UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MAINE

THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, LOCAL LODGE NO. 1821, on behalf of its individual members employed at the Bucksport Paper Mill; **RICHARD GILLEY,** individually and as IAMAW District 4 Business Representative for Local Lodge 1821; **COREY DARVEAU,** individually and as President of Local Lodge 1821; **BRIAN SIMPSON,** individually and as Vice President of Local Lodge 1821; **BRIAN ABBOTT,** individually and as Recording Secretary of Local Lodge 1821; and **HAROLD PORTER,** individually and as Financial Secretary for Local Lodge 1821, Plaintiffs, v. **VERSO PAPER CORP.,** a Delaware Corporation; **VERSO PAPER LLC**, a Delaware Limited Liability Company (LLC) and a wholly owned subsidiary of Verso Paper Corp., **AIM DEVELOPMENT (USA) LLC**, a Delaware Limited Liability Company and indirect wholly-owned subsidiary of American Iron & Metal Company, Inc., Defendants.	CIVIL ACTION NO. :

PLAINTIFFS' MOTION FOR ATTACHMENT AND TRUSTEE'S PROCESS AND MEMORANDUM OF LAW IN SUPPORT

Pursuant to Fed.R.Civ.P. 64, D.Me. Local R. 64 and Me.R.Civ.P. 4A and 4B, Plaintiffs, through undersigned counsel, move for an order of attachment and trustee's process against Defendant Verso Paper Corp.'s property in the State of Maine, real and personal, (whether in Verso Paper Corp.'s name or in the name of any Verso subsidiary) including all property located

in the Town of Bucksport, Maine, to secure $45 million in statutorily mandated severance pay, final wages, including accrued 2015 vacation time pay, and other sums due to Plaintiffs, and all other similarly situated employees of the Bucksport Mill, pursuant to Verso's liability for such sums enumerated in 26 M.R.S.A. §§ 625-B, sub-§§ 2, 4 and 9, and 626.

Plaintiffs have a more than reasonable likelihood of recovering judgment in this case, because:

(1) Verso does not dispute that Plaintiffs, and all other similarly situated Bucksport employees, have a right to payment of severance and accrued 2015 vacation pay;

(2) Verso does not dispute the *amount* of severance pay and vacation pay owed to the Plaintiffs and all other similarly situated Bucksport employees; rather,

(3) The only issue in this suit is the time frame within which Plaintiffs' severance and accrued 2015 vacation time pay must be paid.

Plaintiffs assert that they, and all other similarly situated Bucksport employees, are guaranteed severance pay, within one regular pay period after their last full day of work. According to the determination letter issued to Verso Paper Corp. on December 10, 2014, by Pamela Megathlin, Director of the Maine Bureau of Labor Standards (See, Exhibit 27), the "last full day of work" for all Bucksport employees who will lose their jobs as a result of Verso's closure of the Bucksport Mill is **December 31, 2014**, and **the date on which Verso is required to pay severance and accrued 2015 vacation time pay is January 8, 2015**.

Verso acknowledged that it had liability to pay all Bucksport hourly wage employees severance totaling $30 to $35 million in 2014 and 2015, in Verso's October 1, 2014 8-K[1] and November 13, 2014 10-K[2], filed with the Securities and Exchange Commission (Exhibit 11).

[1] http://investor.versopaper.com/secfiling.cfm?filingID=1421182-14-56&CIK=1421182

[2] http://www.sec.gov/Archives/edgar/data/1421182/000142118214000067/vrs9302014q3.htm#pq=CYBY2v

Subsequently, Verso again acknowledged its statutory obligation under Maine law to pay severance to terminated Bucksport Mill employees in the amount equal to or greater than that amount required under the formula in 26 M.R.S.A. § 625-B in its first draft Memoranda of Agreement that Verso offered employees during Effect Bargaining on October 28, 2014; however no agreement was reached by Verso because Verso refused to agree to pay the sums owed under Maine law within the time frames for payment mandated in State law.

On November 25 and December 3, 2014, Verso has entered Memoranda of Agreement (MOAs) that covered all hourly wage employees at the Bucksport Mill and in which Verso agreed to pay all Bucksport hourly wage employees severance pay and accrued 2015 vacation time. (Exhibit 8 and 10). However, Verso still refused to agree to comply with the time requirements in Maine law and pay severance and accrued vacation time within the first pay period after the last full day of work.

Under this requirement in 26 M.R.S.A. § 625-B, sub-§ 2, **Verso is required to pay all Bucksport employees being terminated on or by December 31, 2014, severance pay and accrued 2015 vacation time pay on or by January 8, 2015**. However, Verso has said it will not do so and will delay paying severance and vacation time pay for three (3) months – until ***April Fool's Day, 2015.***

Thus, because Verso does not dispute the *amount* of the judgment owed to Plaintiffs or the *fact that that money is owed*, Plaintiffs are entitled to attachment to secure their severance and accrued vacation time pay, under Fed.R.Civ.P. 64, D.Me. Local R. 64 and Me.R.Civ.P. 4A and 4B. ***Pursuant to Verso's own public statements the amount owed is at least $45 million.***

In support of this motion and in support of the attachment of Defendants' assets, all Plaintiffs incorporate the Affidavit of Plaintiff Richard Gilley, attached hereto as though stated herein. Plaintiffs assert that under the undisputed facts and circumstances of this case and the law

of the State of Maine, they are entitled to attachment and trustee's process, attaching Defendants' property, including real and personal property in Bucksport, Maine, and/or the proceeds of any purchase and sale agreement or "Membership Interest Purchase Agreement" (MIPA) between the Defendants and any third party, including the December 5, 2014 MIPA between Defendant Verso Paper Corp. and AIM Development (USA) LLC for sale of the Bucksport Mill.

Attachment of Verso's property is necessary to ensure that Plaintiffs' ability to obtain the amount of severance and vacation time payments that Verso acknowledges that it owes, as well as all of the penalties, interest, liquidated damages, costs and attorneys' fees that 26 M.R.S.A. § 625-B, sub-§§ 4 and 9; and § 626, mandate be paid in the event Verso fails to timely pay all severance and vacation time payments owed to the Plaintiffs and all similarly situated Bucksport employees.

FACTUAL ASSERTIONS AND BACKGROUND

This case involves Verso Paper Corp.'s refusal to comply with the clear, unequivocal and unambiguous mandates in Maine law, found in 26 M.R.S.A. §§ 625-B and 626, to ***timely*** pay severance and accrued 2015 vacation time pay to the employees of the Bucksport Mill, who will lose their jobs on or before December 31, 2014. Verso does not dispute the fact or amount of its obligation to pay severance and accrued vacation time pay – Verso only disputes that it must pay this money in the time frame expressly mandated in Maine law. Verso asserts that it has a contractual right to delay paying the statutorily mandated payments for three (3) months. Plaintiffs, and all similarly situated Bucksport employees dispute Verso's interpretation of the CBAs – and assert that ***even under the express terms of the CBAs severance and vacation time pay is due to be paid to them within the time limits mandated in the State statute***.

On October 1, 2014, Verso Paper Corp. unexpectedly announced its intent to close of the Bucksport Paper Mill, in Bucksport, Maine, in an 8-K filed with the Securities and Exchange Commission (S.E.C.).

On October 21, 2014, during Effects Bargaining with union representatives for the hourly wage employees at the Bucksport Mill, including the Plaintiffs, Verso's representatives first revealed that Verso did not intend to honor or comply with the *time limits* for payment of severance pay to the Bucksport Mill employees established in and mandated by 26 M.R.S.A. § 625-B, sub-§ 2. However, Verso acknowledged that it owed all employees an amount of severance equal to or greater than the amount mandated under the formula in 26 M.R.S.A. § 625-B, sub-§ 2.

In addition to severance pay under 26 M.R.S.A. § 625-B, Plaintiffs are entitled to final wages, including accrued 2015 vacation time pay, pursuant to 26 M.R.S.A. § 626, from the Defendants, as a consequence of the Verso's October 1, 2014 decision to close the Bucksport paper mill (hereinafter " the Mill" or "the Bucksport Mill"). Initially, Verso disputed that it owed all hourly wage employees for accrued 2015 vacation time pay under Section 11.15(a) of the Plaintiffs' CBA, and identical provisions (that have different numbering) in the other applicable CBAs with other unions at the Bucksport Mill. However, through Effects Bargaining, Verso has also agreed that it owes accrued 2015 vacation time to all hourly wage Bucksport employees, but again asserts a right to delay paying vacation time pay for three months – ***Verso cites no provision in the CBAs to support its delay in paying accrued vacation time***, however.

The date of closure of the Mill will be December 31, 2014. Although most (all but approximately 46 out of Bucksport's approximately 570) employees will cease all work for Verso at the Bucksport Mill, and will be released from their employer-employee relationship with the Verso Defendants on or about December 17, 2014, Verso is paying holiday pay, gratuitous remuneration and benefits through December 31, 2014. As a consequence of Verso's agreement to pay wages and benefits through December 31, 2014, the Director of the Maine Bureau of Labor Statistics, Pamela Megathlin, issued Determination Letters on November 25 and December 10,

2014, concluding that **all terminated Bucksport Mill employees' "last day of work" within the meaning of 26 M.R.S.A. § 625-B, sub-§ 2, is December 31, 2014**, and that **the date on which Verso is obligated to pay all severance pay is January 8, 2015.** (Exhibits 9 and 27). **Payment for all accrued 2015 vacation time pay is also due on January 8, 2014, pursuant to 26 M.R.S.A. § 626.**

The Verso Defendants and their labor counsel assert that, pursuant to the provisions relevant to the payment of Severance Pay in the various CBAs with hourly wage employees, particularly Section 12.2 of the Plaintiffs CBA (and 13.2 of the other unions' CBA with Verso), Verso does not have to pay severance *for three (3) months following the "date of layoff"* for the Bucksport employees. In asserting this misinterpretation of the CBAs as a justification for violating Maine's severance pay law, Defendants ignore the express terms in the "Contravention" Section in each of the CBAs. Pursuant to the Contravention Section, included in all of the CBAs, any provision of the CBA that is in contravention of the laws or regulations of the United States or Maine, "shall be superseded by the appropriate provisions of such laws or regulations…" (See, e.g. Exhibit 21, Section 29.1, p. 23). Accordingly, any provision of the CBA that contains a time frame for the payment of severance that is in contravention to the time requirements in 26 M.R.S.A. § 625-B, sub-§ 2, are superseded by the Maine law's requirements.

Verso refuses to acknowledge this requirement in the CBAs' plain Contravention language to incorporate the *time* requirement in 26 M.R.S.A. § 625-B, sub-§ 2 – although Verso has acknowledged that the requirements in 26 M.R.S.A. § 625-B, sub-§ 2 relating to the *amount* of severance owed supersede the provisions of the CBA regarding the amount of severance owed.

On information and belief, Verso Paper Corp.'s leadership and the outside legal counsel advising them on labor matters have been advised, *in person and/or in writing*, that Verso has a duty to pay its liability for all severance pay and final wages, including vacation time pay, by or

on January 8, 2015 -- the next regular pay period after Bucksport Mill employees' last full day of work (defined as December 31, 2014), by the following officials for the State of Maine:

- Senior United States Senator for the State of Maine Susan Collins, in person and in writing, and through communications from her most senior staff member in the State of Maine, Carol Woodcock (Exhibit 3);
- Governor Paul LePage, in writing and in person through his Senior Economic Advisor John Butera;
- Attorney General Janet Mills, in person through communications with Assistant Attorney General Nancy Macirowski;
- Commissioner of Labor Jeanne Paquette, in person and in writing, and through communications with and from multiple members of her staff to multiple levels of Verso leadership and staff ;
- Director of the Bureau of Labor Standards Pamela Megathlin, in person and in writing multiple times, including meeting with Verso's outside legal counsel on this issue (Exhibits 9 and 27);
- Maine Speaker of the House Mark W. Eves, in writing (Exhibit 26);
- Maine Senate President Michael D. Thibodeau, in writing (*Id.*);
- Maine Senate Democratic Leader Justin L. Alfond, in writing (*Id.*);
- Maine House Republican Leader Kenneth W. Fredette, in writing (*Id.*);
- Maine State Senator Kimberly Rosen, Senator for the District in which the Bucksport Mill is located, in writing (*Id.*);
- Maine State Representative Richard H. Campbell, Representative for the District in which the Bucksport Mill is located, in writing (*Id.*); and
- United States Senator for the State of Maine Angus King, in person through his most senior Maine staff member, former State Senator Chris Rector.

The Verso Defendants and their labor counsel have responded to each of these officials, to the Plaintiffs, and to union representatives and members of other unions at the Bucksport Mill, stating that Verso ***will not comply with the timing requirements in Maine law*** for the ***timely*** payment of severance or accrued 2015 vacation time pay. (e.g. Exhibit 4).

On December 8, 2014, Verso filed an 8-K filing with the S.E.C. attached to which as exhibit 2.1 was a "Membership Interest Purchase Agreement" (MIPA), dated December 5, 2014, between Defendant Verso Paper Corp. and AIM Development (USA) LLC ("AIM"), detailing

terms for the sale of the Bucksport Mill to AIM.[3] On pages 24 and 42 of that MIPA, the following statements and agreements between Verso and AIM appear regarding the payment of severance:

> 3.10 Employees.
>
> (b) Except for the obligations of Sellers and/or the Companies as set forth in the CBAs (which obligations VB is assuming as of the Closing Date with respect to the Facilities Employees) and except for the obligations to be assumed or retained at Closing by Sellers pursuant to Section 5.08(b) hereof, (i) neither Sellers nor the Companies is liable for any severance pay or other payments to any employee or former employee arising from the termination of employment at or relating to the Project, and (ii) *neither Sellers, the Companies, nor Buyer will have any liability under any benefit or severance policy, practice, agreement, plan, or program that exists or arises, or may be deemed to exist or arise, under any applicable Law (including, but not limited to, WARN and the Maine Revised Statutes regarding severance pay, 26 M.R.S. §625-B (" Maine's Severance Pay Statute ")) or otherwise, as a result of, or in connection with, the transactions contemplated by this Agreement or as a result of the termination on or prior to the Closing Date by Sellers or the Companies of any Persons employed by either Seller or either Company (or their respective Affiliates) at or relating to the Project.*
>
> 5.08 Employment Matters. The Parties agree and acknowledge as follows:
>
> (b) Sellers shall be solely responsible for, and shall assume as of the Effective Time any and all liability for, severance payments and other payments that are or become payable under the CBAs, the Employee Plans, applicable Law (including Maine's Severance Pay Statute) to current or past employees of Sellers or their Affiliates who have been employed at the Project, other than the Facilities Employees (modified as contemplated by Section 5.08(a) hereof) that Buyer elects to employ or to cause VB to employ as of the Effective Time; provided that Sellers shall be solely responsible for and shall retain liability for all Employee Plans with respect to the Facilities Employees. VP caused to be delivered WARN notices to all employees employed at the Project on or about October 1, 2014, indicating the intent to cease operations at the Project effective November 30, 2014, which date may be extended at the option of VP to as late as December 31, 2014. VP shall engage in any bargaining required under the CBAs or applicable Law arising out of the planned termination of any employees employed at the Project who receive WARN notices as provided herein. Buyer agrees that VB shall be solely responsible for any payments or obligations to the Facilities Employees that Buyer elects to employ or to cause VB to employ as of the Effective Time, which payments or obligations arise following the Effective Time in connection with their

[3] http://www.sec.gov/Archives/edgar/data/1421182/000119312514436360/d834648dex21.htm

> employment by Buyer or VB or the termination of such employment, under the CBAs, applicable Law (including Maine's Severance Pay Statute). Any termination of the employment with Buyer or VB of any such Facilities Employee following the Effective Time shall be subject to (as applicable) the CBAs, the Employee Plans and applicable Law, and Buyer and VB shall be solely responsible for any costs or liabilities arising therefrom.

(emphasis supplied). The "closing date," "Effective Date" or "Effective Time" for this agreement are indicated as occurring on or before January 9, 2015.[4]

It appears that the language in § 3.10 of the December 5, 2014 MIPA, between Verso and AIM is intended to structure their MIPA transaction in a way to facilitate Verso Paper Corp.'s use and abuse of the 2009 amendment in 26 M.R.S.A. 625-B, sub-§ 3.E (allowing mitigation of the liability to pay severance if Chapter 11 bankruptcy protection is sought by the covered establishment), to evade all liability for payment of severance and accrued 2015 vacation time pay to Plaintiffs and all similarly situated terminated Bucksport Mill employees. Such an action would breach the November 25 and December 3, 2014 MOAs and, more importantly, violate the spirit, intent and letter of 26 M.R.S.A. § 625-B and 626.

Accordingly, it is critical that Plaintiffs attach sufficient property to secure all of the severance and vacation time pay required to satisfy Verso's liability to ***timely*** pay severance and vacation time pay, as well as all penalties, interest, costs and attorneys' fees mandated to be paid in 26 M.R.S.A. §§ 625-B, sub-§ 2 and 626.

Pursuant to 26 M.R.S.A. § 625-B, sub-§§ 4 and 9, in an action to enforce the requirement to timely pay severance pay, Defendants are liable not only for the *amount* of severance payments owed Plaintiffs, but the court "shall, in addition to any judgment awarded to the …plaintiffs, allow a reasonable attorney's fee to be paid by the defendant and costs of the action," as well as penalties "for which a fine of not more than $1,000 per violation may be adjudged." *Each*

[4] *See, e.g.* MIPA, Article I (Definitions), p. 4; Article 6 (Conditions to the Closing), pp. 46-47; Article 7 (The Closing), pp. 48-49.

employee affected constitutes a separate violation. Approximately 520 employees will lose their jobs at the Bucksport Mill by the end of December 2014 and are thus, owed severance pay and are affected employees within the meaning of these enforcement and penalty provisions.

Pursuant to 26 M.R.S.A. § 626, regarding the timely payment of final wages, including accrued vacation time:

> An employer found in violation of this section is liable for the amount of unpaid wages and, in addition, the judgment rendered in favor of the employee or employees much include a reasonable rate of interest, an additional amount equal to twice the amount of those wages as liquidated damages and costs of suit, including a reasonable attorney's fee.

On October 28, 2014, during effects bargaining, the Defendants' representatives posted a hand written chart on the wall of the Mill's conference room in which the Defendants' representatives and union representatives from all of the various employee groups were meeting. On that chart, Defendants' representative estimated the value of accrued 2015 vacation time at $3.1 million. In the final MOAs entered with all hourly wage employees, Verso agreed to pay all accrued 2015 vacation time pay, but refused to agree to pay those sums within the statutorily mandated time limits (i.e. by January 8 according to Dir. Megathlin's 12-10 Determination letter). Verso cites no authority to delay paying these final wages, even in any strained reading of the CBAs – Verso simply refuses to pay these sums within the time requirements in Maine law. Thus, in excess of $9.3 million is required to compensate the Plaintiffs, and all other similarly situated Bucksport employees, for the amount due them in vacation time, statutorily mandated liquidated damages, interest, costs and attorneys' fees, in the event that Verso refuses to timely pay them on or by January 8, for their accrued 2015 vacation time.

MEMORANDUM OF LAW

I. Applicable Legal Standards

This Court recently detailed the applicable legal standards for evaluating and granting a Motion for Attachment and Trustee's Process in *Tinkham v. Perry*, Docket No. 1:12-cv-00229-GZS, Memorandum of Decision on Counterclaim Plaintiff's Motion For Attachment And Trustee Process (January 9, 2014):

> In accordance with Rule 64 of the Federal Rules of Civil Procedure and Local Rule 64, the federal court will look to Maine law and procedure in adjudicating a motion for attachment or trustee process. The plaintiff must show that it is more likely than not that it will recover judgment, including interest and costs, in an amount equal to or greater than the aggregate sum of the attachment or trustee process plus any insurance, bond or other security, and any property or credits attached by other writ of attachment or by trustee process shown by the defendant to be available to satisfy the judgment. Me.R.Civ.P. 4A(c)(g), 4B(c)(i). A motion for attachment or trustee process must be accompanied by an affidavit or affidavits setting forth "specific facts sufficient to warrant the required findings and shall be upon the affiant's own knowledge, information or belief; and so far as upon information and belief, shall state that the affiant believes this information to be true." Me.R.Civ.P. 4A(i), 4B(c).
>
> In making the determination of whether the plaintiff is more likely than not to recover judgment in an amount equal to or greater than the amount of the attachment sought, the court should assess the merits of the complaint and the weight and credibility of the supporting affidavits. *Plourde v. Plourde*, 678 A.2d 1032, 1035 (Me. 1996). Maine trial courts are particularly unwilling to approve prejudgment attachments when the affidavits make clear that the merits of the dispute can only be resolved by a credibility assessment. *See, e.g., Parkinson v. Milan Indus., Inc.*, No. CV-01-300, 2001 Me. Super. LEXIS 101, 2001 WL 1708837 (Me. Super. Ct., Cum. Cty., Oct. 23, 2001) (Mills, J.)….

These requirements must be strictly complied with since the prejudgment attachment process is in derogation of the common law. *Anderson v. Kennebec River Pulp & Paper Co.*, 433 A.2d 752, 755 (Me. 1981), citing, *Englebrecht v. Development Corp.*, Me. 361 A.2d 908, 920-11 (1976).

In *Northeast Investment Co., Inc. v. Leisure Living Communities, Inc.*, Me., 351 A.2d 845 (1976), the Maine Supreme Judicial Court discussed the "likelihood of success" requirement in

M.R.Civ.P. 4A(c) in detail, and construed the requirement as "connoting a probability of success or a favorable chance of success." *Anderson v. Kennebec River Pulp & Paper Co.*, 433 A.2d at 755.

II. Prior Maine Precedent Supports Attachment In The Circumstances of this Case

Unfortunately, Verso Paper Corp. is not the first owner of a paper mill to try to deny severance pay and accrued vacation time pay owed to dedicated and skilled Maine paper makers and tradesmen who have devoted there lives and livelihoods to Maine's proud forest products industries. But while we are doomed to repeat the history we do not know, in the law, past episodes of greed and violations of the Maine statutes mandating the payment of severance pay, fortunately provide useful precedent to guide us in addressing today's manifestations of unbridled avarice.

In *Anderson v. Kennebec River Pulp & Paper Co.*, 433 A.2d 752, 753-754 (Me. 1981), the Maine Supreme Judicial Court was called upon to rule in an action with striking similarities to the case now evolving in Bucksport. As the Court recounted in relevant part to the *Anderson* case:

> On December 20, 1975, the Kennebec Paper Mill in Madison was closed. Penntech Papers, Inc., through its subsidiary T.P. Property Corporation, thereafter acquired all the outstanding stock of Kennebec River Pulp & Paper Co. The mill at Madison was then reopened by Kennebec, but was shut down permanently on March 29, 1977.
>
> The Plaintiffs, former salaried employees of Kennebec River Pulp & Paper Co., began suit on March 1, 1978, to recover diverse employment benefits guaranteed by Maine law. The Plaintiffs' complaint alleged, inter alia, that following the termination of their employment on or about March 29, 1977, the Defendants failed to provide them with *vacation pay due them, severance pay*, certain earned wages and a customary termination pay. The Defendants' answer denied the material allegations of the Plaintiffs' complaint and raised several affirmative defenses.
>
> On December 6, 1978, the Plaintiffs filed a motion for attachment, including attachment on trustee process, against the property of the corporate Defendants in the amount of $100,000. Accompanying this motion were nine supporting affidavits.

> A hearing on the motion for attachment was held in Superior Court, Somerset County, on October 23, 1979. The motion was granted on December 31, 1979, the court ordering attachment, including attachment on trustee process, in the amount of $100,000 against the Defendants' property. The Defendants seasonably appeal[ed] from this interlocutory order. (emphasis supplied)
>
> ***The Supreme Judicial Court denied the appeal and affirmed the order of attachment.***

Unlike the situation in the *Anderson v. Kennebec River Pulp & Paper Co.*, *supra*, the issue before the court here is merely one of law – not fact – and one of timing of the payment of severance and vacation time pay. Here, unlike *Anderson*, **Verso does not dispute the fact that it owes severance and vacation time pay** and **Verso does not dispute the *amount* of severance and vacation time pay that it owes**. Thus, there is no justification for Verso to oppose the imposition of an Attachment of assets sufficient to guarantee prompt and timely payment of all sums owed the Plaintiffs, and all other similarly situated Bucksport employees.

Further, the Affidavit of Richard Gilley is based on personal knowledge and, to the extent any portions of that affidavit are based on "information and belief," Mr. Gilley has expressly indicated that he believes such information to be true. Thus there are no technical issues for Verso to assert in opposing Attachment.

Accordingly, Attachment should be ordered as Plaintiffs have shown they are more than reasonably likely to recover judgment, including interest and costs, in an amount equal to or greater than the amount of the attachment requested; and this request is supported by an appropriate affidavit, free of technical defects.

Specifically, there is no dispute that Verso owes severance to the Bucksport Mill employees -- Verso acknowledges that it owes severance under both the terms of the various collective bargaining agreements (CBAs) with all of the various unions representing hourly wage employees and under a policy that covers salaried employees (Exhibit 1, Section 12). Verso also

reaffirmed this obligation to pay severance pay in two separate Memoranda of Agreement that Verso executed through Effects Bargaining. The first of these was entered with all unions except the IAMAW on November 25, 2014; the second MOA was entered on December 3, 2014. (Exhibits 2, 8 and 10).

Verso, more importantly does not dispute the *amount* of severance that Verso must pay to Bucksport Mill employees, and agrees that the amount of severance is to be calculated under the formula mandated in 26 M.R.S.A. § 625-B, sub-§§ 1.H and 2[5] and agrees that Verso must pay all terminated Bucksport employees an amount equal to or greater than the amount mandated by 26 M.R.S.A. § 625-B, sub-§ 2**.** (Exhibits: 1, Section 12.6; 2; 8; 10; and 11; *See also* October 1, 2014 8-K and November 13, 2014 10-K, cited in footnotes 1 and 2)

Verso has agreed that it owes all hourly wage employees, including the named Plaintiffs, payment for accrued 2015 vacation time pay. Although initially in Effects Bargaining Verso asserted that it did not owe Bucksport Mill employees for accrued 2015 vacation time pay under the express terms of the CBAs between Verso and all unions representing hourly wage employees at the Bucksport Mill, that dispute was resolved when Verso entered the two Memoranda of Agreement (MOAs), which together cover all hourly wage employees. Each MOA includes an express agreement by Verso to pay accrued 2015 vacation time. (Exhibit 8, § 10; and Exhibit 10, § 10) However, like severance, Verso states that it will not pay these final wages for three

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[5] 26 M.R.S.A. § 625-B, sub-§ 2 states in relevant part that:

> **2. Severance Pay.** Any employer who relocates of terminates a covered establishment shall be liable to his employees for severance pay at the rate of one week's pay for each year of employment by the employee in that establishment….

26 M.R.S.A. § 625-B, sub-§ 1.H defines "week's pay" to mean:

> …an amount equal to the employee's gross earnings during the 12 months previous to the date of termination or relocation as established by the director of the date of termination or layoff of the employee, should it occur earlier, divided by the number of weeks in which the employee worked during that period.

months. Although, unlike severance, Verso cites no authority – even in the CBA – for this 3-month delay in paying owed accrued vacation time pay.

Because no agreement could be reached on the timing of vacation time payments, both MOAs carved out the issue of the time within which those payments are due under Maine law, to be resolved by other means. See, e.g. November 25, 2014 MOA, §§ 10 and 13 (Exhibit 8); and December 3, 2014 MOA, §§ 10 and 12 (Exhibit 10); *see also*, Exhibit 1, Section 11.15(a). This lawsuit is the "other means" that Plaintiffs have determined is needed to resolve this dispute.

Plaintiffs assert that Verso has no legitimate or credible basis in law or fact, under either Maine statutory law or under the plain meaning of the controlling Collective Bargaining Agreements, to evade the unambiguous and unequivocal liability to pay severance and accrued 2015 vacation time to Plaintiffs and all other similarly situated Bucksport employees, within the time requirements in 26 M.R.S.A. §§ 625-B and 626.

Verso's Interpretation of 26 M.R.S.A. § 625-B, sub-§ 3.B is in Error

Verso has cited 26 M.R.S.A. § 625-B, sub-§ 3.B, and a misreading of the controlling CBA provisions. regarding the timing for paying severance, as the purported basis for its intended 3-month delay in paying severance and vacation time pay. However, this provision of Maine's severance pay statute was amended in 2003, expressly to prevent and prohibit the very type of evasion of the requirement to pay severance that Verso now attempts.

In 2003, the language in 26 M.R.S.A. § 625-B, sub-§ 3.B was amended in response to an effort by the owners of the Great Northern Paper Company to evade the requirement to pay its workers the severance pay mandated by law, by asserting a future promise to pay under the terms of an existing collective bargaining agreement. During the second special session of the 121st Legislature, this provision was amended to "clarify" its meaning. The Legislative History of Committee Amendment "A" to H.P. 1255, L.D. 1733, states as follows:

> **'An Act To Clarify the Severance Pay Law'**
>
> Further amend the bill by striking out everything after the enacting clause and before the concept draft summary and inserting in its place the following:
>
> '**Sec. 1. 26** MRSA **§625-B, sub-§3, 1IB,** as amended by PL 1999, c. 55, §l, is further amended to read:
>
> B. The employee is covered by, and has been paid under the terms of, an express contract providing for severance pay that is equal to or greater than the severance pay required by this section:
>
> **Sec. 2. Application.** This Act applies to all claims for severance pay that have not been paid, adjudicated or finally resolved and those pending on the date of enactment.
>
> **SUMMARY**
>
> *This amendment more clearly expresses the intent of the Legislature that severance pay liability imposed by state law is mitigated as a result of a contract providing for severance pay* ***only if the contractual severance pay has actually been paid*** *pursuant to the terms of the contract.* The amendment applies to all claims for severance pay that have not been paid, adjudicated or finally resolved and to those claims that are pending on the date of enactment, including, but not limited to, claims by the former employees of Great Northern Paper Company.

(Underlining was in original text to indicate the language added by the amendment; bold-italics have been added here for emphasis of the salient statements of intent). (Legislative History provided as Exhibit 13).

Verso relies on Section 12.2 of the Severance Pay Section of the current CBAs with the hourly wage employees, as the justification of delaying the payment of severance for 3-months. Section 12.2 states that severance payments will be made in three (3) months after the date of layoff. (See Section 12 in Exhibit 1). Verso argues that, as long as Verso promises to pay severance in three months they have mitigated their liability under 26 M.R.S.A. § 625-B, because they will pay "under the terms of" Section 12.2 of the CBA.

This theory ignores both the plain meaning of the words of the statute, as amended in 2003, and the plain meaning of the collective bargaining agreement *when read in its entirety*.

First, Verso is attempting to ignore the legislative intent in the 2003 amendment in choosing to use the past tense "*has been* paid" as opposed to "*will* be paid." The deliberate nature of this choice is confirmed in the clear statements of legislative intent and context of the enactment of the 2003 amendment stated in the Summary that is contained in the Legislative History – including the retroactive application of this language to address a problem on-going at that time with Great Northern Paper Company. The Legislature has limited the mitigation of liability to only those situations in which the employee "has ***actually*** been paid."

If the Legislature intended for a promise to pay severance, *in the future,* under the express terms of a contract between and employer and its employees to satisfy this mitigation requirement, there would have been no need for the Legislature to amend the statute in 2003, because the original wording of 26 M.R.S.A. § 625-B, sub-§ 3.B already would have allowed an employer to evade timely paying severance simply by having a contract covering severance pay. Indeed it was Great Northern Paper Company's attempt to use precisely the construction of the original wording of this provision, that Verso now advocates, that resulted in the amendment in 2003. However, even when presented with this legislative history, Verso and their counsel have refused to agree to pay severance within the time period mandated by Maine law.

The interpretation of 26 M.R.S.A. § 625-B, sub-§ 3.B for which Verso advocates would nullify the 2003 amendment and give it no meaning at all. Such a result is contrary to every tenet of statutory construction and the express statement of intent made at the time of the Legislature enacting this amendment in the Legislative history for this amendment. The First Circuit summarized the applicable standards for statutory construction as follows, in *Arnold v. United Parcel Service, Inc.*, 136 F.3d 854, 857-858 (1st Cir. 1998):

> The "starting point for interpretation of a statute 'is the language of the statute itself.' " *Kaiser Aluminum & Chem, Corp. v. Bonjorno,* 494 U.S. 827, 835, 110 S.Ct. 1570, 1575-76, 108 L.Ed.2d 842 (1990) (quoting *Consumer Prod. Safety*

> *Comm'n v. GTE Sylvania, Inc.,* 447 U.S. 102, 108, 100 S.Ct. 2051, 2056, 64 L.Ed.2d 766 (1980)); *see Telematics Int'l, Inc. v. NEMLC Leasing Corp.,* 967 F.2d 703, 706 (1st Cir. 1992). If the language of a statute "is plain and admits of no more than one meaning" and "if the law is within the constitutional authority of the law-making body which passed it," then "the duty of interpretation does not arise" and "the sole function of the courts is to enforce the statute according to its terms." *Caminetti v. United States*, 242 U.S. 470, 485, 37 S.Ct. 192, 194, 61 L.Ed2d 442 (1917); *see also Chevron USA Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837, 842-43, 104 S.Ct. 2778, 2781, 81 L.Ed.2d 694 (1984). The plain meaning of a statute's text must be given effect "unless it would produce an absurd result or one manifestly at odds with the statute's intended effect." *Parisi by Cooney v. Chater*, 69 F.3d 614, 617 (1st Cir. 1995). Of course, we focus on "the plain meaning of the whole statute, not of isolated sentences." *Beecham v. United States*, 511 U.S. 368, 372, 114 S.Ct 1669, 1671, 128 L.Ed.2d 383 (1994), and we interpret the statute's words " 'in light of the purposes Congress sought to serve,' " *Dickerson v. New Banner Inst., Inc.*, 460 U.S. 103, 118, 103 S.Ct. 986, 995, 74 L.Ed.2d 845 (1983) (quoting *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 608, 99 S.Ct. 1905, 1911, 60 L.Ed.2d 508 (1979)).
>
> …[W]e need not look into a statute's legislative history if the statutory language is plain, *see Summit Inv. & Dev. Corp. v. Leroux*, 69 F.3d 608, 610 (1st Cir. 1995) ("Plain statutory language does not prompt recourse to countervailing legislative history."), at least in the absence of a "clearly expressed legislative intent to the contrary," *Dickerson*, 460 U.S. at 110, 103 S.Ct. at 990 (internal quotation marks and citation omitted); *United States v. Caron*, 77 F.3d 1, 4 (1st Cir. 1996). If the text is not unambiguously clear, however, we are obliged to turn to other sources to discern the legislature's meaning. One important source, of course, is the legislative history. If that history reveals an unequivocal answer, we do not look to the interpretation that may be given to the statute by the agency charged with its enforcement. *Strickland v. Commissioner, Maine Dep't of Human Servs.,* 48 F.3d 12, 17 (1st Cir. 1995) (applying the test of *Chevron*, 467 U.S. at 843-44, 104 S.Ct. at 2781-83.

Accordingly, Verso's interpretation must be rejected and Plaintiffs have more than a reasonable likelihood of recovering judgment. Here, the plain meaning of 26 M.R.S.A. § 625-B, sub-§ 3.B is unambiguous and confirmed by the legislative history. As explained to Verso by Director Megathlin in her December 10, 2014 Determination Letter:

> As we have previously explained, based on the current collective bargaining agreement, Verso may not mitigate its liability for severance pursuant to 26 M.R.S. § 625-B(3)(B) unless the severance pay has actually been paid. Verso may not mitigate its liability for severance pursuant to 26 M.R.S. § 625-B(3)(B) by agreement to pay the amount of severance under the law but paying it at a date later than one regular pay period after the last full day of work.

(Exhibit 27).

The Express Terms of the CBAs Require Verso to Pay Severance Within the Time requirements in 26 M.R.S.A. § 625-B, sub-§ 2

The severance payment timing provision in Section 12.2 of the CBA, allegedly permitting Verso to delay the payment of severance for three (3) months under Verso's interpretation of the CBAs, is actually superseded by the timing requirements in 26 M.R.S.A. § 625-B, sub-§ 2, pursuant to Section 29 (Contravention) of the CBA. Section 29 provides in relevant part that:

> 29.1 If any provision or section of this Agreement is in contravention of the laws or regulations of the United States or of the State in which the mill covered by this Agreement is located, such provisions shall be superseded by the appropriate provisions of such law or regulations, so long as same is in force and effect, but all other provisions of the Agreement shall continue in full force and effect.

(Exhibit 21, Section 29, p. 23.

Accordingly, Verso's assertion that there is a valid provision in the CBAs entitling it to evade or mitigate its liability under 26 M.R.S.A. § 625-B, sub-§ 2, is false. The express terms of the CBAs require that the time provisions in Section 12.2 be *superseded* by the time requirements in 26 M.R.S.A. § 625-B, sub-§ 2. Thus, Verso is bound, *even under the terms of the CBA*, by the State law's requirement to pay severance within one regular pay period after the employee's last day of work – here the Director of the Bureau of Labor Standards has determined that all terminated Bucksport employees will have their "last day of work" on December 31, 2014, and that Verso is mandated to pay all severance pay due under Maine law by or on January 8, 2014. Accordingly, Verso has both a statutory and contractual obligation to pay severance and accrued 2015 vacation time by January 8, 2015.

For the foregoing reasons and based on the authorities cited herein, Plaintiff move for an Attachment in the amount of $45 million, as calculated below.

SUMMARY OF AMOUNT OF VERSO'S OBLIGATIONS TO PLAINTIFFS, AND ALL SIMILARLY SITUATED BUCKSPORT MILL EMPLOYEES FOR WHICH ATTACHMENT IS SOUGHT AND REQUIRED

- **Severance Pay $35.5 Million:** Verso has valued the amount of its severance obligation at $30 to $35 million in the October 1, 2014 8-K and November 13, 2014 10-K, that Verso filed with the S.E.C. Pursuant to 26 M.R.S.A. §625-B, sub-§ 4, the court "shall", in addition to any judgment awarded to the plaintiffs, allow a reasonable attorney's fee to be paid by the defendants and costs of the action. Further, pursuant to 26 M.R.S.A. § 625-B, sub-§ 9, a person that violates 26 M.R.S.A. § 625-B, sub-§ 2, which includes the obligation to timely pay severance "within one regular pay period after the employee's last full day of work," commits a civil violation for which a fine of not more than $1,000 per violation may be adjudged. Each of the terminated Bucksport Mill employees affected constitute a "separate violation" under this provision – and there will be more than 520 affected Bucksport employees.

- **2015 Vacation Time Pay $9.5 Million**: During the October 28, 2014 Effects Bargaining session, Verso representatives posted a hand-written chart on the wall which indicated that paying all hourly wage Bucksport employees their accrued 2015 vacation time pay would be $3.1 Million (a picture of which is attached to Plaintiff Gilley's Affidavit that is incorporated herein). Pursuant to 26 M.R.S.A. § 626, an employer found in violation of this section is liable for the *amount of unpaid wages* (here $3.1 million by Verso's estimate) and, *in addition*, the judgment entered in favor of employees for unpaid wages, including accrued vacation time, *must include* a reasonable rate of *interest*, an additional amount equal to *twice the amount of those wages as liquidated damages* and *costs of suit, including a reasonable attorney's fee.*

Dated this *15th* Day of December, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of December, 2014, a true and correct copy of the foregoing was served upon the following individuals electronically by the CM/ECF system:

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Signed: /s/ *Kimberly J. Ervin Tucker*

I further hereby certify that on the 15th day of December, 2014, a true and correct copy of the foregoing was served upon the following individuals on behalf of AIM Development (USA) LLC electronically by direct email at the emails listed for contact on the December 5, 2014 MIPA.

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