James, the  
4 Liquidating Trust Case Defendants and Credit Suisse Securities (USA) dispute the claims asserted  
5 by the Trustee, and have asserted claims against the Liquidating Trust. Moreover, the District Court  
6 granted Fort James’ (a) partial summary judgment on Count I (Aug. 11, 2006 [Docket #152]) and (b)  
7 full summary judgment on (i) Count II (Jan. 12, 2007 [Docket #249]) and (ii) in the related case of  
8 *Beck v. Fort James Corp.*, Case No. 05-0798 MMC (Dec. 12, 2006 (Docket #59)). The District  
9 Court also granted Fort James’ motion to strike the jury demand regarding Count I (Jan. 18, 2007  
10 [Docket #273]), which was set for trial on February 5, 2007. Additionally, the Ninth Circuit  
11 affirmed the orders dismissing all claims based on 11 U.S.C. § 541 on *in pari delicto* grounds.  
12 *Crown Paper Liquidating Trust v. PricewaterhouseCoopers LLP*, 198 Fed. Appx. 597 (9th Cir.  
13 2006).<sup>4</sup>

14 As a consequence of the foregoing, the Trustee's suit was reduced to one Count for  
15 fraudulent transfer with actual intent which is ordinarily the most difficult sort of fraudulent transfer  
16 claim to prosecute. Accordingly, in view of the highly significant uncertainty described above,  
17 settlement was both desirable and prudent.

18 2. Difficulties with Collection

19 Although the Trustee believes that Fort James is financially sound, the large amount of  
20 damages claimed in these actions could conceivably present collection problems.

21 3. Complexity of Litigation

22 As described above, resolution of the Litigation involves complex legal and factual issues.  
23 The Litigation also involves numerous parties and claims that arise from conduct allegedly occurring  
24 in multiple jurisdictions. Moreover, the proof of actual intent to obtain a fraudulent transfer is  
25 exceedingly complex, as is proof of the value of the property transferred to and by the parties to the  
26

27 <sup>3</sup> The attached Declaration of Jeffrey H. Beck details particular uncertainties in pursuing further litigation in this matter.

28 <sup>4</sup> While Case Nos. 02-3836 and 05-0798 are technically closed, there still remain outstanding motions for attorneys’ fees against the Liquidating Trust. See Stipulation and Order Continuing Defendants’ Motions for Attorneys’ Fees Pending Documentation of Settlement (Case No. 02-0798; filed Feb. 12, 2007 ([Docket #66])).

1 spin-off transaction. As to the latter, proof would in large part be through the testimony of numerous  
2 experts and complicated documentary evidence. Absent these Settlement Agreements, litigation to  
3 prosecute the claims would cost millions of dollars and significantly impact judicial resources.  
4 Moreover, the Litigation process, including any further appeals, could take years to conclude.  
5 Accordingly, in view of the procedural and substantive complexity and the uncertainty involved,  
6 resolution made particular sense here.

7 4. Interest of Creditors

8 Presently, there does not appear to be any certain prospect for a distribution to Trust  
9 Beneficiaries absent the successful conclusion of the Litigation, whether by settlement or by  
10 judgment in favor of the Trustee. By the Settlement Agreements, the Trustee will receive the  
11 Settlement Amount which can be used in accordance with the Plan and Trust Agreement and should  
12 be sufficient to pay all unpaid Administrative Claims and Trust expenses, as well as to make a  
13 modest distribution to the Trust Beneficiaries. Moreover, the Trustee will receive releases from the  
14 Liquidating Trust Case Defendants and Credit Suisse Securities (USA) which include the release of  
15 potential liabilities for attorneys' fees and a lien on the Liquidating Trust. For each of those reasons,  
16 the Settlement Agreements are in the best interest of Trust Beneficiaries as is best evidenced by  
17 the consent of the Liquidating Trust Committee thereto.

18 **III.**

19 **CONCLUSION**

20 Given an assessment of the factors ordinarily warranting settlements and compromises, the  
21 Court should approve the Settlement Agreements as reasonable and appropriate under the  
22 circumstances.

23 Accordingly, the Trustee and Fort James respectfully request that this Court (i) approve the  
24 Settlement Agreements, (ii) enter an Approval Order in the form attached hereto as Exhibit 1 hereto,  
25 and (iii) grant such other and further relief as the Court may deem just and appropriate.  
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Dated: \_\_\_\_\_, 2007

SHEPPARD, MULLIN, RICHTER  
& HAMPTON LLP

By /s/ Joseph F. Coyne, Jr.  
Joseph F. Coyne, Jr.  
Attorneys for Fort James Defendants

Dated: \_\_\_\_\_, 2007

BEUS GILBERT PLLC

By /s/ Leo R. Beus  
Leo R. Beus  
Attorneys for Liquidating Trustee

Dated: \_\_\_\_\_, 2007

STEYER, LOWENTHAL, BOODROOKAS  
ALVAREZ & SMITH, LLP

By /s/ Allan Steyer  
Allan Steyer  
Attorneys for Liquidating Trustee

Crown Paper/Pleadings/NDCA/Joint Mot Approve Compromise 03-20-07

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Attorneys for Liquidating Trustee

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

In re:

CROWN VANTAGE, INC.,

Debtor.

Employer I.D. #54-1752384

CROWN PAPER LIQUIDATING TRUST,

Plaintiff,

v.

PRICEWATERHOUSECOOPERS LLP f/k/a/  
COOPERS & LYBRAND, et al.

Defendants.

CROWN PAPER COMPANY; CROWN  
VANTAGE, INC.; JEFFREY H. BECK,  
Liquidating Trustee; and CROWN PAPER  
LIQUIDATING TRUST,

Plaintiffs,

v.

FORT JAMES CORPORATION, f/k/a JAMES  
RIVER CORPORATION OF VIRGINIA;  
FORT JAMES OPERATING COMPANY;  
FORT JAMES FIBER COMPANY, f/k/a  
JAMES RIVER TIMBER CORPORATION;  
and FORT JAMES INTERNATIONAL  
HOLDINGS, LTD., f/k/a JAMES RIVER  
INTERNATIONAL HOLDINGS, LTD.,

Defendants.

Case Nos. C 02-3836 MMC  
C 02-3838 MMC

**DECLARATION OF JEFFREY H. BECK IN  
SUPPORT OF JOINT MOTION OF  
LIQUIDATING TRUSTEE OF CROWN  
TRUST, FORT JAMES AND CERTAIN  
LIQUIDATING TRUST DEFENDANTS  
PURSUANT TO F.R.B.P. 9019 TO  
APPROVE COMPROMISE OF  
CONTROVERSY**

Jeffrey H. Beck declares under penalty of perjury:

1. I am Liquidating Trustee of the Crown Paper Liquidating Trust (the "Trust") and, except where it is indicated that my knowledge is based on information and belief, I have personal knowledge of the matters set forth herein. I submit this declaration in support of the *Joint Motion of Liquidating Trustee of Crown Trust, Fort James and Certain Liquidating Trust Defendants Pursuant to F.R.B.P. 9019 to Approve Compromise of Controversy; Memorandum of Points and Authorities, in Support Thereof* (the "Motion").<sup>1</sup>

2. I have read the factual allegations of the Motion and am informed and believe that they are true and correct.

3. On November 19, 2001, the Bankruptcy Court confirmed the Plan and retained jurisdiction over the Plan and its administration. Under the terms of the Plan, I was appointed the Trustee for the Trust, with the rights, powers and duties as set forth in the Plan and the Liquidating Trust Agreement. Among other things, I am charged with the post-confirmation administration and prosecution against third parties of Causes of Action that, prior to the Effective Date, constituted property of the Debtors' bankruptcy estates. I represent that I have the authority to enter into the Settlement Agreements subject to approval of the Court.

4. Included in the property of the Debtors' bankruptcy estates are certain Causes of Action that the Trust has asserted against Fort James and the Liquidating Trust Case Defendants arising out of the August 1995 Spin-off transaction more particularly described in the Motion.

5. As Trustee, I filed suit against Fort James in the case now known as *Crown Paper Co. v. Fort James Corp.*, Case No. C 02-3838 MMC, and I filed suit against the Liquidating Trust Case Defendants in *Crown Paper Liquidating Trust v. PricewaterhouseCoopers LLP*, Case No. C 02-

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<sup>1</sup> All capitalized terms not defined herein shall have the meaning ascribed thereto in the Motion.

3836 MMC (collectively, the "Litigation"). Judgment was entered against the Trust in Case No. C 02-3836 on July 12, 2004 and affirmed by the Ninth Circuit. I file a petition for *certiorari* with the United States Supreme Court, which was denied on February 26, 2007. In the meantime, trial in Case No. C 02-3838 MMC had been scheduled for February 5, 2007.

6. In an effort to resolve the disputes with Fort James before trial, I engaged in extensive, arm's length, settlement discussions. These discussions included multiple sessions with the Honorable Joseph Spero, Magistrate Judge of the District Court, as well as negotiation with counsel. The settlement discussions with Fort James resulted in the Fort James Settlement Agreement. As a result of reaching settlement with Fort James, the Liquidating Trust Case Defendants entered into extensive and arm's length negotiations with me that resulted in the Liquidating Trust Settlement Agreement. I believe all parties to the settlement negotiations acted in good faith.

7. The claims by the Trust against the Fort James Released Parties, including the Liquidating Trust Case Defendants, are disputed as to liability, causation and damages. Beus Gilbert was employed by the Trust to prosecute the claims in the Litigation on a contingent fee basis. Although counsel has prosecuted the claims on a contingent basis, the Trust remains responsible for costs and expenses of the Litigation, which I would be substantial if the case were to proceed to trial. I also believe that the Litigation would be complex, protracted and time-consuming. Moreover, McGuire Woods LLP, one of the Liquidating Trust Case Defendants, has asserted a claim for substantial attorneys' fees and costs which it has agreed to waive as part of the Settlement Agreements. Other Defendants also may have claims for costs, fees, and other relief from the Trust.

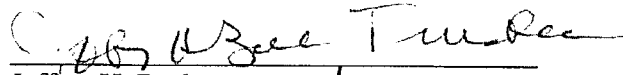
8. In view of the foregoing considerations, taking into account the inherent uncertainties of litigation and in the exercise of my reasonable business judgment, I believe that the consideration provided in the Settlement Agreements is a fair and reasonable compromise and that the proposed

Settlement Agreements are in the best interests of the Debtors, their estates, creditors and trust beneficiaries. As described in detail in the Motion, in reaching this conclusion, I considered many factors including the probability of success on the merits, difficulties with collection, and the complexity of the litigation.

9. Based on the foregoing, I request that the Court approve the Settlement Agreements. I propose to distribute the Settlement Amount in accordance with the Plan.

10. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Dated: March 21, 2007

  
\_\_\_\_\_  
Jeffrey H. Beck  
Liquidating Trustee of the Crown Paper Liquidating  
Trust

# **EXHIBIT B**

1 Debra Grassgreen (CA Bar No. 169978)  
John D. Fiero (CA Bar No. 136557)  
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13 Attorneys for Liquidating Trustee

14 **UNITED STATES BANKRUPTCY COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN FRANCISCO DIVISION**

17 In re:  
18 **CROWN VANTAGE, INC.**  
19 **CROWN PAPER CO.,**  
20 Debtors.

Jointly Administered  
Case No.: 00-41584 N

Chapter 11

**[PROPOSED] ORDER  
WITHDRAWING THE REFERENCE  
WITH RESPECT TO MOTION TO  
APPROVE COMPROMISE OF  
CONTROVERSY**

[No Hearing Required]

25 This cause came before the Court upon the "*Agreed Motion of Liquidating Trustee of Crown*  
26 *Paper Liquidating Trust for (1) Withdrawal of The Reference with Respect to Motion to Approve*  
27 *Compromise of Controversy and (2) Assignment of Motion to Approve Compromise of Controversy*  
28 *to District Court Presiding in Related Cases*" (the "Motion"). This Court has considered the

1 Motion, the record in the District Court Cases (as such term is defined below), the Declaration of  
2 Jeffrey Beck submitted in connection with Settlement Motion (as such term is defined below) and  
3 based upon the foregoing, has determined that notice of the Motion was appropriate under the  
4 circumstances, no hearing is required on the Motion, no further notice of the Motion is required and  
5 that good cause appears for granting the relief requested in the Motion, Accordingly, it is hereby

6 ORDERED that the Motion is granted. This Court hereby withdraws the reference of the  
7 *“Joint Motion of Liquidating Trustee of Crown Trustee, Fort James and Certain Liquidating Trust*  
8 *Defendants Pursuant to F.R.B.P. 9019 to Approve Compromise of Controversy”* (the “Settlement  
9 Motion”). The Settlement Motion shall be filed in the related adversary proceedings: Case Nos. C  
10 02-3836 MMC and C 02-3838 MMC (the “District Court Cases) and shall be heard and determined  
11 by this Court; and it is further

12 ORDERED that a hearing on the Settlement Motion shall be conducted on April \_\_, 2007 at  
13 \_\_\_\_\_. Objections to the Settlement Motion, if any, shall be filed and served by no later than April  
14 \_\_, 2007; and it is further

15 ORDERED that the moving parties are hereby directed to immediately serve notice of the  
16 Settlement Motion and of the hearing on the Settlement Motion on all parties in the Litigation (as  
17 such term is defined in the Motion) and on all parties who are required to receive notice pursuant to  
18 Fed. R. Bankr. P. 2002(a)(3) and Bankruptcy Local Rule 2002-1, as modified by the Order  
19 Establishing Case Management Procedures and Hearing Schedule, entered in the Bankruptcy Cases  
20 on April 28, 2000.

21 \*\*END OF ORDER\*\*  
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**File a Motion:**00-41584 Crown Vantage Inc.

Type: bk

Chapter: 11 v

Office: 4 (Oakland)

Judge: RN

Assets: y

Case Flag: JNTADMN, PreAct

**U.S. Bankruptcy Court****Northern District of California**

## Notice of Electronic Filing

The following transaction was received from Grassgreen, Debra I. entered on 3/27/2007 at 9:39 AM PDT and filed on 3/27/2007

**Case Name:** Crown Vantage Inc.**Case Number:** 00-41584**Document Number:** 1821**Docket Text:**

Motion for Withdrawal of Reference *Agreed Motion of Liquidating Trustee of Crown Paper Liquidating Trust for (1) Withdrawal of the Reference with Respect to Motion to Approve Compromise of Controversy and (2) Assignment of Motion to Approve Compromise of Controversy to District Court Presiding in Related Cases* Fee Amount \$150. Filed by Trustee Other Prof Jeffrey H. Beck (Attachments: # (1) Exhibit A to the Motion# (2) Exhibit B to the Motion# (3) Certificate of Service) (Grassgreen, Debra)

The following document(s) are associated with this transaction:

**Document description:**Main Document**Original filename:**C:\Documents and Settings\htp\Desktop\Crown - Motion to Withdraw Reference.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=1017961465 [Date=3/27/2007] [FileNumber=5946474-0] [82ca80f6b28f0cca388d4cfc75381480570ce3b2c6ac19db8462653ba24e5c1c6ecab520ab719006dbe3c024e51dc9ffb62525739f78203e37835b39093f2c81]]

**Document description:** Exhibit A to the Motion**Original filename:**C:\Documents and Settings\htp\Desktop\Crown - Exhibit A.PDF**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=1017961465 [Date=3/27/2007] [FileNumber=5946474-1] [3a41217cceb7e24634266b5ec9e716161500d1e5e6ff94a09be9c0eefd5fd9ad2803affeb028e3b77c87f3011d870d7be5eb4324275081ca452b5dff4a9d518]]

**Document description:** Exhibit B to the Motion**Original filename:**C:\Documents and Settings\htp\Desktop\Crown - Exhibit B.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=1017961465 [Date=3/27/2007] [FileNumber=5946474-2] [a818ef626c776671510b44837e492f1c173c6c427901f27ebbbe9be41c19d87ae32f13dc5a067f0d2e59ae5a5fe42a4539017726b4962b43607765da1d5738c5]]

**Document description:**Certificate of Service**Original filename:**C:\Documents and Settings\htp\Desktop\Crown - Certificate of Service.pdf

**U.S. Bankruptcy Court  
Northern District of California**

Thank you. Your transaction in the amount of \$ **150.00** has been completed.

Please print a copy of your transaction receipt for future reference. The transaction number is **4107190**.

**Detail description:**

Motion for Withdrawal of Reference(00-41584) [motion,mwdref] ( 150.00)

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