CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: 500-11-036133-094

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act,* R.S.C., c. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

ABITIBIBOWATER INC.

and

ABITIBI-CONSOLIDATED INC.,

and

BOWATER CANADIAN HOLDINGS INC.,

and

The other Debtors listed on Schedules "A", "B" and "C",

Debtors

and

ERNST & YOUNG INC.,

Monitor

and

DDJ CAPITAL MANAGEMENT, LLC

and

NEWSTART FACTORS, INC

and

STICHTING PENSIOENFONDS ABP

and

THE FOOTHILL GROUP, INC.

and

FOOTHILL CLO I, LTD.

Respondents, *ès qualité*

CONTESTATION OF RESPONDENTS TO PETITIONERS' *MOTION FOR APPROVAL OF A DIP FINANCING IN RESPECT OF THE ABITIBI PETITIONERS*

IN CONTESTATION TO PETITIONERS' *MOTION FOR APPROVAL OF A DIP FINANCING IN RESPECT OF THE ABITIBI PETITIONERS*, THE RESPONDENTS ACTING ON BEHALF OF THE TERM LENDERS, RESPECTFULLY SUBMIT THE FOLLOWING:

1. Respondents are or represent secured creditors of certain entities within the ABH Group, including ACCC and ACI, pursuant to a Credit and Guarantee Agreement dated as of April 1, 2008 (the "**Term Loan**"), already filed in the Court record as **Exhibit R-1** in support of their *Motion to Vary an Initial Order Rendered Pursuant to the Companies' Creditors Arrangement Act*;

2. Respondents appear herein on behalf of all lenders under the Term Loan (the "**Term Lenders**"), as Administrative Agent:

   (a) Respondents are or represent Term Lenders who together hold "Term Loan Exposure" representing more than 50% of the aggregate "Term Loan Exposure" of all Lenders. As such, Petitioners are "Requisite Lenders" within the meaning of Section 1.1 of the Term Loan;

   (b) They are deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the previous Administrative Agent, namely Goldman Sachs Credit Partners L.P. ("Goldman"), pursuant to Section 9.7 of the Term Loan; and

   (c) Pursuant to Section 9 of the Term Loan, the Administrative Agent is duly authorized to exercise the rights and remedies of the Term Lenders and act on their behalf;

3. On Monday April 27, 2009, Petitioners served upon the Term Lenders and others a *Motion for Approval of a DIP Financing in Respect of the Abitibi Petitioners* (the "**DIP Motion**") in the instant matter, as appears from the Court record. The Motion was originally presentable on May 1, 2009;

4. On April 30, 2009 the *ad hoc* Committee of Senior Secured Note Holders and U.S. Bank National Association, Indenture Trustee for the Senior Secured Notes (the "**Senior Noteholders**"), filed a contestation to the DIP Motion, as appears from the Court record;

5. The Term Lenders hereby invoke in their favour and as their own all of the arguments and conclusions put forward by the Senior Noteholders in their Contestation, as if such arguments were recited at length herein;

6. For the reasons set out in the Secured Noteholders' Contestation and incorporated herein as if recited at length, the Term Lenders request that the DIP Motion be dismissed by this Court because it is unfounded in fact and in law;

7. In the alternative, should this Court conclude that the Abitibi Petitioners should be authorized to enter into the proposed DIP Financing Agreement, the Term Lenders request, given the prejudice that they will suffer as a result of the DIP Financing which constitutes for all intents and purposes a virtual expropriation of their security, that the conclusions of this Contestation appearing under the heading "Subrogation to ACI DIP Charge" be granted in order to ease and apportion amongst the Abitibi Petitioners' Creditors, the prejudicial effect of the proposed subrogation;

8. Moreover, in order to compensate for the inevitable deterioration of the Term Lenders' position and the fact that their security is being used and will continue to be used by the Abitibi Petitioners on an ongoing basis, the Term Lenders require that an adequate protection charge be granted in their favour, as set out in the conclusions of this Contestation appearing under the heading "Adequate Protection Charge";

9. This Contestation is well founded in fact and in law;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

DISMISS Petitioners' *Motion for Approval of a DIP Financing in Respect of the Abitibi Petitioners*;

GRANT the Term Lenders' Contestation;

IN THE ALTERNATIVE, in the event that a DIP Order is granted as per the Petitioners' *Motion for Approval of a DIP Financing in Respect of the Abitibi Petitioners*:

SUBROGATION TO ACI DIP CHARGE

ORDER that the Secured Noteholders (as a group), the Term Lenders (as a group) and The McBurney Corporation et al., that hold security over assets that are subject to the ACI DIP Charge and that, as of the Effective Time, was opposable to third parties (including a trustee in bankruptcy) in accordance with the law applicable to such security (an "**Impaired Secured Creditor**" and "**Existing Security**", respectively) shall be subrogated to the ACI DIP Charge to the extent of the lesser of (i) any gross proceeds from the sale or other disposition of assets, gross proceeds resulting from the collection of accounts receivable or other claims (other than Property subject to the Securitization Program Agreements) and/or cash that is subject to the Existing Security of such Impaired Secured Creditor and is used to pay the ACI DIP Lender (including by any means of realization) on account of principal, interest or costs, in whole or in part and (ii) the unpaid amounts due and/or becoming due to the Impaired Secured Creditor that are secured by its Existing Security. For this purpose "ACI DIP Lender" shall be read to include Bank of Montreal, IQ, and their successors and assigns, including any lender or lenders providing replacement DIP financing should same be approved by subsequent order of this Court. No Impaired Secured Creditor shall be subrogated to the ACI DIP Charge until all obligations to the ACI DIP Lender have been paid in full. The rights of an Impaired Secured Creditor as subrogee to the ACI DIP Charge shall be enforceable solely through a receiver or receiver and manager appointed by the Court, to the extent of the following amount (the "Subrogee's Portion of the DIP Payment"):

(a) Each Impaired Secured Creditor, as subrogee, shall be entitled to realize in priority to the collateral of each other Impaired Secured Creditor only to the extent of an amount obtained by multiplying the amount with respect to which such Impaired Secured Creditor is a subrogee by a fraction,

    (i) the numerator of which is the debt owing to the other Impaired Secured Creditor as of the date any receiver or receiver and manager is appointed by the Court in relation to ACI; and

    (ii) the denominator of which is the aggregate indebtedness owing to all Impaired Secured Creditors as of the date any receiver or receiver and manager is appointed by the Court in relation to ACI;

(b) In the event that more than one Impaired Secured Creditor is subrogated to the ACI DIP Charge, such Impaired Secured Creditors shall rank *pari passu* as subrogees, rateably in accordance with the extent to which each of them is subrogated to the ACI DIP Charge.

Where an Impaired Secured Creditor is entitled to be a subrogee in accordance with this paragraph, the following shall apply:

(a) All amounts owing to such Impaired Secured Creditor shall first be satisfied out of the realization of such Impaired Secured Creditor's Existing Security;

(b) while such Impaired Secured Creditor's Existing Security is in the process of being realized, where any proceeds from another Impaired Secured Creditor's Existing Security would be required to make a payment corresponding to a Subrogee's Portion of the DIP Payment owing to the subrogee, then an amount not to exceed the Subrogee's Portion of the DIP Payment owing to that Impaired Secured Creditor shall be held in escrow by any receiver or receiver and manager of ACI to meet any claim such Impaired Secured Creditor may have as subrogee following the realization of its own collateral.

<u>ADEQUATE PROTECTION CHARGES</u>

ORDER that the Secured Noteholders and the Term Lenders are hereby granted the following charges, by way of lien, mortgage and security interest (the "**Adequate**

Protection Charges") over the Canadian Collateral (as defined in the ACI DIP Credit Agreement) (the " **Canadian Collateral**"):

(a) in the case of the Secured Noteholders, a charge on the Canadian Collateral that is subject to the Existing Security of the Term Lenders, ranking after that Existing Security, as security for the amounts due and/or becoming due to the Secured Noteholders;

(b) in the case of the Term Lenders, a charge on the Canadian Collateral that is subject to the Existing Security of the Secured Noteholders, ranking after that Existing Security, as security for the amounts due and/or becoming due to the Term Lenders; and

(c) in the case of both the Secured Noteholders and the Term Lenders, a charge on the Canadian Collateral that is not subject to either the Existing Security of the Secured Noteholders or the Existing Security of the Term Lenders (other than the Canadian Collateral subject to the Securitization Program Agreements), *pari passu* and rateably in accordance with the respective amounts due and/or becoming due to the Secured Noteholders and the Term Lenders, as security for such amounts.

ORDER that, notwithstanding any contrary provision of this Order, the Adequate Protection Charges shall rank after the Abitibi Administration Charge, the Abitibi D&O Charge in respect of the Abitibi D&O First Tranche, the ACI DIP Loan and the respective Existing Security of the Secured Noteholders and the Term Lenders but in priority to the ACI Inter-Company Advances Charge and the Abitibi D&O Charge in respect of the Abitibi D&O Second Tranche.

NOTICES AND INFORMATION RE THE ACI DIP LOAN

ORDER that (i) copies of any Borrowing Request given to the Lender and the Sponsor in accordance with the ACI DIP Loan and the supporting materials thereto shall be provided concurrently to the Monitor, to Jeffries & Co., as the financial advisor to the Term Lenders, and to the Secured Noteholders at least 6 days in advance of any drawing of the ACI DIP Loan, with leave to any Impaired Secured Creditor to apply to the Court within that time to contest any such Borrowing Request ; and (ii) all financial information, documents and reports required to be provided to the Lender or the Sponsor in accordance with the ACI DIP Loan or the IQ Guarantee shall be provided concurrently to the Monitor, to Jeffries & Co., as the financial advisor to the Term Lenders, and to the Secured Noteholders .

THE WHOLE with costs.

Montréal, this May 4, 2009

Fasken Martineau DuMoulin

Fasken Martineau DuMoulin LLP
Attorneys the Term Lenders