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16 THE CROWN PAPER LIQUIDATING TRUST

17 **UNITED STATES BANKRUPTCY COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **OAKLAND DIVISION**

20 In re:) Case No.: 00-41584 (RN)
21)
22 CROWN VANTAGE, INC.,) Chapter 11
23 CROWN PAPER CO.,)
24 Debtors.) **LIQUIDATING TRUSTEE'S THIRD**
25) **MOTION FOR ORDER EXTENDING**
26) **THE TERM OF THE LIQUIDATING**
27) **TRUST**
28) [No hearing requested.]

29 **TO: THE HONORABLE RANDALL J. NEWSOME, UNITED STATES BANKRUPTCY**
30 **JUDGE, U.S. TRUSTEE, AND PARTIES IN INTEREST**

31 Jeffrey H. Beck, in his capacity as the Liquidating Trustee of the Crown Paper Liquidating
32 Trust (the "Liquidating Trustee"), by and through his undersigned counsel, Bilzin Sumberg Baena
33 Price & Axelrod LLP, and Pachulski Stang Ziehl & Jones LLP, hereby moves (the "Motion") this
34 Court for entry of an Order extending the term of the Crown Paper Liquidating Trust (the
35 "Liquidating Trust") from March 31, 2009 to December 31, 2009, pursuant to section 105 of title 11,
36 of the United States Code (the "Bankruptcy Code"), and the terms of the Plan (defined below).

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1 In support of the Motion, the Liquidating Trustee respectfully represents as follows:

2 **I.**

3 **PRELIMINARY STATEMENT**

4 By this Motion, the Liquidating Trustee seeks the entry of an Order extending the term of the
5 Liquidating Trust, for an additional nine months, to enable the Liquidating Trustee to complete the
6 administration of the Liquidating Trust and to wind down its affairs by the end of the year. In
7 particular, as discussed more fully below, the Plan requires the Liquidating Trustee to wait six
8 months after making a distribution in order to allow Holders (as defined in the Plan) to update their
9 addresses. If a check is returned as undeliverable, and the Holder does not update its address within
10 six months of the distribution, then the unclaimed distribution reverts to the Liquidating Trust.
11 Anticipating that the remaining pending claims objections will be resolved before March 31, 2009,
12 the Liquidating Trust plans to make an initial distribution on or about that date ("Initial
13 Distribution"). Thereafter, the Liquidating Trustee will wait the Plan required six month period and
14 will then make, on or about September 30, 2009, the final distribution ("Final Distribution").
15 Thereafter, the activities of the Liquidating Trust can be concluded and a final decree sought to close
16 the case. Consequently, it will take until approximately the end of the year to wind up the
17 Liquidating Trust's responsibilities under the Plan and obtain a final decree.

18 **II.**

19 **BACKGROUND**

20 On March 15, 2000 (the "Petition Date"), Crown Vantage, Inc., and Crown Paper Co.
21 (collectively, the "Debtors" or "Crown") each filed voluntary petitions for relief under the
22 Bankruptcy Code. By Order dated March 16, 2000, the Debtors' cases were ordered to be jointly
23 administered under Case No. 00-41584 N.

24 By Order dated November 19, 2001, this Court confirmed the *Debtors' Second Amended*
25 *Disclosure Statement and Joint Liquidating Plan of Reorganization*, as amended (the "Plan"), which
26 provided for the creation of the Liquidating Trust, and appointed Jeffrey H. Beck to serve as
27 Liquidating Trustee.

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1 On March 1, 2002, the Plan became effective (the "Effective Date") and the Liquidating
2 Trust was formed as part of the Plan pursuant to the terms of the Crown Paper Liquidating Trust
3 Agreement (the "Liquidating Trust Agreement").

4 Pursuant to Section 6.1 of the Liquidating Trust Agreement:

5 The Liquidating Trust shall terminate no later than five (5) years from
6 the Effective Date. However, if warranted by the facts and
7 circumstances provided for in the Plan, and subject to the approval of
8 the Bankruptcy Court upon a finding that an extension is necessary for
the purpose of the Liquidating Trust, the term of the Liquidating Trust
may be extended, one or more times for a finite period, based on the
particular circumstances at issue.

9 Liquidating Trust Agreement at § 6.1.

10 Pursuant to this Court's *Order Granting Second Motion by Liquidating Trustee for Entry of*
11 *an Order Extending the Term of the Liquidating Trust*, entered on February 5, 2008 (Docket No.
12 2051), the current termination date of the Liquidating Trust is March 31, 2009. This is the
13 Liquidating Trustee's third request to extend the Liquidating Trust.

14 As set forth in the Declaration of Jeffrey H. Beck filed herewith, based upon the limits of its
15 allowed budget, the substantial unpaid Chapter 11 administrative expenses it was required to pay,
16 and the sharing formula with certain pre-petition lenders for recoveries on assets, until the middle of
17 2007 and for the bulk of the time of its existence from the Effective Date of the Plan, the Liquidating
18 Trust had insufficient funds with which to pay its ongoing operations, fees and expenses.

19 Nevertheless, the Liquidating Trustee and the Liquidating Trustee's professionals expended
20 tremendous resources and energies to attempt to properly administer and carry out the purposes of
21 the Liquidating Trust's creation. For several years, this activity was carried out with no assurance of
22 compensation. With the exception of those matters beyond the control of the Liquidating Trust,
23 activities were accomplished in the earliest possible time frame allowed in the Plan in moving the
24 administration forward. Fortunately, in 2007, the Liquidating Trust ultimately successfully settled a
25 substantial litigation claim which was the principal asset of the Liquidating Trust and thereafter
26 succeeded in protracted litigation over a retirement plan reversion. The conclusion of those matters
27 paved the way for the Liquidating Trust to undertake the next steps required under the Plan, the

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1 review and resolution of claims, the making of distributions and ultimately the obtaining of a final
2 decree.

3 As part of the timing of that process, the Court's attention is drawn to Section 8.12 of the
4 Plan which provides that undeliverable distributions become property of the Liquidating Trust if
5 within six months of the distribution, the Holder does not provide the Liquidating Trustee notice in
6 writing of the Holder's then current address. Pertinent excerpts of the Plan are attached hereto as
7 **Exhibit A**. Thus, even though the Liquidating Trustee expects to make its Initial Distribution by
8 March 31, 2009, subject to certain contingencies described below, under the terms of the Plan, the
9 Liquidating Trust must exist for at least six months after this distribution to accommodate the six-
10 month waiting period with respect to undeliverable distributions and to allow such unclaimed
11 distributions to be redistributed in the Final Distribution.¹ Accordingly, the requested extension is
12 necessary.

13 The following discussion details the actions undertaken by the Liquidating Trust to wind up
14 its activities from 2007 to date, all of which have been undertaken in the sequence required under the
15 Plan, and details the remaining steps necessary. This discussion serves as the basis for granting this
16 Motion.

17 **A. Administration, Claims, and Distributions**

18 The Plan required that claims be subjected to review and objection within six months after it
19 became clear that a purpose would be served by doing so, namely, that there be a minimum of \$1
20 million of funds to distribute. While the Liquidating Trustee did not participate in crafting the Plan,
21 he assumes that the wisdom of that Plan provision was premised upon the sound concept that the
22 undertaking of claims processing of the extremely large number of unresolved claims, prior to
23 having funds on hand to make a distribution, would have unnecessarily burdened the Court because
24 it would not have been clear that any purpose would have been served to complete that exercise.
25 Moreover, based upon the financial circumstances of the Liquidating Trust described above, until the
26

27 ¹ In this regard, after the six month period has expired, and an additional distribution has been made, the Liquidating
28 Trustee intends on filing a motion to authorize the Liquidating Trustee to donate unclaimed distributions, if *de minimis*,
to a charity so as to allow the Liquidating Trust to terminate and to obtain a final decree of the cases as soon as possible.
A *de minimis* distribution under the Plan is a distribution of less than \$100.00. See **Exh. A**, Plan, § 8.14.

1 settlement of the principal litigation claim, the Liquidating Trust lacked the resources to undertake
2 the process of objecting to and resolving the substantial numbers of unresolved claims. When the
3 Liquidating Trust executed the settlement agreement with Fort James/James River and for the "Spin"
4 litigation in mid-2007, although \$1 million was not yet in hand, it was believed that there would be
5 sufficient funds after payment of the various Liquidating Trust obligations and Plan required
6 payments to fund a distribution of at least \$1 million to Liquidating Trust beneficiaries. Thus, the
7 Liquidating Trust immediately began the process of analysis and review of claims. The result was
8 that the Liquidating Trust had reviewed and filed objections to all claims requiring objection by
9 January 31, 2008. By that date, the Liquidating Trust had filed twelve rounds of omnibus
10 objections² and twenty six individual objections in an effort to conclude the determination of a total
11 of 2,624 unresolved claims pending as of the start of that process.

12 While the Liquidating Trust had initiated all of the appropriate objections by the end of
13 January 2008, the process of resolving such objections has not been completed. Shortly prior to the
14 filing of this Motion, the Liquidating Trust has filed two "housekeeping" motions to reclassify as
15 claims against the proper entity, Crown Paper Co., certain claims that were erroneously filed by the
16 claimants against Crown Vantage, Inc. or that had not listed the debtor against whom the claim is
17 asserted. In addition, five unliquidated "asbestos" claims (the "Asbestos Claims") remain
18 outstanding. The parties are attempting to resolve the Asbestos Claims.³ A status conference is
19 scheduled with respect to the Asbestos Claims on February 25, 2009, at 9:30 a.m. Finally, one
20 amended claim objection is outstanding (the "Fortier Objection"). The Liquidating Trustee expects
21 the Fortier Objection to be resolved by default in the very near future.

22 Upon the disposition of remaining claim objections, the Liquidating Trust will pay any
23 additional obligations arising from such disposition and will make the Initial Distribution to Holders.
24 Based upon the claims resolutions to date, there will be a minimum of \$327,500,000 in beneficial
25 interests entitled to participate in the distribution, including the \$263,970,028 in beneficial interests
26

27 ² From mid-2007 through January 31, 2008, the Liquidating Trustee filed Omnibus Objections Nos. 5 through 16, for
28 a total of twelve omnibus objections.

³ The attorney for the holders of the Asbestos Claims agrees that one of these five claims is a duplicate and should be disallowed.

1 resulting from the Old Sub Notes. The amount of beneficial interests will be higher by the amount
2 of additional claims ultimately allowed. As of December 31, 2008, the Liquidating Trust had
3 deposits of cash in the amount of approximately \$11 million, subject to: reserves for disputed
4 claims; additional obligations to the pre-petition lenders; tax obligations; accrued and ongoing
5 Liquidating Trust operating expenses; and accrued and ongoing Liquidating Trust administration fee
6 and expense obligations.

7 The remaining sources of recovery for the Liquidating Trust include: interest on invested
8 funds and the proceeds of mineral rights at Profit Island which, because the value of such rights is
9 perceived to be greater in holding than in sale, will be disposed of only shortly before the Final
10 Distribution to derive maximum proceeds from that asset. Currently, the Liquidating Trust is
11 estimating that there will be approximately \$8 million available for the Initial Distribution to
12 Holders.

13 **B. Wind Up and Final Decree**

14 Coincident with implementing the Final Distribution, the Liquidating Trust will seek a bar
15 order for claims occurring during the Liquidating Trust administration and a motion to allow the
16 Liquidating Trustee to donate any unclaimed distributions, if *de minimis*, to charity. In addition, the
17 Liquidating Trustee anticipates promptly filing all tax returns and assuring payment of all
18 obligations of the Liquidating Trust. The Liquidating Trustee believes that this can be accomplished
19 with an extension of the Liquidating Trust through December 31, 2009 and that the activities to be
20 accomplished during this time period will provide significant benefit to Holders, the former
21 unsecured creditors of Crown.

22 **III.**

23 **RELIEF REQUESTED**

24 Pursuant to section 105 of the Bankruptcy Code, the Liquidating Trustee of the Liquidating
25 Trust hereby moves for entry of an Order extending the term of the Liquidating Trust for a period of
26 nine months through December 31, 2009 to allow for the additional time necessary to complete the
27 orderly liquidation of the remaining assets of the Liquidating Trust.

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IV.

JURISDICTION AND VENUE

This Court has jurisdiction over this Motion pursuant to 11 U.S.C. § 105 and 28 U.S.C. § 1334. Further, pursuant to the Plan, the Court retained jurisdiction to "construe and take any action to enforce the Plan and issue such orders as may be necessary for the implementation, execution and consummation of the Plan" and to "ensure Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan," both of which are implicated by this Motion. *See Exh. A*, Plan §12.1(b) and (f). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409 (a). This matter is a core proceeding pursuant to 28 U.S.C. § 157.

V.

GROUND FOR RELIEF REQUESTED

As set forth above, the Plan requires the Liquidating Trust to remain open for six months after the distribution to allow Holders to claim distributions that may be unclaimed. As a result, the Liquidating Trustee believes it will take nine months to wind down the estate and terminate the Liquidating Trust.

If the Liquidating Trust's term is not extended, the Liquidating Trust will be terminated and the very purpose of the Plan, to ensure distributions to allowed claimants are accomplished pursuant to the provisions of the Plan, would be thwarted.

VI.

CONCLUSION

Based on the foregoing, the Liquidating Trustee respectfully submits that good and sufficient cause exists in to grant the Motion and extend the term of the Liquidating Trust an additional nine months through December 31, 2009.

Exhibit A

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN.
 ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE
 STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT.
 THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS
 NOT BEEN APPROVED BY THE COURT.

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UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA

U.S. BANKRUPTCY COURT
 NORTHERN DIST. OF CAL.
 OAKLAND, CA.
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In re)	Jointly Administered
CROWN VANTAGE, INC.,)	Case No. 00-41584 N
)	Chapter 11
Debtor.)	DEBTORS' SECOND AMENDED
EMPLOYER I.D. #54-1752384)	DISCLOSURE STATEMENT AND JOINT
)	LIQUIDATING PLAN OF
)	REORGANIZATION
)	<u>Hearing:</u>
)	Date: November 19, 2001
)	Time: 2:00 p.m.

In re)
CROWN PAPER CO.,)
)
Debtor.)
EMPLOYER I.D. #54-1752385)

October 5, 2001

1287

(including the tax withholding provisions of Section 14.3 hereof and the provisions governing surrender of the Old Sub Notes pursuant to Section 7.7 hereof), shall deliver Distributions to the respective Holders of such Allowed Old Sub Note Claims.

(c) Secured IRB Claims. The Secured IRBs Indenture Trustee is the sole Holder of the Secured IRB Claims. Distributions under the Plan with respect to the Secured IRB Claims shall be made to the Secured IRBs Indenture Trustee.

(d) Unsecured IRB Claims. The Unsecured IRBs Indenture Trustee is the sole Holder of the Unsecured Claims. Distributions under the Plan with respect to the Unsecured IRB Claims shall be made to the Unsecured IRBs Indenture Trustee.

(e) Delivery. Distributions and deliveries to Holders of Allowed Claims shall be made at the address of each such Holder as set forth on the proofs of Claim Filed by such Holders (or at the last known addresses of such Holders if no proof of Claim is Filed or if the Debtors or Liquidating Trustee, as the case may be, have been notified in writing of a change of address), except as otherwise provided in the Plan. Distributions will be made to Holders of record as of the Distribution Record Date.

(f) Distribution Record Date. As of the close of business on the Distribution Record Date, the transfer registers for the Old Sub Notes, as maintained by the Debtors, the Old Sub Notes Indenture Trustee, the transfer agent for the Equity Interests or their respective agents, shall be closed and the transfer of Old Sub Notes and Equity Interests, or any interest therein, will be prohibited. Moreover, the Debtors or the Liquidating Trustee, on behalf of the Liquidating Trust, as the case may be, shall have no obligation to recognize the transfer of any Old Sub Notes or Equity Interests occurring after the Distribution Record Date, and shall be entitled for all purposes herein to recognize and deal only with those Holders of record as of the close of business on the Distribution Record Date.

Section 8.12. Undeliverable Distributions. If any Distribution is returned as undeliverable, no further Distributions to the Holder of such undeliverable Distribution shall be made unless and until the Liquidating Trustee is notified in writing by such Holder of such Holder's then current address, at which time any missed Distributions shall be made to such Holder without interest unless provided for herein. Amounts in respect of undeliverable Distributions shall be returned to the Liquidating Trustee, on behalf of the Liquidating Trust, until such Distributions are claimed. All Claims for undeliverable Distributions shall be made within six months of the date of such Distribution. Any Cash amounts in respect of undeliverable Distributions which remain unclaimed within such six-month period shall be forfeited to the Liquidating Trust and shall constitute Available Cash.

Section 8.13. Final Distribution. A final Distribution of Distributable Cash shall be made by the Liquidating Trustee on, or as promptly as practicable after, the later of: (a) the date upon which all Liquidating Trust Assets have been reduced to Cash, including the Causes of Action, or abandoned pursuant to § 554 of the Bankruptcy Code in accordance with a Final Order of the Bankruptcy Court; and (b) the date upon which (i) all Disputed Claims have either been Allowed or Disallowed and (ii) all Unresolved Claims have been either Allowed or Disallowed.

Section 8.14. Fractional Cents. When any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent (rounding down in the case of .50 or less and rounding up in the case of more than .50).

Section 8.15. De Minimis Payments. The Liquidating Trustee may elect to not make a payment under the Plan to a Holder of an Allowed Claim if the amount of the Cash payment is less than one hundred dollars (\$100.00). Cash not distributed may be reserved for such Holder until such time as a Cash payment that is greater than one hundred dollars (\$100.00) is due to such Holder. If the Liquidating Trustee determines that such Holder of an Allowed Claim is not entitled to any further Cash payments, then such sum shall be deemed Available Cash.

ARTICLE IX

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Section 9.1. Rejection. In accordance with the provisions of §§ 365 and 1123 of the Bankruptcy Code on the Confirmation Date, all executory contracts and unexpired leases not previously assumed or rejected by the Debtors, or subject to a motion seeking assumption or rejection, shall automatically be rejected by the Debtors as of the Effective Date without further notice or order of the Bankruptcy Court.

Section 9.2. Claims Based on Rejection of Executory Contracts or Unexpired Leases. All proofs of Claim with respect to Claims arising from the rejection of executory contracts or unexpired leases not assumed or rejected prior to the Confirmation Date, if any, must be Filed with the Bankruptcy Court within the later of (i) 30 days after the date of entry of the order of the Bankruptcy Court approving such rejection and (ii) 30 days after the Confirmation Date. Any Claims arising from the rejection of an executory contract or unexpired lease not assumed or rejected prior to the Confirmation Date that are not Filed within such times shall be forever barred from assertion against the Debtors, their Estates and property, the Liquidating Trustee, the Liquidating Trust and the Liquidating Trust Assets, unless otherwise ordered by the Bankruptcy Court or provided for in this Plan. If an objection to any such proof of Claim is Filed and the Claim becomes an Allowed Claim, then such Claim shall be, and shall be treated as, a General Unsecured Claim in the appropriate Chapter 11 Case, subject the provisions of Article VI hereof and subject to any limitation on allowance of such Claims under § 502(b) of the Bankruptcy Code or otherwise.

ARTICLE X

RETIREE BENEFITS

In accordance with § 1129(a)(13) of the Bankruptcy Code, the Plan provides for, after the Effective Date, the continuation of the Modified Retiree Benefits at the level established pursuant to § 1114(g) of the Bankruptcy Code prior to Confirmation of the Plan, as approved by