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",

Petitioners

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, *es qualité*

MOTION TO ADJOURN PETITIONERS' *MOTION FOR AN ORDER AUTHORIZING A REPLACEMENT SECURITIZATION FACILITY AND TO AMEND THE INITIAL ORDER*

TO THE HONOURABLE JUSTICE CLÉMENT GASCON, J.C.S., SITTING IN AND FOR THE COMMERCIAL DIVISION OF THE SUPERIOR COURT, DISTRICT OF MONTREAL, PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. Respondents seek from the Court an order adjourning the Petitioners' motion (the "**Petitioners' Securitization Motion**') requesting the Court to authorize the Petitioners to enter into what they refer to as "an amended and restated guaranteed receivables purchase facility" and various agreements related thereto (the "**Replacement Securitization Program**");

2. On May 18, 2009, AbitibiBowater US Holding LLC, a U.S. affiliate of ACI and ACCC, and certain of its subsidiaries (the "**U.S. Debtors**"), filed a similar motion in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") seeking an order authorizing them to enter into the Replacement Securitization Program and authorizing the U.S. Debtors, Abitibi-Consolidated Inc. ("**ACI**") and Abitibi-Consolidated Company of Canada Inc. ("**ACCC**") to use the Term Loan Lenders' (as defined below) cash collateral (the "**U.S. Securitization Motion**"). The U.S. Securitization Motion, which is attached hereto as **Exhibit R-6**, seeks authority to use any and all cash collateral of the Term Loan Lenders, including that attributable to Receivables of ACI;

3. The hearing on the U.S. Securitization Motion is scheduled to proceed on May 27, 2009;

4. The substance of the Petitioners' Securitization Motion is the same as the relief requested in the U.S. Securitization Motion, but it was only served after 5 p.m. on May 21, 2009, for a hearing intended to proceed two days in advance of the U.S. hearing.

5. The Petitioners have known since April 16, 2009 that the Interim Securitization Program (as defined below) expires on June 1, 2009. The Term Loan Lenders submit that the manner in which the two motions have been advanced suggests that the impression of urgency sought to be created by the Petitioners is of their own making.

6. The Term Loan Lenders (as defined below) have brought a motion in the U.S. Court (the "**Chapter 15 Motion**") submitting that, as a matter of U.S. law, the U.S. Court cannot sanction the use of cash collateral held within the territorial jurisdiction of the United States that is subject to the Term Loan Lenders' security without the Petitioners providing adequate protection for the use of that cash collateral, including *inter alia* by way of providing liens to the Term Loan Lenders on assets in Canada. The Chapter 15 Motion is attached hereto as **Exhibit R-1**;

7. The Term Loan Lenders have also filed an objection in the U.S. Court (the "**Objection**") opposing the granting of the relief requested in the U.S. Securitization on a number of grounds, including that the U.S. Court cannot sanction the use of cash collateral held within the territorial jurisdiction of the United States that is subject to the Term Loan Lenders' security without the U.S. Debtors providing adequate protection for the use of that cash collateral, including *inter alia* by way of providing liens to the Term Loan Lenders on assets of the Petitioners in Canada. The Objection is attached hereto as **Exhibit R-2**.

8. If the Term Loan Lenders are successful before the U.S. Court then, in order to implement the Replacement Securitization Program, the Petitioners will be required to seek from the Court an order permitting them to provide such adequate protection to the Term Loan Lenders;

9. Respondents submit that it would be wasteful of the Court's resources for the Court to entertain the Petitioners' motion to sanction the Replacement Securitization Program before all of the circumstances in which it would operate are known;

II. THE RESPONDENTS

10. 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*;

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

    (a) Respondents are or represent Term Loan Lenders who together hold "Term Loan Exposure" representing more than 50% of the aggregate "Term Loan Exposure" of all Term Loan Lenders. As such, Respondents 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 (Goldman Sachs Credit Partners L.P.) 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 Lenders and act on their behalf;

III. The Relief Obtained in the Initial Order Concerning the Interim Securitization Program

12. As appears from the CCAA Petition:

    (a) The ABH Group produces various products including newsprint, specialty papers, wood pulp and wood products (the "**Products**") (Petition, para. [97]);

    (b) The Products of the ACI Group are produced through mills owned directly or indirectly by ACCC. The Products are sold by ACCC to ACI, which in turn sells them to customers (Petition, para. [98]);

    (c) ACI also sells Products to Abitibi-Consolidated Sales Corporation ("**ACSC**"), a DCorp Group entity, which in turn sells them to customers in the United States (Petition, para. [100]);

    (d) As part of a securitization in place prior to the filing of the CCAA Petition involving Citibank (the "**Pre-Filing Securitization Program**"), the accounts receivable of ACI and ACSC resulting from sales to customers in Canada, the U.S. and elsewhere, except the U.K., Belgium, Ireland and Germany (the "**Receivables**") were sold to a special purpose vehicle, ACI Funding, which then sold fractional ownership interests in the Receivables and related rights to Citibank (Petition, para. [109],[183]-[185]);

    (e) The Pre-Filing Securitization Program is set up through various agreements (Petition, para. [185]);

13. The Term Loan is secured by various assets (the "**Term Loan Lenders' Collateral**"), including *inter alia* cash collateral derived from the Receivables;

14. The CCAA Petition requested that ACI and ACSC be authorized to continue selling Receivables under the Pre-Filing Securitization Program for 45 days (Petition, para. [109] and [183] to [203]) (the "**Interim Securitization Program**");

15. This request was granted through para. [29] to [45] of the Initial Order, without any conditions and without any protection being afforded to the Term Loan Lenders regarding the possible reduction of the value of the Term Loan Lenders' Collateral, including the cash collateral derived from the Receivables;

IV. U.S. Negotiations Concerning the Interim Securitization Program

16. On April 16, 2009, the U.S. Debtors, including ACSC, filed in the U.S. Court a motion requesting the same relief regarding the Interim Securitization Program as in the CCAA Petition, as appears from the *Debtors' Motion for an Interim Order Pursuant to Sections 105, 362(d), 363(b)(1), 363(f), 363(m), 364(c)(1), 364(e) and 365 of the Bankruptcy Code (A) Authorizing Certain Debtors to Continue Selling Receivables and Related Rights Pursuant to an Amended Securitization Program, (B) Modifying the Automatic Stay and (C) Granting Other Related Relief* (the "**U.S. Interim Securitization Motion**") attached hereto as **Exhibit R-3**;

17. A limited objection to the U.S. Interim Securitization Motion was made by the Term Loan Lenders, who requested that the sale of Receivables under the Interim Securitization Program be made conditional upon the Term Loan Lenders being provided adequate protection against an eventual reduction in the value of the Term Loan Lenders' Collateral, as appears from the Term Loan Lenders' objection attached hereto as **Exhibit R-4**;

18. Prior to the hearing of the U.S. Interim Securitization Motion, the Term Loan Lenders and the U.S. Debtors negotiated and came to an interim agreement on an adequate protection package to protect the Term Loan Lenders' interests in connection with the Interim Securitization Program, provided that the Term Loan Lenders reserved their rights to object to any other securitization, including the Replacement Securitization Program;

19. On April 17, 2009, the U.S. Court rendered an Interim Order that is expressly subject to and supplemented by the adequate protection agreed to by the parties on the record at the hearing of the U.S. Interim Securitization Motion, as appears from the transcript of the hearing attached hereto as **Exhibit R-5**;

20. In summary, the following protection was provided to the Term Loan Lenders in relation to the 45 days during which the Interim Securitization Program was to remain in effect:

    (a) Post-petition replacement liens, to the extent of a diminution in the Term Loan Lenders' Collateral, on all post-petition assets that constituted pre-petition collateral;

    (b) New liens, to the extent of a diminution in the Term Loan Lenders' Collateral, in the form of post-petition liens on unencumbered assets of the U.S. Debtors and junior liens on their already encumbered assets, provided that the Term Loan Lenders will not have liens on assets on which the U.S. Debtors are not permitted to grant liens;

    (c) An administrative expense priority claim (junior only to the administrative expense priority claim granted to Citibank) for (a) all accrued and unpaid interest on the Term Loan and interest to accrue through the termination of the Interim Securitization Program (which interest will accrue at the default rate when applicable), payable upon the refinancing or replacement of the Securitization; and (b) any diminution of the value of the Term Loan Lenders' Collateral;

    (d) Payment of reasonable fees and expenses of the Term Loan Lenders' advisors, including their financial advisor, their U.S. legal counsel and their Canadian legal counsel;

    (e) A standstill on the Inter-Creditor Agreement between the Term Loan Lenders and Citibank, to remain in effect until the termination of the Interim Securitization Program or earlier if an event of default was to occur under the Interim Securitization Program; and

    (f) The Debtors to use their best efforts to deliver a budget showing how the proceeds of the Interim Securitization Program are to be used, the whole as appears from the transcript of the hearing;

21. Notwithstanding that the Petitioners refer to the proposed Replacement Securitization Program as merely an extension, it is in reality a replacement, in accordance with which the existing securitization lenders would be paid in full—a fact that the Petitioners implicitly acknowledge in styling their motion as one to authorize a "replacement" facility;

V. THE TERM LOAN LENDERS' CHAPTER 15 MOTION

22. On April 17, 2009, ACI and ACCC filed petitions for recognition of their CCAA cases as foreign main proceedings under chapter 15 of the United States Bankruptcy Code ("**Chapter 15**") (which, like section 18.6 of the CCAA, deals with recognition of foreign insolvency proceedings). A stated purpose of the Chapter 15 filings was to obtain the protection of a stay of proceedings for ACCC's and ACI's U.S. assets;

23. In contending for the approval of the U.S. Securitization Motion, the U.S. Debtors claim that ACI and ACCC do not need to provide the Term Loan Lenders with adequate protection because the aggregate value of their U.S. assets on the petition date was only $7 million. Even if, as a matter of U.S. law, this claim could be sustained, the Term Loan Lenders submit that the U.S. Debtors' submissions ignore two fundamental facts;

24. First, the Term Loan Lenders have perfected liens on all of ACI's and ACCC's inventory and receivables and the proceeds derived therefrom (now or hereafter existing);

25. Second, the U.S. Debtors' assessment of the value of the U.S. assets ignores the manner in which the Pre-Filing and Interim Securitization Programs operate (and the proposed Replacement Securitization Program would operate);

26. Although this fact is not apparent from the description of the Petitioners' cash management system in the Sixth Report of the Monitor, the Term Loan Lenders' Collateral includes the cash from time to time deposited in an ACI account at Bank of America (the "**ACI Concentration Account**"). The Term Loan Lenders' lien is perfected by a blocked account control agreement, a copy of which is attached as Exhibit A to the Chapter 15 Motion. The ACI Concentration Account and the cash at any time deposited in it are located within the territorial jurisdiction of the United States. As a result, access to that asset is properly subject to the control of the U.S. Court;

27. According to the bank account structure chart attached as Exhibit B to the Chapter 15 Motion, the ACI Concentration Account is the account in which the proceeds of U.S. dollar denominated Receivables sold to ACI Funding (including by ACI) are aggregated. As appears from the Chapter 15 Motion, virtually all of the proceeds of the Receivables of ACI are denominated in U.S. dollars (Chapter 15 Motion, pp. 4, 6). As such, virtually all proceeds of the Pre-Filing and Interim Securitization Program are (and virtually all of the proceeds of the proposed Replacement Securitization Facility would be), at some point, held in a U.S. bank account and therefore subject to any order that the U.S. Court may make;

28. In the Chapter 15 Motion the Term Loan Lenders submit that, having sought the protection of Chapter 15, as a matter of U.S. law ACI and ACCC are required, as a

condition of continuing to enjoy that protection, to provide adequate protection for the use of the Term Loan Lenders' cash collateral before any order can be granted permitting use of that cash collateral;

29. It is readily apparent that an order permitting access to the Term Loan Lenders' cash collateral in the ACI Concentration Account would be essential to the operation of the Replacement Securitization Program. The Term Loan Lenders submit that it is entirely appropriate for the U.S. Court to impose whatever conditions it is required to impose, as a matter of U.S. law, before permitting use of that cash collateral. The Term Loan Lenders submit that such conditions must involve ACI and ACCC providing adequate protection, including, *inter alia,* by way of liens on Canadian assets, in order to satisfy such conditions and that, if ACI and ACCC do not do so, they cannot be entitled to the benefit of Chapter 15 and a stay of proceedings in the United States;

VI. THE TERM LOAN LENDERS' OBJECTIONS TO THE REPLACEMENT SECURITIZATION PROGRAM

30. Some of the Term Loan Lenders' grounds of objection to the U.S. Securitization Motion concern matters of U.S. law (for example, the requirement for adequate protection). Others (for example, the inadequacy of information provided in support of the request to sanction the Replacement Securitization Program) are equally applicable to the relief sought in the Petitioners' Securitization Motion;

VII. CONCLUSIONS

31. It would be wasteful of the Court's resources to consider the motion by the Petitioners seeking approval for the Replacement Securitization Program before all of the circumstances in which it would operate are known, and in particular while the Term Loan Lenders' submissions that they are entitled to adequate protection, including *inter alia* liens on Canadian assets, as a condition to any use of their cash collateral, have yet to be heard;

32. It would also be pointless to require the Term Loan Lenders to mount their objections to the Petitioners' Securitization Motion in advance of the hearing of the U.S. Securitization Motion. In addition to presenting objections to the Replacement Securitization Program under U.S. law, further objections have been or will be raised by the Term Loan Lenders that are equally germane for this Court. Duplication and waste would be occasioned by having identical submissions advanced both to the Court and to the U.S. Court. Adjourning the Petitioners' Securitization Motion would be a more efficient manner of proceeding for all concerned and would avoid the risk of inconsistent orders;

33. Furthermore, since the Term Loan Lenders have argued that, as a matter of U.S. law, the Replacement Securitization Program cannot be implemented without the imposition of certain conditions, principles of comity suggest that this Court should defer its decision until the question whether, as a matter of U.S. law, any conditions need to be imposed is resolved in the U.S. Court according to the requirements of U.S. law. Only then will the Petitioners know what order they will need from the Court;

34. The Term Loan Lenders therefore request that the hearing of the Petitioners' Securitization Motion be adjourned to await the determination of the Chapter 15 Motion and the U.S. Securitization Motion.

35. In the alternative, the Term Loan Lenders request that, if any relief is to be granted on the Petitioners' motion, such relief should be expressly without prejudice to the determination of all issues raised by the Term Loan Lenders before the U.S. Court in the Chapter 15 Motion and in relation to the U.S. Securitization Motion.;

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present motion;

ADJOURN the Petitioners' Securitization Motion;

THE WHOLE without costs except in case of contestation.

Montréal, this May 22, 2009

Fasken Martineau DuMoulin

Fasken Martineau DuMoulin LLP
Attorneys for Respondents

NOTICE OF PRESENTATION

TO: SEE ATTACHED SERVICE LIST

TAKE NOTICE that the present *Motion for an Order Authorizing a Replacement Securitization Program and to Amend the Initial Order* will be presented for adjudication before Justice Clément Gascon, J.C.S., sitting in and for the District of Montréal, Commercial Division, on **May 25, 2009**, at **9:00 a.m.**, or so soon thereafter as counsel may be heard, in room **15.04** of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec, H4Z 1E9.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, this May 22, 2009

Fasken Martineau DuMoulin

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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",

Petitioners

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, *es qualité*

LIST OF EXHIBITS

EXHIBIT R-1 : Chapter 15 Motion;

EXHIBIT R-2 : Objection in the U.S. Court opposing the granting of the relief requested in the U.S. Securitization;

EXHIBIT R-3 : Debtors' Motion for an Interim Order Pursuant to Sections 105, 362(d), 363(b)(1), 363(f), 363(m), 364(c)(1), 364(e) and 365 of the Bankruptcy Code (A) Authorizing Certain Debtors to Continue Selling Receivables and Related Rights Pursuant to an Amended Securitization Program, (B) Modifying the Automatic Stay and (C) Granting Other Related Relief;

EXHIBIT R-4 : Limited Objection of Certain of the ACC Term Loan Lenders to the Debtors' Motion for an Interim Order Pursuant to Sections 105, 362(d), 363(b)(1), 363(f), 363(m), 364(c)(1), 364(e) and 365 of the Bankruptcy Code (A) Authorizing Certain Debtors to Continue Selling Receivables and Related Rights Pursuant to an Amended Securitization Program, (B) Modifying the Automatic Stay and (C) Granting Other Related Relief;

EXHIBIT R-5 : Transcript of the hearing held before the U.S. Bankruptcy Court for the District of Delaware on April 17, 2009;

EXHIBIT R-6 : U.S. Securitization Motion;

Montréal, this May 22, 2009

Fasken Martineau DuMoulin

Fasken Martineau DuMoulin LLP
Attorneys for Respondents