



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, c. S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF  
THIRD COAST LIMITED AND PARRISH & HEIMBECKER, LIMITED**

**ORDER  
(Section 127)**

**WHEREAS** on June 8, 2012, Parrish & Heimbecker, Limited (“P&H”) filed an application (the “Rights Plan Application”) with the Ontario Securities Commission (the “Commission”) pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”) for a permanent order that all trading cease in connection with the shareholder rights plan of Thirdcoast Limited (“Thirdcoast”) dated May 30, 2012 (the “Rights Plan”);

**AND WHEREAS** P&H seeks the following relief pursuant to the Rights Plan Application:

- (a) a permanent order pursuant to section 127 of the Act that all trading cease in respect of any securities issued, or that are proposed to be issued, in connection with the Rights Plan, including, without limitation, in respect of any rights issued or to be issued under the Rights Plan (“Rights”) and any common shares of Thirdcoast to be issued upon the exercise of such Rights; and
- (b) a permanent order removing prospectus exemptions in respect of the distribution of Rights issued under or in connection with the Rights Plan and in respect of the exercise of such Rights;

**AND WHEREAS** on June 12, 2012, Thirdcoast filed an application (the “Lock-up Agreements Application”) with the Commission pursuant to section 127 of the Act for a

permanent order that all trading in Thirdcoast common shares pursuant to lock-up agreements (the “Lock-up Agreements”) entered into by P&H pursuant to its take-over bid (the “Bid”) for common shares of Thirdcoast cease;

**AND WHEREAS** in its Lock-up Agreements Application and in subsequently filed written submissions, Thirdcoast seeks the following relief:

- (a) a permanent order pursuant to section 127 of the Act that all trading in Thirdcoast common shares pursuant to the terms of the Lock-up Agreements cease; and
- (b) an order pursuant to section 104(1)(b) of the Act that P&H amend its Offer and its take-over bid circular delivered to shareholders of Thirdcoast in connection with the Bid to provide for the amended information with respect to the Lock-up Agreements, which would include a recommencement of the 35-day minimum period that shareholders of Thirdcoast would be permitted to deposit their common shares of Thirdcoast under the Bid;

**AND WHEREAS** on June 14, 2012, the Commission issued a Notice of Hearing for a hearing commencing on July 4, 2012 to consider whether it is in the public interest to make an order, pursuant to the Rights Plan Application, cease trading the securities issued or proposed to be issued pursuant to the Rights Plan and to consider whether it is in the public interest to make an order, pursuant to the Lock-up Agreements Application, cease trading the securities that are subject to the Lock-up Agreements;

**AND WHEREAS** Thirdcoast is a reporting issuer existing under the laws of Ontario whose common shares trade primarily on the over-the-counter market and are not listed on any stock exchange;

**AND WHEREAS** P&H is the largest holder of Thirdcoast common shares, holding approximately 27.99% of the issued and outstanding common shares of the company;

**AND WHEREAS** on February 21, 2012, P&H informed members of Thirdcoast’s board of directors of its intention to acquire the remaining common shares of Thirdcoast that P&H did not then own and requested that Thirdcoast obtain an independent valuation in accordance with requirements for insider bids pursuant to Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (“MI 61-101”);

**AND WHEREAS** as of the close of business on March 5, 2012, the prices for Thirdcoast common shares were posted as at January 31, 2012 at a bid price of \$75.00 per common share and an ask price of \$79.00 per common share;

**AND WHEREAS** on March 6, 2012, P&H issued a press release announcing its intention to make an all-cash offer of \$115 per share for Thirdcoast common shares and disclosing that it had entered into Lock-up Agreements with certain shareholders of Thirdcoast, pursuant to which those shareholders agreed to tender their common shares to P&H and not to withdraw their common shares from the offer unless the Lock-up Agreements are terminated;

**AND WHEREAS** the Thirdcoast common shares owned by P&H, combined with those common shares subject to the Lock-up Agreements, constitute 51.62% of the issued and outstanding Thirdcoast common shares;

**AND WHEREAS** on March 30, 2012, P&H issued a press release which states that P&H's intention is "to continue the operation of Thirdcoast's grain handling facilities under the existing public house model in the event that P&H successfully acquires or controls Thirdcoast as a result of the Bid";

**AND WHEREAS** on May 28, 2012, the independent valuation of Thirdcoast, prepared pursuant to the requirements of MI 61-101, valued Thirdcoast common shares in the range of \$130 to \$170 per common share;

**AND WHEREAS** on May 29, 2012, after receipt and review of the independent valuation of Thirdcoast made in connection with the Bid, P&H issued a press release announcing an increase in the consideration that will be offered in its proposed Bid for Thirdcoast common shares to \$155 per common share;

**AND WHEREAS** on May 30, 2012, Thirdcoast issued a press release announcing that the Thirdcoast board of directors adopted the Rights Plan "to allow the Board time to explore and develop strategic alternatives in the context of [P&H's] Insider Bid";

**AND WHEREAS** on May 31, 2012, P&H formally commenced its Bid for any and all of the issued and outstanding common shares of Thirdcoast not currently owned by P&H for all-cash consideration of \$155 per common share;

**AND WHEREAS** on June 28, 2012, Thirdcoast issued a press release announcing, among other things, that the independent committee of the Thirdcoast board of directors (the “Independent Committee”), in consultation with its financial advisor, “is working on an alternative asset transaction involving the sale of its grain business which would result in Shareholders receiving a superior return to [P&H’s offer]”. The June 28, 2012 press release further states that “[t]here is no guarantee that a Superior Transaction will be entered into, but if it were, it is expected that the net proceeds of such Superior Transaction (after all taxes and transaction costs) combined with Thirdcoast’s cash and liquid investment balance would be in excess of \$155 per share, and result in cash being paid out to Shareholders in the form of a dividend”;

**AND WHEREAS**, in response to P&H’s Rights Plan Application, Thirdcoast requests that the Rights Plan be permitted to remain in place for a further 30 days, “to permit the Independent Committee to fulfill their fiduciary duties to Thirdcoast”, and in particular, to pursue “an alternative asset transaction”, which is currently the subject of litigation;

**AND WHEREAS** a hearing was held on July 4, 2012 to consider the merits of the Rights Plan Application and the Lock-up Agreements Application;

**AND UPON** considering the evidence and the submissions of P&H, Thirdcoast and Staff of the Commission;

**AND UPON** considering the case law, including the Commission’s decision in *Re Sears Canada Inc.* 2006 LNONOSC 1044 and *Re CDC Life Sciences Inc.* (1998), 11 O.S.C.B. 2541, and evidence presented with respect to the Lock-up Agreements;

**AND UPON** being presented with no evidence that would lead us to conclude that P&H has entered into any collateral agreement, commitment or understanding that would have the effect of providing any Thirdcoast shareholder with consideration of greater value than any other shareholder;

**AND UPON** considering the nature of the Lock-up Agreements, the lack of a minimum tender condition in the Bid and the requirements of Part XX of the Act, we are not satisfied that the Bid is coercive or contrary to the public interest;

**AND WHEREAS**, with respect to the Rights Plan Application, we have considered National Policy 62-202 – *Take-Over Bids – Defensive Tactics* and the case law which sets out the

relevant factors to be considered in making a determination to cease trade a shareholder rights plan, including those enumerated in *Re Royal Host Real Estate Investment Trust* (1999), 22 O.S.C.B. 7819;

**AND WHEREAS** in this case, we have considered certain factors to be particularly important in deciding to cease trade the Rights Plan, including:

1. Thirdcoast shareholders have not had an opportunity to approve the Rights Plan and no evidence has been provided of shareholder support for the Rights Plan. Thirdcoast acknowledges that, based on the existence of the Lock-up Agreements, it is unlikely that any such approval would be forthcoming;
2. The Rights Plan was adopted in response to P&H's offer;
3. As of the expiry of the Bid on July 5, 2012, the formal Bid will have been outstanding for 35 days, public notice of P&H's intention to make the Bid will have been made for 122 days and Thirdcoast will have been aware of P&H's intention to acquire the remaining common shares of Thirdcoast which it does not currently own for 135 days;
4. No other viable bidder for Thirdcoast's common shares has come forward to date. We are not satisfied that the Rights Plan continues to provide an opportunity for further bids for Thirdcoast's common shares;
5. The evidence presented at the hearing does not support the allegation by Thirdcoast that the Bid is coercive; and
6. We were not presented with sufficient evidence that would lead us to conclude that permitting the Rights Plan to remain in place for an additional 30 days would serve the purpose of enhancing shareholder value;

**AND WHEREAS** we have concluded that it is in the public interest to make this order and will issue reasons for this order in due course;

**IT IS ORDERED** that:

1. pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities issued or to be issued under or in connection with the Rights Plan shall cease permanently;

2. pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply permanently to any securities issued or to be issued under or in connection with the Rights Plan; and
3. the Lock-up Agreements Application is dismissed.

Dated at Toronto this 4<sup>th</sup> day of July 2012.

*“Mary G. Condon”*

*“C. Wesley M. Scott”*

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Mary G. Condon

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C. Wesley M. Scott

*“Paulette L. Kennedy”*

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Paulette L. Kennedy