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 *EXPEDITED* DECLARATORY JUDGMENT AND REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTION

Pursuant to Fed.R.Civ.P. 57 and 28 U.S.C. § 2201, the Plaintiffs seek judgment from this Court, on their behalf and on behalf of all similarly situated employees of the Bucksport Mill, salaried and hourly wage, declaring their right to timely payment of severance pay and final wages, including accrued 2015 vacation time pay, from Verso Paper Corp., pursuant to the time frames for such payments established by and mandated in 26 M.R.S.A. §§ 625-B and 626.

Pursuant to Fed.R.Civ.P. 65 and 28 U.S.C. § 2202, the Plaintiffs seek entry of an injunction from this Court, on their behalf and on behalf of all similarly situated employees of the Bucksport Mill, salaried and hourly wage, enjoining Verso and enforcing the rights if all terminated Bucksport employees to ***timely*** payment of severance pay and final wages, including accrued 2015 vacation time pay, from Verso Paper Corp., ***by January 8, 2015***, pursuant to the time frames for such payments established in and mandated by 26 M.R.S.A. §§ 625-B and 626. Further, Plaintiffs seeks appropriate orders to enforce the time requirements, liquidated damage provisions, penalties and other reimbursements established in and mandated by these same Maine laws.

Review and resolution of a matter by this Court through the mechanism of a declaratory judgment action and imposition of injunctive relief is discretionary. However, as discussed more fully in the Memorandum of Law incorporated in this Motion, this case presents precisely the type of dispute that a declaratory judgment action is designed to redress. Declaratory and Injunctive Relief, declaring the right to and compelling the timely payment of severance and accrued 2015 vacation time pay, is appropriate because this action presents:

(1) an actual controversy;

(2) within the diversity jurisdiction of the Court, conferring subject-matter jurisdiction in the federal court; and

(3) the named plaintiffs, a union representing employees in the Maintenance Department of the Buckport paper mill, and individual employees who are owed timely payments for severance pay and accrued 2015 vacation time from Verso, have express standing to bring this action, pursuant to 26 M.R.S.A. §§ 625-B, sub-§ 4 and 626, on their own behalf and on behalf of all similarly situated employees.

Further, this case is about the irreparable harm that can and will result from the Verso Defendants' refusal to ***timely*** pay severance and accrued 2015 vacation time pay owed to the Bucksport employees who are losing their jobs as a result of Verso's decision to close the

Bucksport Mill, rather than selling the Mill for a reasonable price to a buyer willing and capable of continuing to operate it as a going concern. Express provisions of Maine law, in 26 M.R.S.A. §§ 625-B and 626 require the severance payments due the Bucksport Mill employees to be paid within the next regular pay period after each employee's last full day of work.

On November 25 and December 10, 2014, Pamela Megathlin, Director of the Maine Bureau of Labor Standards, issued Determination Letters declaring that ***December 31, 2014 will be the last full day of work for all Bucksport employees*** losing their jobs as a consequence of Verso's decision to close the Bucksport Mill. Director Megathlin also declared that Verso is liable to pay all terminated Bucksport employees severance pay, in an amount equal to or greater than required by 26 M.R.S.A. § 625-B, sub-§ 2, ***on or by January 8, 2015*** – the next regularly scheduled pay period after December 31, 2014. (Exhibits 9 and 27). This determination should resolve this matter – but it has not.

After the December 10, 2014 Determination Letter was issued to Verso, Plaintiffs inquired whether Verso had changed its position with respect to the time for payment of severance. On the evening of December 12, 2014, Verso's Bucksport Human Resources Direct responded and advised that: "Verso's position on timing of severance pay and the payment required by Section 10 (2015 Vacation) of the MOA has not changed, but we continue to evaluate circumstances as they arise." (Exhibit 18).

Here:

- The legal obligation to pay severance is unambiguous in Maine law;
- The time frame within which the obligation to pay severance must be performed is well known to Verso — severance and vacation time pay shall be paid by or on January 8, 2015; and
- Verso's intent to violate its legal obligation under Maine law, by refusing to timely pay severance and vacation pay, has been unequivocally stated by Verso's leadership and legal counsel on numerous occasions — only the reasons they give for refusing have changed

depending upon who they speak with.

In sum:

- The Maine law requiring the payment of severance within the next regular pay period after an individual employee's last day of work is unambiguous;
- The Bucksport employees' right to severance pay and accrued 2015 vacation pay on or before January 8 is undeniable;
- The threat that these rights will be violated by Verso is real, imminent and undebatable;
- The harm that Bucksport employees will suffer is substantial, irreparable and unquestionable;
- The risk that Verso will declare bankruptcy of its Bucksport Mill subsidiary after a merger with NewPage is complete — denying Bucksport employees the ability to recover their severance under Maine law is significant and irrefutable; and
- The need for immediate court action, through a declaration and injunction to prevent this violation of law is indisputable and in the interest of justice.

MEMORANDUM OF LAW

Regrettably Verso Paper Corp. is not the first owner of a paper mill to try to take advantage of Maine's dedicated and skilled paper makers and tradesmen who have devoted their lives and livelihoods to Maine's proud forest products industries.

Indeed, 26 M.R.S.A. § 625-B, sub-§ 3.B, the very provision of Maine's severance pay statute that Verso and its lawyers have either misread or misrepresented in advancing their assertion that they are not bound by the time requirements in 26 M.R.S.A. § 625-B, sub-§ 2, was amended in 2003 because the owners of the Great Northern Paper Company attempted to evade the requirement to pay its workers the severance pay mandated by law, by hiding behind severance provisions in a contract with its workers.

During the second special session of the 121st Legislature, this provision was amended to "clarify" the Legislature's intent with regard to timely payment of severance and the circumstances under which the liability for such payments can be mitigated by payment under the

terms of an express contract (including a collective bargaining agreement). 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 in original to indicate the language added by the amendment; bold italics added for emphasis).

Verso argues that, under its interpretation of the Collective Bargaining Agreements with all of the hourly wage employees, Section 12.2 (or 13.2) of the Severance Pay Section envisions payments being made in three (3) months, as long as Verso promises to pay severance in three months they have mitigated their liability under the contract. This ignores the plain meaning of the words of the statute, and the express use of the past tense "has been paid" (as opposed to "will be paid"), as well as the clear statements of legislative intent and context of the enactment of the 2003 amendment – including the retroactive application of this language to address a problem on-going at that time with Great Northern Paper Company.

If the Legislature intended for a promise to pay severance in the future under the express terms of a contract to satisfy the 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 seemingly allowed an employer to evade timely paying severance with that argument -- 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 that Verso advocates for 26 M.R.S.A. § 625-B, sub-§ 3.B would nullify the 2003 amendment and give it no meaning. Such a result is contrary to every tenet of statutory construction. See, *Arnold v. United Parcel Service, Inc.*, 136 F.3d 854, 857-858 (1st Cir. 1998) (citations omitted).

Indeed, even under the express provisions of the controlling collective bargaining agreements, Verso is required to pay Plaintiffs, and all similarly situated Bucksport employees, severance and accrued 2015 vacation time pay by January 8, 2015. This is the case because 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 CBAs*, 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.

Undisputed Facts:
There Is No Genuine Issue of Fact in Dispute

The only issue in dispute between the parties in the time within which the Verso Defendants are required to make payments of severance and accrued 2015 vacation time pay to the Bucksport Mill employees. *However, this is an issue of law NOT fact.*

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 (See Exhibit 1). Verso also reaffirmed this obligation in a Memorandum of Agreement (MOA) that it executed through Effects Bargaining with all unions except the IAMAW on November 25, 2014 (Exhibit 8) and another MOA entered with Plaintiffs on December 3, 2014 (Exhibit 10). Further, Verso acknowledged that it owes $30 to $35 million in severance in 2014 and 2015, as a result of the closure of the Bucksport Mill, 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

There is no dispute that the amount of severance that Verso must pay to Bucksport Mill employees is to be calculated under the formula mandated in 26 M.R.S.A. § 625-B, sub-§§ 1.H and 2[3] and must be in an amount equal to or greater than the amount mandated by 26 M.R.S.A. § 625-B, sub-§ 2.

There is no dispute that Verso owes all hourly wage employees, including the named Plaintiffs, payment for accrued 2015 vacation time pay. Although the Verso Defendants asserted that they 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 two Memoranda of Agreement (MOAs), which together cover all hourly wage employees, that both include an express agreement by Verso to pay accrued 2015 vacation time, but which both carve out the issue of the time within which those payments are due under main 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).

Plaintiffs, representatives of other similarly situated Bucksport employees, and the highest ranking government officials in the State of Maine have all attempted to resolve the dispute over

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

[3] 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.

the legal question of Verso's liability to timely pay severance and accrued vacation time pay to Bucksport employees who will lose their jobs as a consequence of the Verso Defendants' decision to close – not sell – the Bucksport Mill. (Exhibits 3; 5; 8; 9; 10; 18; 26; and 27) However, despite all efforts to resolve this issue and get Verso to acknowledge the unequivocal and unambiguous mandates in Maine law to pay severance pay and accrued 2015 vacation time pay within one regular pay period after each employee's last full day of work, Verso still refuses to acknowledge nor comply with this obligation. (Exhibits 2; 4; 8; 10; and 18).

Accordingly, only through litigation to enforce and compel compliance with the mandates of Maine law can the Plaintiffs obtain the severance pay and accrued vacation time pay that they will need to sustain them until they can obtain new employment.

The Maine Department of Labor, through Maine Director of Labor Standards Pamela Megathlin, has advised Verso's leadership and legal counsel, that Verso is obligated to pay severance pursuant to 26 M.R.S.A. § 625-B, by January 8, 2015 for those employees whose last full day of work will be December 31, 2014. (See, Exhibits 9 and 27). According to the Director's November 25, 2014 Determination letter, December 31, 2014, will be the "last full day of work" for most of the approximately 526 Bucksport employees who are losing their jobs at the Bucksport Mill. *Id.*

Despite the Department of Labor's unequivocal and definitive declaration that Verso has a statutory obligation to pay severance to all employees losing their job at the Bucksport Mill on December 31, 2014, by January 8, 2015 (or earlier), Verso has repeatedly told the Plaintiffs and officials for the State of Maine that they will not pay severance until three months after December 31, 2014 – ***on April Fool's Day, 2015***. As of the evening of December 12, 2014, this remains Verso's position. (Exhibit 18).

However, without ***timely*** payment of the severance pay and accrued vacation pay that Verso acknowledges they owe under Maine law – on or before January 8, 2015 -- the Bucksport Mill employees will suffer significant and irreparable harm, including:

- Insufficient resources to pay for their living expenses, including heat and food this winter;
- Insufficient resources to enroll in the Affordable Care Act in 2015, prior to the February 15 open enrollment deadline, and will therefore be denied the ability to obtain heath care through the ACA for the remainder of 2015, until the next open enrollment period – because in order to enroll by February 15, a person must have the funds to pay for March ACA premiums on or before February 15, 2015;
- Insufficient resources to pay for COBRA health care benefits for at least March and April, 2015.

Declaratory Judgment Is The Appropriate Mechanism for Resolving This Dispute and Declaring Terminated Bucksport Employees' Rights

In the federal courts, a declaratory-judgment remedy is authorized under 28 U.S.C. §2201(a), which reads in pertinent part:

> In a case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Thus, 28 U.S.C. §2201, sets out three requirements for declaratory relief, including: (1) an "actual controversy;" (2) "within its jurisdiction" (subject-matter jurisdiction in the federal court); and (3) an "interested party" (parties with standing).

Federal Rule of Civil Procedure 57 also speaks to the declaratory judgment remedy:

> These rules govern the procedure for obtaining a declaratory judgment under 28 U.S.C. §2201, Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment action.

"Declaratory judgment actions, being statutory creatures, are neither inherently legal nor inherently equitable." *El Dia. Inc. v. Hernandez Colon,* 963 F.2d 488, 493 1st Cir. 1992).

Recently, the United States District Court for the District of Massachusetts described the standard of review for a Motion for Declaratory Judgment under Rule 57, as follows:

> Looking to the basic nature of the plaintiffs' case and the manner in which the issues would likely have arisen if the Declaratory Judgment Act had been stillborn," the Court may apply the "traditional principles of equity jurisprudence" if the relief sought is "equitable in nature." *Id.* "Especially when matters of great public moment are involved, declaratory judgments should not be pronounced unless the need is clear, not remote or speculative." *Id.* at 494 (citations and quotations omitted)…
>
> [Where]…the Plaintiffs are asking the Court to provide declaratory relief as a matter of law, the Court may treat the motion for declaratory judgment as one for summary judgment on these issues. *Riva v. Ashland, Inc.*, No. 09-cv-12074-DJC, 2013 WL 1222393, at *9 (D.Mass. Mar. 26, 2013); *Jenkins Starr, LLC v. Cont'l Ins. Co., Inc.*, 601 F.Supp.2d 344, 346 (D.Mass. 2009). "Therefore, the burden is upon [the Plaintiffs] to show that there is no genuine dispute as to any material fact and that [they are] entitled to judgment as a matter of law." *Riva,* 2013 WL 1222393, at *9 (citing Fed.R.Civ.P. 56(a).

Delaware County Employees Retirement Fund v. Portnoy, Slip Copy, 2014 WL 1271528, *4 (D.Mass. 2014).

Controversies involving the interpretation of statutes may be settled under the declaratory judgment law, but those controversies must include rights claimed by one of the parties and denied by the other, and not be merely as to the meaning of the statute. *Williams v. Flood*, 124 Kan. 728, 262 Pac. 563, 564 (Kan. 1928).

While declaratory judgment should not be granted in speculative situations, a litigant does not have to await consummation of threatened injury to obtain preventive relief; if an injury is certainly impending, that is enough. *State of R.I. v. Narragansett Indian Tribe,* 19 F.3d 685, 693 (1st Cir. 1994), quoting *Pacific Gas & Elec. Co. v. State Energy Resources Conserv. & Dev't Comm'n,* 461 U.S. 190, 201, 103 S.Ct. 1713, 1720, 75 L.Ed.2d 752 (1983).

Likelihood Of Success On The Merits

1. There is no dispute, even by Verso, that 26 M.R.S.A. § 625-B, sub-§ 2, requires Verso, as the statutorily defined employer, to pay the terminated Bucksport employees severance pay in an amount equal to or greater than the amount required in the formula in 26 M.R.S.A. § 625-B, sub-§ 2. Specifically, 26 M.R.S.A. §625-B, sub-§ 2 mandates in relevant part as follows:

> **2. Severance pay.** Any employer who relocates or 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***. The severance pay to eligible employees shall be in addition to any final wage payment to the employee and ***shall be paid within one regular pay period after the employee's last full day of work,*** notwithstanding any other provisions of law.

(emphasis supplied).

As stated by the Director of the Maine Bureau of Labor Standards, the official charged with enforcing the State's rights under 26 M.R.S.A. § 625-B:

> This is also to reiterate, as we have previously indicated to you and your attorney, that severance payments will be due within one regular pay period after December 31, 2014, which we understand to by January 8, 2015. Any further delay of severance payment by Verso to their workers will be viewed as a violation of the law and will subject Verso, Apollo Global Management, LLC and potentially any other major shareholders to an enforcement action for full legal remedies authorized by law. The pending sale of Verso does not mitigate its liability nor that of Apollo Global Management, LLC for severance pursuant to 26 M.R.S. § 625-B(2).
>
> 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). Thus, under the plain mandates in Maine law, as interpreted by the Director of the Maine Bureau of Labor Standards, Plaintiffs have a substantial likelihood of success on the merits for all severance pay claims in this action for declaratory and injunctive relief and, as discussed

previously, Verso is also contractually obligated to pay severance within the time requirements in 26 M.R.S.A. § 625-B, sub-§ 2, pursuant to the Contravention provision (Section 29) in the CBAs which mandate that the statutory provision supersedes any provision in the CBA that is in contravention of state or federal law and regulations. Thus, Plaintiffs have a substantial likelihood of success under either a statutory or contractual analysis of Verso's liability for severance.

Similarly, Plaintiffs have a substantial likelihood of success on all claims for timely payment of accrued 2015 vacation time. Verso has agreed to pay 2015 vacation time in the MOAs entered with all Bucksport hourly wage employees and 26 M.R.S.A. § 626 mandates such sums be paid, under the circumstances of this case on January 8, 2015.

Verso has not statutory or contractual basis for delaying or denying these payments be paid on or by January 8, 2015.

Lack of adequate remedy at law

Plaintiffs do not have an adequate remedy at law. Recovery of a delayed payment later will not prevent Plaintiffs and all similarly situated employees from suffering unbearable, unnecessary and in many cases irreparable harm now. Indeed, delay could lead to the loss of the ability to obtain the statutorily mandated amounts of severance and accrued 2015 vacation pay, altogether in light of the language Verso has included in Section 3.10 of the December 5, 2014 MIPA with AIM Development (USA) LLC for the sale and transfer of the Bucksport Mill to this established scrapper.

Verso has audaciously structured a deal with AIM, executed after Verso had received the November 25, 2014 Determination letter from Director Megathlin clarifying its liability to pay severance on or by January 8, 2015 (Exhibit 9), in which not only does Verso get their cake and

eat it too, but they also would get paid $58 million by AIM Development (USA) LLC to take and eat the Bucksport Mill employees' statutorily guaranteed $30-$35 million piece of cake as well.

Under Verso's avaricious scheme, Verso *gets its cake* by becoming the dominant player in the coated paper market through a merger with NewPage. Verso would then get to *eat its cake* by benefiting financially from the anticompetitive benefits to be achieved from the reduction of capacity derived from closing the Bucksport Mill as ending its production of paper in the coated paper market that the Verso-NewPage entity will dominate post merger. But now, under Section 3.10 of the MIPA, Verso has revealed that it also intends to get paid $58 million by scrapper AIM to *eat the Bucksport Mill employees' $30 to $35 million slice of severance cake* -- structuring a deal with scrapper AIM Development that will both further Verso's scheme of *permanently* eliminating the Bucksport Mill's paper-making capacity, while simultaneously attempting to shift Verso Paper Corp.'s statutory obligation to pay Bucksport's employees $30 - $35 million in severance payments to Verso's Bucksport subsidiary as a part of the $58 million sale transaction with AIM.

As a result of this alleged shift of the severance obligation to Verso Bucksport, Verso Paper Corp. asserts that it, and successor AIM, would be relieved of all liability for severance payments under Maine law by contractually transferring this obligation to a subsidiary that will have no assets remaining to pay this obligation. Indeed, through this artifice, Verso presumably intends to nullify the severance obligation altogether by transferring this liability to Verso's asset-less Bucksport subsidiary which could then declare bankruptcy under Chapter 11 – invoking the severance liability mitigation provision in 26 M.R.S.A. § 625-B, sub-§ 3.E to eliminate the State and Plaintiffs' ability to recover the severance payments to which they are now entitled by law.

As noted in *Roland Machinery Co. v. Dresser Industries, Inc.*, 749 F.2d 380, 386 (7th Cir. 1984):

> The absence of an adequate remedy at law is a precondition to any form of equitable relief. The requirement of irreparable harm is needed to take care of the case where although the ultimate relief that the plaintiff is seeking is equitable, implying that he has no adequate remedy at law, he can easily wait till the end of trial to get that relief….
>
> Only if he will suffer irreparable harm in the interim—that is, harm that cannot be prevented or fully rectified by the final judgment after trial—can he get a preliminary injunction. Where the only remedy sought at trial is damages, the two requirements—irreparable harm, and no adequate remedy at law—merge. The question is then whether the plaintiff will be made whole if he prevails on the merits and is awarded damages.
>
> 2. In saying that the plaintiff must show that an award of damages at the end of trial will be inadequate, we do not mean wholly ineffectual; we mean seriously deficient as a remedy for the harm suffered. See *Semmes Motors, Inc. v. Ford Motor Co.*, 429 F.2d 1197, 1205 (2d Cir. 1970) (Friendly, J.); 11 Wright & Miller, *supra*, § 2944, at p. 396. A damages remedy can be inadequate for any of four reasons:
>
> (a) The damage award may come too late to save the plaintiff's business. He may go broke while waiting, or may have to shut down his business but without declaring bankruptcy. Of course, even if the plaintiff declares bankruptcy, his trustee in bankruptcy can get a damage award; but probably it will not cover all the losses incident to the bankruptcy. The award may be inadequate even if the plaintiff leaves the business without becoming insolvent. As Judge Friendly noted in a case involving the termination of an automobile dealer, "the right to continue a business in which William Semmes had engaged for twenty years and into which his son had recently entered is not measurable entirely in monetary terms; the Semmes want to sell automobiles, not to live on the income from a damages award." *Semmes Motors, Inc. v. Ford Motor Co.*, 429 F.2d at 1205.
>
> (b) The plaintiff may not be able to finance his lawsuit against the defendant without the revenues from his business that the defendant is threatening to destroy. But in an age of contingent-fee contracts this will rarely be a decisive consideration.
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> (c) Damages may be unobtainable from the defendant because he may become insolvent before a final judgment can be entered and collected. See discussion in

Signode Corp. v. Weld-Loc Systems, Inc., 700 F.2d 1108, 111 (7th Cir. 1983).

> (d) The nature of the plaintiff's loss may make damages very difficult to calculate. Consider a loss, but not a crippling loss (that would be case (a)), of business profits. In principle, any profits lost by Roland as a result of being terminated for breach of an implied exclusive-dealing contract can be monetized, and awarded as damages; but in practice it may be very difficult to distinguish the effect of the termination from the effect of other things happening at the same time, and to project that effect into the distant future. On the difficulties encountered in trying to calculate damages for lost profits, see, e.g., *Taylor v. Meirick*, 712 F.2d 1112, 1119-22 (7th Cir. 1983); *Hayes v. Solomon*, 597 F.2d 958, 976-77 (5th Cir. 1979); Note, *Private Treble Damage Antitrust Suits: Measure of Damages for Destruction of All of Part of a Business*, 80 Harv.L.Rev. 1566, 1577-86 (1967).

Here, the losses are more *human* than the losses contemplated by the courts in *Semmes Motors*, 429 F.2d at 1205, or *Roland Machinery*, 749 F.2d at 386. Yet, just as in those cases, monetary damages received later, if recovered or recoverable, will not be adequate to compensate the Plaintiffs for the irreparable harms that they will endure in the interim if they are denied the ***timely*** payment of severance and accrued 2015 vacation time required by Maine law. Analyzed using the *Semmes Motors* and *Roland Machinery* criteria:

(a) *The damage award for untimely severance payments may come too late* to save the plaintiffs' homes, vehicles, access to health care and health care insurance, and access to schooling, heat, fuel and food this winter. Verso's suggestion that Bucksport employees should endure a Maine winter with no resources to sustain them, while Verso pursues its $1.4 *billion* acquisition – because Verso asserts that the Collective Bargaining Agreement would permit Verso to make employees wait until April Fool's Day for any compensation -- is unconscionable and shameful. As in *Semmes Motors*, some of the Plaintiffs, or similarly situated Bucksport employees, may go broke while waiting for their severance pay and accrued 2015 vacation time pay – some Bucksport employees may even be forced to declare bankruptcy. All avoidable consequences if Maine law is enforced.

(b) The plaintiffs should not be forced to finance this lawsuit against the defendants merely to enforce rights guaranteed by Maine law that Defendants are simply refusing to comply with without any legitimate basis for such a refusal to pay without any legitimate, good faith legal basis to do so, under the controlling statutes, MOAs or CBAs.

(c) *Damages may be unobtainable from Verso because the Bucksport LLC that operates the covered establishment of the Bucksport Mill may become declare insolvency before a final judgment can be entered and collected*. This is the greatest threat that exists in this case, and a strong motivation Plaintiffs fear for Verso's refusal to comply with Maine law and for including Section 3.10 in the MIPA Verso entered with AIM. Indeed, Verso's leadership have represented to some Maine officials and representatives from other unions that they currently lack the funds to pay severance to the Bucksport employees. However, if Verso has the funds for a $1.4 billion acquisition of NewPage, they must have the funds to pay the liabilities owed to the State of Maine and the Bucksport employees.

(d) The nature of the plaintiff's loss may make damages very difficult to calculate. Each Bucksport employee will suffer different and unique harms if the Maine laws on timely payment of severance and accrued vacation time are not enforced and these funds are not received on or by January 8, 2015. Thus, there is no justification for allowing Verso to deny any Bucksport employee timely payment of severance and accrued vacation time, as required by Maine law.

Likelihood Of Irreparable Harm

In addition to the emotional and economic turmoil this has and will continue to cause individual employees and their families, this will:

- Defeat the Legislative Intent behind 26 M.R.S.A. §§ 625-B and 626;
- Deny Bucksport employees the ability and resources to obtain health insurance from March 1 on, under either COBRA or the Affordable Care Act (ACA); and
- Deny Bucksport employees and their families the resources to obtain 2015 coverage under the ACA from March 1, 2015 on, prior to the February 15, 2015 deadline for enrollment in this program.

Allowing any employer to flout its obligations under the unequivocal mandates of 26 M.R.S.A. §§ 625-B and 626 is contrary to the public's interest.

In so doing, employers will be incentivized to shift the burden of support for and assistance to employees and their families to the State – rather than providing the employees the benefits to which Maine law entitles them.

In Maine, we pride ourselves on being "open for business" – but being open for business does not mean the State of Maine is open to the abuse of its workers by those who have the privilege of doing business here. With the privilege of operating a business in Maine, comes the responsibility to treat the workers of Maine with respect and dignity, and to comply with all federal and Maine laws that have been enacted to protect workers from abuse.

Finally, there is a real and imminent risk that Bucksport employees will lose the statutory right to enforce the obligation to pay severance payments under 26 M.R.S.A. § 625-B, if this right is not enforced immediately, and paid within the statutorily mandated time frames.

Although at its core the relief sought is monetary, it is enforcing the statutory *timing* of these payments that is the relief sought – not the *amount*. Indeed, Verso does not dispute the amount that they owe the Plaintiffs and all other Bucksport employees. See October 1, 2014 Verso 8-K filing (Exhibit 11) and November 13, 2014 Verso 10-K filing, in which Verso acknowledges owing between $30 and $35 million in severance payments in 2014 and 2015. Enforcing the timing of the statutory payment obligations will avoid irreparable harm to Plaintiffs and the communities in which they reside – as well as to the economy of the Midcoast and Cnetral Maine regions, and the State of Maine.

Balance of Harms

Verso cannot claim harm as a result of an order enforcing unequivocal legal obligations and requiring them to comply with severance payments they already acknowledge in fact and amount. In contrast Plaintiffs and the public will suffer significant and potentially irreparable harm if Verso is allowed to evade, delay or deny the payment of severance and accrued 2015 vacation time pursuant to the time requirements in 26 M.R.S.A §§ 625-B and 626.

CONCLUSION AND PRAYER FOR RELIEF

The production of paper at the Bucksport Mill ended on December 4, 2014. The last full day of work for at least some Bucksport Mill employees, including most of the members of the IAM, will be on December 17, 2014. The last full day of work for all but an estimated forty-four (44) Bucksport employees will be on or before December 31, 2014. For those Bucksport employees, including most members of the IAM, who Verso has indicated will work their "last full day of work" at the Bucksport Mill on December 17, the date on which their severance and accrued 2015 vacation time are due to be paid by Verso, pursuant to 26 M.R.S.A. §§ 625-B and 626, is December 23, 2014. For those Bucksport employees who Verso has indicated will work their "last full day of work" at the Bucksport Mill on December 31, the date on which their severance and accrued 2015 vacation time are due to be paid by Verso, pursuant to 26 M.R.S.A. §§ 625-B and 626, is January 8, 2015.

ACCORDINGLY, Plaintiffs seek a judgment from this Court declaring that each employee of the Bucksport Mill, is entitled to the timely payment of severance pay and accrued 2015 vacation time pay, within one regular pay period after the employee's last full day of work, which shall be as early as December 23 for some employees and no later than January 8, 2015 for all but the approximately 44 employees that have been slated to remain working to maintain the power plant at the Mill and other duties.

In the event Verso fails to timely pay severance and accrued 2015 Vacation Time in accordance with Maine law and this Court's Declaratory Judgment Decree, Plaintiffs seek interest at the rate of 6.13% (the rate required under Maine law and regulations,[4] sanctions, penalties or other enhancement of the this liability in an amount deemed just and appropriate by this Court.

[4] http://www.courts.maine.gov/citizen_help/attorneys/writ-pro.html

Further, if Verso appeals this judgment, Plaintiffs seek an order directing Verso to deposit into the Court's registry, an amount sufficient to pay Plaintiffs the severance owed them under Maine law, their reasonable attorneys' fees and costs, interest through April 1, 2015, sanctions, penalties or other enhancements deemed just and appropriate by the Court, with the direction that such sums *shall be distributed no later than April 1, 2015* – regardless of whether Verso's appeal is still pending – since Verso has already acknowledged that it is required to pay these sums no later than April 1, 2015 under its interpretation of the CBAs and MOAs.

Finally, Plaintiffs seek recovery of all of their reasonable costs and attorneys' fees, pursuant to 26 M.R.S.A. §§ 625-B, sub-§ 4 and 626. Plaintiffs respectfully submit that they are entitled to such fees from October 21, 2014 -- the date on which Verso first advised employees that they would not pay severance or accrued 2015 vacation time in accordance with the provisions of Maine statutory law.

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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