EXHIBIT

R-1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
ABITIBI-CONSOLIDATED, INC., *et al.*	Case No. 09-11348 (KJC)
Debtors in a Foreign Proceeding	(Jointly Administered)
	Proposed Objection Deadline: TBD **Proposed Hearing Date: May 27, 2009 at 3:30 p.m. (ET)**

MOTION OF ACTING AGENT, ON BEHALF OF THE TERM LOAN LENDERS, FOR ENTRY OF AN ORDER EITHER (A) COMPELLING THE CHAPTER 15 PETITIONERS TO PROVIDE THE TERM LOAN LENDERS ADEQUATE PROTECTION UNDER 11 U.S.C. § 363, AS APPLICABLE TO THESE CHAPTER 15 CASES PURSUANT TO 11 U.S.C. § 1520(a)(2), OR (B) DENYING RECOGNITION OF THE CHAPTER 15 PETITIONS AND TERMINATING THE PROVISIONAL ORDER PURSUANT TO 11 U.S.C. § 1522(a)

The Acting Agent[1] pursuant to that certain Credit and Guaranty Agreement dated as of April 1, 2008 (the "Term Loan Agreement") among Abitibi-Consolidated Company of Canada ("ACCC") and Abitibi-Consolidated Inc. ("ACI"), as borrowers, certain subsidiaries and affiliates of ACI, as guarantors (together with ACCC and ACI, the "Loan Parties"), and the lenders from time to time party thereto (the "Term Loan Lenders"), as lenders, respectfully submits this motion (the "Motion"), on behalf of the Term Loan Lenders, pursuant to sections 363, 1520(a)(2) and 1522(a) of Title 11 of the United States Code (the "Bankruptcy Code") for entry of an order either (a) compelling the above-captioned Chapter 15 Petitioners to provide the Term Loan Lenders adequate protection of their interest in "cash collateral," or (b) in the alternative, denying recognition of the above-captioned Chapter 15 Petitioners' petitions and terminating the Order Granting Provisional Relief dated April 21, 2009 (the "Provisional Order")

[1] The agent under the Term Loan Agreement resigned effective as of April 20, 2009. The Term Loan Lenders have chosen a successor agent; however, due to the refusal of the Debtors to sign a fee letter with the successor agent, the appointment of the successor agent has not yet become effective. As a result, pursuant to section 9.7(a) of the Term Loan Agreement, certain of the Term Loan Lenders constituting Required Lenders (as such term is defined in the Term Loan Agreement) have formed a steering committee and are serving as the Acting Agent.

pursuant to section 1522(a) of the Bankruptcy Code, and granting such other and further relief that the Court deems necessary and proper. In support of the Motion, the Acting Agent respectfully states as follows:

PRELIMINARY STATEMENT

The above-captioned chapter 15 petitioners (the "Chapter 15 Petitioners"), ACI and ACCC, and certain of their direct and indirect subsidiaries and affiliates (together, the "Canadian Debtors") are debtors under cases (the "Canadian Proceedings") pending in Canada under the Companies' Creditors Arrangement Act (the "CCAA"). AbitibiBowater US Holding LLC, a US affiliate of ACI and ACCC, and certain of its subsidiaries (together, the "US Debtors" and with the Canadian Debtors, the "Debtors") are debtors under chapter 11 of the Bankruptcy Code (the "US Proceedings"). The US Proceedings and the Canadian Proceedings were commenced as part of comprehensive cross-border restructuring of these entities and their Bowater affiliates. Each Loan Party under the Term Loan Agreement is either a US Debtor or a Canadian Debtor.

On April 17, 2009 (the "Petition Date"), the Chapter 15 Petitioners filed petitions for recognition of their CCAA cases as foreign main proceedings under chapter 15 of the Bankruptcy Code.[2] The stated purpose of the chapter 15 filings was to obtain the protection of the automatic stay for the Chapter 15 Petitioners' US assets and maintain their ability to access the Securitization Program (as defined below). See Debtors' Motion for Provisional and Final Relief Pursuant to 11 U.S.C. §§ 105(a), 1519, 1520, and 1521 of the Bankruptcy Code (the "Recognition Motion"), ¶¶ 5(a), 10. Although the Chapter 15 Petitioners want the benefit of the

[2] The hearing on recognition, originally scheduled for May 15th, has been adjourned to June 4th. Pending entry of a recognition order, the Court entered the Provisional Order, under which the Chapter 15 Petitioners' US assets have the benefit of the automatic stay and therefore, parties with an interest in these assets, including the Term Loan Lenders, are prevented from exercising rights and remedies with respect to such assets.

automatic stay, they are unwilling to comply with the obligations under section 363 to provide the Term Loan Lenders with adequate protection for their use of the Term Loan Lenders' cash collateral.

At the outset of the Debtors' cases, this Court and the Canadian court authorized the Debtors to continue their prepetition Securitization Program for 45 days after the Petition Date while a replacement facility was arranged. The Term Loan Lenders consented to the US Debtors' and Chapter 15 Debtors use of their cash collateral during this limited time based on adequate protection provided only by the US Debtors. On May 18th, the US Debtors filed a motion seeking the entry of an order, *inter alia*, approving (i) an replacement Securitization Program for at least a year based on amended and restated documents, and (ii) continued use by the US Debtors and the Chapter 15 Petitioners of the Term Loan Lenders' cash collateral (the "Financing Motion"). The Financing Motion seeks authority to use any and all cash collateral of the Term Loan Lenders, whether it is attributable to ACI (i.e. Canadian) receivables or Donohue (i.e. US) receivables. Yet, the Debtors state that the Chapter 15 Petitioners will provide no adequate protection for the use of the cash collateral derived from ACI receivables, even though these receivables are sold by ACI to ACI Funding (as defined below), a US company, and, upon information and belief, a substantial portion of the proceeds (representing all US dollar dominated receivables) of such sales are remitted to a US bank account, and are therefore within the territorial jurisdiction of this US.

The Chapter 15 Petitioners refusal to provide any adequate protection for their use of substantial cash collateral is patently unacceptable and contrary to the requirement under section 1520(a)(2) of the Bankruptcy Code that a chapter 15 debtor comply with section 363 of the Bankruptcy Code with respect to assets located within the territorial jurisdiction of the US.

Section 363 clearly requires that the Term Loan Lenders' interest in cash collateral be adequately protected if it is to be used by the Chapter 15 Petitioners.

The US Debtors claim that the Chapter 15 Petitions do not need to provide the Term Loan Lenders with adequate protection because the aggregate value of their US assets on the Petition Date was only $7 million.[3] Putting aside the Debtors' meritless contention that $7 million is an insufficient amount to warrant adequate protection, the Debtors completely disregard the fact that (a) the Term Loan Lenders have valid, perfected and enforceable liens on and security interests in all of ACI's inventory and receivables (now or hereafter existing), which liens continue post-commencement of the CCAA cases under Canadian law and (b) upon information and belief, all US dollar denominated proceeds of ACI's accounts receivable are paid into a US bank account that is within the territorial jurisdiction of the US. As such, the value of the Chapter 15 Petitioners' US assets on which the Term Loan Lenders have a lien is substantially greater than $7 million; in fact, it is likely to be nearly the full amount of the proceeds paid or payable by ACI Funding in connection with the purchase of ACI receivables. Given the extremely shortened notice on which the Debtors are seeking to have the Financing Motion heard by this Court and the need to have this Motion heard at the same time in order for meaningful relief to be granted, the Term Loan Lenders will submit evidence of the Chapter 15 Petitioners' substantial US assets at the hearing.

To the extent that the Chapter 15 Petitioners cannot or will not provide adequate protection, the Acting Agent hereby requests that the Court deny the request for recognition and terminate the Provisional Order to prevent the Chapter 15 Petitioners from availing themselves

[3] The Debtors' implication is that the limited adequate protection offered by the US Debtors is sufficient to compensate for both the US Debtors and the Chapter 15 Petitioners' use of cash collateral. In fact, the adequate protection offered by the US Debtors is not even sufficient to protect the Term Loan Lenders' interest against the US Debtors' use of cash collateral. The Term Loan Lenders will be filing a separate objection to the Financing Motion.

of the protection of the Bankruptcy Code, including the automatic stay, without sufficiently protecting its creditors, as required by section 1522(a) of the Bankruptcy Code.

FACTS

A. Term Loan Agreement

The Term Loan Agreement matured by its terms on March 30, 2009.[4] As of the Petition Date, there was approximately $347 million in principal obligations plus accrued and unpaid interest and fees past due and owing under the Term Loan Agreement (the "Term Loan Obligations").

The Term Loan Obligations are secured by valid, first priority liens on, among other things, the Loan Parties' inventory, accounts receivable and the proceeds thereof. With respect to the lien on ACI's assets, under Canadian law, the Term Loan Lenders' lien continues to attach to post-petition assets.[5] The Term Loan Lenders' collateral includes a lien against the cash in an ACI deposit account at Bank of America (the "ACI Concentration Account"), which lien is perfected by a valid and enforceable blocked account control agreement, a true and correct copy of which is attached hereto as Exhibit A. The ACI Concentration Account and the cash at any time deposited in it are located within the territorial jurisdiction of the United States. According to the bank account structure chart attached as an exhibit to the US Debtors' cash management motion (docket # 13), a copy of which is attached hereto as Exhibit B, the ACI Concentration Account is the account in which, upon information and belief, the proceeds of US dollar denominated accounts receivable sold to ACI Funding are aggregated. As such, virtually all

[4] However, the obligations outstanding under the Term Loan Agreement became due and owing on March 13, 2009 as a result of the occurrence of an Event of Default and the acceleration of the obligations.

[5] In this respect the CCAA differs from the provisions of section 552 of the Bankruptcy Code.

proceeds of the Securitization Program are, at some point, held in a US bank account located within the territorial jurisdiction of the US.

B. The Securitization Program

Prior to the bankruptcy filings, the debtors were parties to a securitization program with Citibank (the "Securitization Program"). Upon information and belief, under the program, all receivables originated by ACI and Abitibi Consolidated Sales Corporation ("ACSC"), one of the US Debtors, are sold to Abitibi-Consolidated U.S. Funding Corp. ("ACI Funding"), a special-purpose, bankruptcy remote entity, pursuant to the Amended and Restated Purchase and Contribution Agreement dated as of January 31, 2008 (the "PCA") among ACI, ACSC and ACI Funding. ACI Funding is a US corporation organized under the laws of Delaware. A portion of the receivables purchased by ACI Funding are resold to Citibank. Upon information and belief, as consideration for the US dollar denominated receivables purchased, ACI Funding makes daily cash transfers that are aggregated in the ACI Concentration Account. The cash is then disbursed throughout the Debtors' cash management system to fund the day-to-day operations of the US Debtors and the Canadian Debtors.

Upon the bankruptcy filings, the Debtors were granted authority by the US and Canadian courts to continue the prepetition Securitization Program through June 1st, when the facility will expire by its terms. The US order relating to the Securitization Program is subject to certain adequate protection granted to the Term Loan Lenders by the US Debtors on the record at the first day hearings held on April 17, 2009. A true and correct copy of the transcript of the April 17th hearing is attached hereto as Exhibit C. Despite the fact that ACI and the other Canadian Debtors are benefiting from the use of the Term Loan Lenders' cash collateral, no adequate protection is currently being provided by them.

On May 18th, the Debtors filed the Financing Motion in the US seeking authority to enter into an amended and restated Securitization Program for up to another 18 months on substantially the same terms as the prepetition program.[6] The motion contemplates that the Debtors will continue to use the cash generated by the Securitization Program to fund their operations. The motion is scheduled to be heard on May 27th.

C. Adequate Protection Proposal

The US Debtors have offered the Term Loan Lenders limited adequate protection for the use of a portion of the cash collateral representing proceeds of accounts receivable and inventory of the US Debtors.[7] The Debtors have not, however, offered any adequate protection from the Chapter 15 Petitioners on the grounds that ACI and ACCC had only $7 million of assets in the US on the Petition Date. This position overlooks two important facts. First, in addition to cash on hand on the Petition Date, all of the proceeds of US dollar denominated ACI receivables are US based assets by virtue of the fact that such proceeds are remitted to a US bank account. Second, under Canadian law, a filing under the CCAA does not terminate a lien on after acquired property, and thus, the Term Loan Lenders' lien attaches to these ACI receivables and the proceeds thereof. As such, ACI has and will continue to have from time to time substantial assets located in the territorial jurisdiction of the US and the Term Loan Lenders have a lien on all such assets.

This cash collateral may not be used by the Chapter 15 Petitioners or any of the Debtors unless the Term Loan Lenders consent or are granted adequate protection. The protection proposed to be provided to the Term Loan Lenders by the US Debtors is not adequate protection

[6] The Canadian Debtors are expected to file a motion seeking substantially identical relief. The hearing on the Canadian motion is scheduled for May 25th.

[7] The Term Loan Lenders intend to file an objection to the US Financing Motion on the grounds that the adequate protection offered will not sufficiently protect their interests in the cash collateral.

that would protect the Term Loan Lenders from the potential diminution in value of the ACI cash collateral, and, in fact, is not even sufficient to protect the Term Loan Lenders from the diminution in value of the US Debtors' cash collateral.

To illustrate, on the Petition Date, the Debtors had cash on hand in the amount of $98.2 million, which cash was subject to the Term Loan Lenders' lien, but as of May 10th, the aggregate amount of cash on hand has declined to $85.3 million. See ACI Receipts and Disbursement Report for the week ended May 10th, a copy of which is annexed hereto as Exhibit D. This $12.9 million (or more than 10%) drop in value unequivocally demonstrates that the Term Loan Lenders' collateral is decreasing in value and the remaining collateral must be protected, and as a result, adequate protection from the Chapter 15 Petitioners, in addition to the US Debtors, is unquestionably necessary and appropriate here.

RELIEF REQUESTED

In anticipation of entry of an order recognizing the Chapter 15 Petitioners' Canadian proceedings as foreign main proceedings on June 4th, the Term Loan Lenders request that this Court (a) enter an order compelling ACI to comply with section 1520(a)(2) of the Bankruptcy Code and provide the Term Loan Lenders with adequate protection for use by the Chapter 15 Petitioners of the Term Loan Lenders' cash collateral or (b) in the alternative, deny the petition for recognition and terminate the Provisional Order pursuant to section 1522(a).

Specifically, the Term Loan Lenders seek the following adequate protection from the Chapter 15 Petitioners: (i) post-petition replacement liens (first liens on unencumbered assets and junior liens on already encumbered assets) on the Chapter 15 Petitioners' assets (whether located in the US or Canada) that are not part of the Term Loan Lenders' prepetition collateral package, (ii) payment of reasonable fees and expenses of the Agent's and Term Loan Lenders' professionals, including Canadian counsel, and (iii) payment of current interest at the contractual non-default rate on the Term Loan Obligations.[8]

ARGUMENT

1. The Term Loan Lenders are entitled to adequate protection of their interest in cash collateral pursuant to section 1520(a)(2) of the Bankruptcy Code

In the Financing Motion, the Debtors acknowledge that pursuant to section 1520(a) of the Bankruptcy Code, the Chapter 15 Petitioners must comply with section 363 of the Bankruptcy Code with respect to their assets located within the territorial jurisdiction of the US.[9] Section 363 provides that a debtor may only use, transfer or otherwise dispose of cash collateral if parties with an interest in the cash collateral consent or are provided with adequate protection of their interest in the cash collateral. 11 U.S.C. §§ 363(c)(2), (e); see also In re Tri-Continental Exchange Ltd., 349 B.R. 627, 639 (Bankr. E.D. Cal. 2006) ("An automatic consequence of recognition of a foreign main proceeding is that § 363 applies....As a consequence, cash collateral cannot be used without permission." (internal citations omitted).) The Debtors try to avoid the inevitable conclusion that they must provide the Term Loan Lenders with adequate protection for the use the Chapter 15 Petitioners' cash collateral located within the territorial jurisdiction of the US by simply claiming that there is only $7 million of such cash collateral in existence.

However, based on a review of the Debtors' bank account structure chart, the Debtors have greatly understated the amount of cash collateral subject to section 363's requirement to provide adequate protection to parties with an interest in cash collateral. Among the assets of the

[8] The Term Loan Lenders hereby reserve their right to seek payment of incremental interest between the contractual non-default rate and the contractual default rate at a later time.

[9] Section 1520(a)(2) provides that "upon recognition of a foreign proceeding that is a foreign main proceeding -- "(2) sections 363, 549 and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of the estate." 11 U.S.C. § 1520(a)(2).

Chapter 15 Petitioners located within the "territorial jurisdiction of the United States" is the ACI Concentration Account and the cash from time to time held therein. Upon information and belief, all of the Chapter 15 Petitioners' inventory and receivables will ultimately be monetized through the Securitization Program, and a substantial portion of the proceeds will be aggregated in the ACI Concentration Account. The Term Loan Lenders have an interest in this cash collateral as proceeds of accounts receivable on which the Term Loan Lenders have a lien, and by virtue of their first-priority, validly perfected lien on and security interest in the cash in the ACI Concentration Account at any given time, as evidenced by the blocked account agreement attached as Exhibit A hereto.[10] As a result, it is not just the value of the Chapter 15 Petitioner's US cash on the Petition Date that is relevant; the cash generated post-petition by the monetizing of the Chapter 15 Petitioners' inventory and accounts receivable also constitutes the Term Loan Lenders' cash collateral for which adequate protection must be provided if the Debtors wish to use it.

This protection is vital to the preservation of the value of the Term Loan Lenders' collateral. The Term Loan Lenders have already been impaired by the imposition of a priming lien on their Canadian collateral to secure the Canadian Debtors' obligations under a Canadian DIP facility.[11] In addition, Citibank, as the securitization purchaser, has swept substantial amounts of cash out of the cash management system to pay down the balance owed to it, further reducing the value of the Term Loan Lenders' collateral, which is readily apparent by the more than a 10% decrease in the amount of cash on hand in the past month.

[10] The Debtors admit the validity and enforceability of this agreement. See Financing Motion, ¶ 12, 19.

[11] Notably, the Canadian Court justified priming the Term Loan Lenders' interest in its Canadian collateral without providing any adequate protection based on the Debtors' argument that on a comprehensive cross-border basis the Term Loan Lenders are oversecured. Therefore, the Debtors should not be permitted to argue before this Court that the value of the Term Loan Lenders ' collateral for purposes of determining how much adequate protection is required should be determined based only on collateral located in the US.

2. <u>If the Chapter 15 Petitioners refuse to grant the Term Loan Lenders adequate protection the Court should deny the Chapter 15 Petitioners' request for recognition and terminate the Provisional Order</u>

Section 1522(a) of the Bankruptcy Code provides that:

> The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

11 U.S.C. § 1522(a). To the extent that the Chapter 15 Petitioners cannot or will not provide the Term Loan Lenders with adequate protection for their interest in the cash collateral, the Term Loan Lenders request that the Court deny the request for recognition pursuant to section 1522(a) because the interests of the Term Loan Lenders would not be "sufficiently protected."[12] 11 U.S.C. § 1522(a); <u>see also</u> <u>In re Altas Shipping A/S</u>, 2009 WL 1111209, *9 (Bankr. S.D.N.Y. 2009) (holding that discretionary relief under section 1519 and 1521 may only be granted "if the interests of creditors are sufficiently protected."); <u>Tri-Continental Exchange</u>, 349 B.R. at 637 ("Standards that inform the analysis of § 1522 protective measures in connection with discretionary relief emphasize the need to tailor relief and conditions so as to balance the relief granted to the foreign representative and the interests of those affected by such relief"). In connection with such denial, the Term Loan Lenders request that this Court also deny comity to the CCAA order staying actions against assets of ACI and ACCC located in the US.

Furthermore, pursuant to paragraph 10 of the Provisional Order, with this Motion constituting the required notice, the Term Loan Lenders request that the Provisional Order be immediately terminated for the foregoing reasons so that the Term Loan Lenders may exercise rights and remedies against the Chapter 15 Petitioners' US assets. Provisional Order, ¶ 10 ("Any party in interest ... may make a motion seeking relief from, or modification of, this Order,

[12] To the extent that the Chapter 15 Petitioners will need the authorization of the Canadian court to grant adequate protection on their assets to the Term Loan Lenders, it is reasonable to think that the Canadian Court would agree to do so based on its grant of adequate protection to secured creditors of the Chapter 15 Petitioners' Bowater affiliates.

by filing a motion on not less than five (5) business days notice to United States Counsel ... seeking an order for such relief, and any such request shall be the subject of a hearing to be scheduled by the Court.").

Any other outcome would permit the Chapter 15 Petitioners to avail themselves of the benefits of the US banking system and Bankruptcy Code's automatic stay without abiding by the corresponding obligations to provide certain protections to the interests of secured creditors. These benefits and burdens cannot be separated.

CONCLUSION

For the reasons set forth herein, the Acting Agent requests that the Court compel the Chapter 15 Petitioners to provide the Term Loan Lenders with adequate protection for their interest in the cash collateral generated by the Securitization Program, or, in the alternative, denying the request for recognition and terminating the Provisional Order, and grant such other and further relief as the Court determines is necessary and just.

Dated: May 20, 2009
Wilmington, Delaware

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