EXHIBIT

R-5

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In Re:	)Chapter 11
	)
ABITIBIBOWATER, et al.,	)09-11296 (KJC)
	)
Debtors.	)
	)UNOFFICIAL TRANSCRIPT

824 Market Street
Wilmington, Delaware
April 17, 2009
6:05 p.m.

EXCERPT

TRANSCRIPT OF AN ELECTRONIC RECORDING

Before:
THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

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THE COURT: Good evening. All right, what's next?

MS. CORNISH: Your Honor, thank you for continuing the hearing and giving us more time. We really appreciate it and it was a productive -- very productive use of time as well. We were able to, I think, at least preliminarily, work through some difficult issues.

With respect to the next motion, which we'd like to take up item 18 on the agenda, which is the --

THE COURT: Item --

MS. CORNISH: Oh, excuse me.

THE COURT: 16.

MS. CORNISH: Item 16, sorry.

THE COURT: Don't scare me like that.

MS. CORNISH: The, the debtors' motion for an interim order authorizing the continuance of a receivables facility.

Very briefly, Your Honor I know it's very late in the day, this motion really is quite simple. We seek authority to keep a vital prepetition receivables securitization program in

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place which essentially funds the Donahue Corporation Group and Abitibi Group in Canada. Specifically, the company has monetized substantially all of its accounts receivable generated by the Abitibi Group, and specifically the two entities are ACSC, Abitibi Consolidated Sales Corporation, and ACI, the Canadian entity, through a securitization program with Citibank. And this motion simply seeks to keep the prepetition securitization program in place for a limited period of time, 45 days, until the company puts a replacement facility in place.

There's nothing fancy about this. There are no new liens being granted. We believe no one's rights are being altered, et cetera. We're simply taking a prepetition facility and extending it into the case for 45 days.

The reason we are here before you is the filing of the Chapter 11 CCAA proceedings gives Citibank the right to terminate the securitization program. It's a termination event under the existing program, which would result in an immediate and very detrimental disruption of cash flow on the Abitibi side. The group

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depends, Your Honor, on advance funding of its accounts receivable under the securitization program to fund its operations in Canada. The program is a classic -- and in the U.S.

The program is a classic securitization structure. ACI and ACSC originate receivables and then they sell them into an SPV, which is called Abitibi Consolidated U.S. Funding Corp., and it's on your chart, if you still have that.

THE COURT: I do.

MS. CORNISH: It is the one entity, I

believe, Your Honor, it's on the left side of the chart and it is a, it is -- it's below ACSC. And those receivables are sold at a discount based on outstanding balances on accounts receivable. The SPV ACI funds, pays ACI and ACSC for the receivables from essentially two sources, collections on accounts receivable it already owns, and second, pooling acquired receivables and selling an undivided percentage ownership interest to Citibank, which has committed to purchase receivables up to $210 million under the program.

The financing available under the program is limited principally by the outstanding balance of eligible receivables and the size of total reserves; basically, an equity cushion based on the present value of the future income stream from the receivables.

Under the program Citibank was granted a security interest in all of ACI fundings, the SPV's rights under certain of the securitization documents, the receivables themselves, lock boxes, deposit accounts and other items under the documents.

As I mentioned, the filing of these cases and the CCAA proceedings constitute a termination event, and we are seeking approval of a fifth amendment to the securitization program, pursuant to which Citi will waive that termination event and permit the continuation of the securitization program for 45 days, again, Your Honor, at which time we expect that we will be replacing that facility with another securitization facility or some other alternate financing vehicle.

The fifth amendment effectively

maintains the securitization program's prepetition economics and structure, we believe to the benefit of all stakeholders. And I note that the company is seeking identical relief in the Canadian court with respect to ACI's participation in this program.

So in summary, Your Honor, the items that we're seeking under this motion are approval of the fifth amendment; in addition, a finding that the transfers that are made by ACI and ACSC to the SPV are true sales, I think something that was done in Tribune and perhaps other cases, also a finding that the performance by ACI and ACSC and the SPV under the financing agreements does not provide a basis for substantive consolidation of those entities.

There is an administrative claim that is granted in favor of Citi which basically covers indemnification obligations and similar obligations by ACI and ACSC. And then finally, we're seeking authorization for ACSC to cause the SPV to pay certain fees to Citi in connection with the extension, which are set forth in the motion.

We have had extensive negotiations with, with the companies -- with the term loan lenders. Your Honor, I mentioned in my open remarks, I believe, that one of the ways that the Abitibi Group has gotten working capital and has been funded over the last year is through a secured 364-day term loan facility that is at ACCC in Canada. That loan is secured by fixed assets and other -- excuse me, personalty in Canada, as well as there are guarantees by the Donahue Corp. entities and certain of its subsidiaries of those obligations, and those guarantees are secured by a pledge of certain personalty of Donahue Corp. and subsidiaries, some real property and other collateral.

The term loan lenders have asserted that they are entitled to adequate protection of their interests in connection with the extension of the securitization facility, and we have negotiated with them we believe an adequate protection package that the company is prepared to, to provide. And I believe that -- and counsel for the term loan lenders can speak for themselves, I believe they have no objection to

at this point. And essentially, that adequate protection package is -- contains the following: The adequate protection, first off, all of the elements I'm about to recite are really for just the duration of the 45-day period of the securitization facility. They go no further than that.

First, the adequate protection is to be provided by Donahue Corporation and its subsidiaries who are debtors in these cases. This does not -- the adequate protection package does not impact the securitization or any of Citibank's rights with respect to the program.

To the extent of diminution in value on their prepetition collateral during the 45-day period, the term loan lenders will receive replacement liens on post-petition assets that constituted prepetition collateral, in the case of the receivables subject to the inter creditor agreement.

They will receive liens on unencumbered assets on which the debtors are able to grant such a lien. And just to be clear, those assets do not include the membership

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interest to the Augusta Newsprint Corp. joint venture. That will not be subject to the adequate protection lien.

We have also offered junior liens on assets that are already encumbered on the D Corp. side. As additional adequate protection, we have offered a 507(b) claim in an allowed amount equal to the amount of interest due on the facility through the petition date and interest accruing during the 45-day period.

In addition, we've offered reasonable fees and expenses of advisors to the term loan lenders, including their financial advisor, I believe it's Jeffries, Canadian counsel, and their primary U.S. and local counsel.

There is no stipulation in this adequate protection package as to the validity, enforceability or perfection of the term lenders' liens or claims here.

And finally, there is a standstill under the inter creditor agreement. It will continue to be valid with the term loan lenders having the right and obligation under the inter creditor agreement -- all rights and obligations

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under the inter creditor agreement. That standstill will expire upon the termination of the securitization facility, or obviously at the end of the 45-day period.

And I believe that covers what we -- the debtors are willing to offer as adequate protection, and again, I believe that the term loan lenders have no objection, but I will turn the podium over to them.

Oh, thank you. Also, just a clarification. The 507(b) claim that I just described with respect to payment of interest is junior to Citi's claim, their administrative claim that we've negotiated with respect to the fifth amendment.

THE COURT: All right, thank you. Anyone else care to be heard?

MR. LANDIS: Thank you, Your Honor, and good evening. Adam Landis, for the record, on behalf of certain ACC term lenders.

I am -- we did file a limited objection, and I don't know if Your Honor was able to take a look at it.

THE COURT: I've read it.

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MR. LANDIS: We were working pretty fast without a net. I'm here with David Hillman from Schulte Roth & Zabel, co-counsel in this matter. And although we haven't moved his admission pro hac vice by formal paper, I'd like to move it for purposes of this hearing orally today.

THE COURT: You will follow up with a written motion?

MR. LANDIS: Absolutely, Your Honor.

THE COURT: Very well, thank you.

MR. LANDIS: And I'll yield the motion to Mr. Hillman.

THE COURT: All right. Welcome.

MR. HILLMAN: Good evening, Your Honor, thank you. I'm here today as counsel to certain of what we've been describing as the ACC term lenders. Debtors' counsel has described certain proposals that they've made in the form of adequate protection. I think there are some clarifications that are worth making.

First, it's our understanding that the proceeds, the cash collateral that will be generated from the sale of receivables to the

securitization and the existing cash collateral in the company's balance sheet will be used in accordance with a budget. We've been provided today with an amended copy of that budget, and it's our understanding that the stipulation that we're reading into the record here today will actually be memorialized in a separate document that we'll work on after the hearing, and that budget would be attached to the order.

The second issue is, relates to the Augusta property. I think you heard from the debtors that our replacement lien would not attach to the debtors' interest in Augusta. I don't know what the operative documents provide, but we have agreed that our replacement lien will not attach to any property that the debtor is not authorized to grant us a lien on. If that includes the Augusta property or the Augusta equity interest, then we won't get it.

There was a discussion about a 507(b) superpriority claim for interest that has -- that is due prepetition, and that occurs or is accrued post-petition for the next 45 days. That's accurate, but the agreement is to interest at the

default rate.

The next issue that requires some clarification is --

THE COURT: What is that rate?

MR. HILLMAN: LIBOR plus 800 plus 200 points.

THE COURT: Thank you.

MR. HILLMAN: There was a proposal that the adequate protection package would include an agreement for the standstill on --

THE COURT: I'm sorry. That is sometimes caused by live PDAS.

UNIDENTIFIED SPEAKER: Yeah, I know.

MR. HILLMAN: Your Honor, I was saying that there was -- part of the package included a standstill of any enforcement under the inter creditor agreement, and I believe the debtor said that it would terminate upon the termination of the securitization program, or if an event of default occurs under the termination program, I wanted to add that in.

One of the other superpriority administrative claims that we did hear about was with respect to interest. We also were provided or offered a superpriority administrative expense claim for the use of cash collateral equal to the diminution that would arise during the 45-day period. That is a separate superpriority administrative expense claim, but that superpriority expense claim is also subordinate to the claim granted to Citibank under the securitization order.

Things are moving fast. My clients are trying to get up to speed and follow all the events as they unfold.

THE COURT: I try to do the same thing. And I haven't met a slow case recently either.

MR. HILLMAN: It's not always possible to be on top of every order of every provision, but I know we will work diligently with the debtor, as they will with us, to try to keep us in the loop and to get this order entered. I would say that to the extent the Court is inclined to enter the order that's been presented, I would ask that we put on the order that it's as modified by the agreements on the record, and that we will work with the debtor to

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come up with a stand-alone order to address the issues that we've outlined to the Court.

The last point I would like to make is the motion is to use or to sell accounts receivable that constitute cash collateral of the ACC lenders. We have liens on that. When the proceeds are generated, it is also the ACC lenders' position that we have liens on the proceeds. I wanted to make sure that that position was accurately reflected on the record, as we will want to recite that in our stipulation as well.

This order, as you heard, would be interim, and I don't know what the Court's scheduling is like to schedule a final hearing, but as a housekeeping matter, at 5:30, quarter to 6, we were trying to get ahold of all of our clients to get them to sign off on this, and I wasn't able to reach all of those clients. So I would just ask that the Court take that into consideration when scheduling the final hearing. Thank you, Your Honor.

THE COURT: Well, we've already scheduled the final hearing in connection with

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the other financing motion. I had anticipated we'd do the same with this one.

MR. HILLMAN: I suspected that would be Your Honor's position. I didn't know if there was any opportunity to have an earlier date as maybe a status or a hold date in case there are issues that need to be resolved.

THE COURT: If there are issues, reach out to me by conference telephone.

MR. HILLMAN: Thank you, Your Honor.

MS. CORNISH: Your Honor, just a couple of points. On the issue of a budget, we will provide a budget for the 45-day period, but we do not agree that we are bound by it or that it can't be amended or the like. We will provide a budget.

And with respect to the, the lien with respect to Augusta, I just want to confirm that we are not able to grant that lien and, therefore, that's not part of the package that's being offered.

And finally, with respect to Mr. Hillman's statements with respect to the liens and claims and where they sit in the

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structure, we just want to make it clear for the record that we're not conceding any of that. I understand it's his position, but we're not conceding any of that.

And with that, Your Honor, we would ask you to approve this motion, which would permit the debtors to continue this very vital securitization program post-petition.

THE COURT: Well, are you asking me to sign the form of order that you have by pooling in the agreements that have been read into the record so that it can get docketed tonight? I take it that's what you're asking?

MS. CORNISH: We are, yes. And then

we will do, we will do a separate order memorializing what's been agreed to here orally this evening.

THE COURT: Okay. And assuming that doesn't come to me tonight, is there any problem with my signing that upon my return on Thursday of next week?

MS. CORNISH: Absolutely not, Your Honor. As long as our order gets signed this evening and it incorporates the oral agreements

of this evening, that's adequate.

THE COURT: Okay.

MS. CORNISH: Thank you, Your Honor.

THE COURT: Mr. Hillman?

MR. HILLMAN: I'm sorry, but the last -- one comment that the debtors' counsel has made is troublesome, and it deals with the budget. Effectively this is a cash collateral motion in part because the debtor seeks the authority to use cash collateral. The budget is a vital piece of that, and we had many concerns about line items in the budget. And the debtor, to its credit, addressed a number of our concerns by removing some of the line items that gave us problems, so to hear the debtor say we'll give you a budget but we won't be bound by it.

(DATA ERROR)

MS. CORNISH: But we cannot be, we cannot be bound to every, you know, item in the budget.

THE COURT: Well, normally a budget would contain variances, allowances. Maybe that would be the way to address that issue.

MS. CORNISH: It just puts us in a

very tough spot, especially now, Your Honor. You can imagine how busy and how many things are on the plate of this debtor, and to get something together and to be comfortable with it for this very brief -- I mean we're talking about 45 days, starting today. I mean we are not talking about a rolling 13-week forecast that covered, you know, a year DIP. It's 45 days.

I mean the amount of time -- you know, we'll get something together. We will get it to them in good faith. But it was not something that we offered as a part of this package, and I just don't want to, I don't want to constrain the company.

THE COURT: Well, Mr. Hillman, here's what I'm hearing, is that the debtor will use its best efforts to provide a budget to you. To the extent the parties can reach agreement on what it should be, reach out to me and I will address it then.

I don't know, the one comfort I have, and expectation I almost always have, is that regardless of what might have happened prepetition, and I'm making no suggestion about that, once the debtor is in Chapter 11, there are so many people looking over its shoulder, that the likelihood of it doing something untoward is fairly low. Not that it's impossible.

MR. HILLMAN: Your Honor, I understand the Court's comments. While it is a 45-day period or 30 days until the final hearing, there's a substantial amount of money that is to be spent, in excess of $20 plus million. So cash collateral use requires in every case I've been involved with a budget, and I'm confident that we can work together with the debtor to come up with a budget along the lines what they showed us and reasonable variances, so I don't see this as a stumbling block, but it's not something we want to see six weeks, 45 days, 30 days as part of the stipulation that we should be preparing for the Court as soon as we leave the hearing or shortly thereafter.

THE COURT: Well, as I said, if there is an issue reach out to me by conference telephone.

MR. HILLMAN: Thank you, Your Honor.

THE COURT: All right. Does anyone

else care to be heard in connection with this motion? I hear no further response. So I take it, Mr. Hillman, on the record, the limited objection is resolved.

MR. HILLMAN: I would say that the limited objection to entry of the interim order is resolved, but we reserve our rights to carry the objection to the final hearing, whenever that is set for.

THE COURT: Understood.

MR. HILLMAN: Thank you, Your Honor.

THE COURT: Okay, is there a form of order?

MS. CORNISH: Yes.

Should we keep moving along?

THE COURT: Certainly.

MS. CORNISH: Your Honor, why don't we move along through the rest of the first day motions and we will, as soon as we make some interlineations, we'll hand up the order.

THE COURT: All right.

MS. CORNISH: Thank you, Your Honor.

(6:29 p.m.)

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CERTIFICATE

STATE OF DELAWARE)
)
NEW CASTLE COUNTY)

I, Julie H. Parrack, Registered Professional Reporter and Notary Public, do hereby certify that the foregoing record, pages 1 to 22 inclusive, is a true and accurate transcript of an excerpt of an electronic recording, to the best of my ability, in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of April, 2009.

Julie H. Parrack, RMR-CRR
Certification No. 102-RPR
(Expires January 31, 2011)