CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

N°: 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 Petitioners listed on Schedules "A", "B" and "C"

Petitioners,

AND

ERNST & YOUNG INC.

Monitor,

AND
The Ad Hoc Committee of the Senior Secured Noteholders and U.S. Bank National Association, Indenture Trustee for the Senior Secured Notes

Respondents

CONTESTATION TO PETITIONERS' MOTION FOR AN ORDER AUTHORIZING A REPLACEMENT SECURITIZATION FACILITY

IN CONTESTATION TO PETITIONERS' MOTION FOR AN ORDER AUTHORIZING A REPLACEMENT SECURITIZATION FACILITY, THE AD HOC COMMITTEE OF SENIOR SECURED NOTEHOLDERS (the "Senior Noteholders Committee") AND U.S. BANK NATIONAL ASSOCIATION, INDENTURE TRUSTEE FOR THE SENIOR SECURED NOTES (the "Notes Trustee") SUBMIT THE FOLLOWING:

1. Abitibi seeks approval to enter into certain amended an restated securitization program agreements, (the "**Amended Securitization Program**") designed to refinance and replace the existing program while continuing under its current structure;

2. The Senior Secured Noteholders advanced approximately US $413,000,000 to Abitibi Consolidated Company of Canada ("**ACCC**") about one year ago (the "**Senior Secured Loan**"). With accrued interest, the approximate amount presently owing in respect of the Senior Secured Loan is US $445,000,000. Interest continues to accrue on the Notes at the rate of about US$5,000,000 per month;

3. The Senior Secured Loan is secured by ACCC's interest in two hydro projects (the "**Hydro Assets**"):

   (i) ACCC's 60% interest in Manicouagan Power Company ("**MPCo**"), which owns and operates a 335 megawatt hydroelectric power facility on the Manicouagan River; and

   (ii) ACCC's 75% interest in ACH Limited Partnership ("**ACH**"), a joint venture with Caisse de depot et placement du Quebec for its Ontario hydro-electric generation facilities, which encompass eight hydroelectric generation facilities located in Ontario together with the shares of Abitibi Consolidated Hydro Inc, general partner of ACH Limited Partnership;

4. In addition to the Hydro Assets, the Senior Secured Noteholders have the benefit of additional security, including charges upon eleven pulp and paper mills, related equipment, intellectual property and other property (the "**Additional Collateral**" and collectively, the "**Senior Notes Security**");

5. In addition to the Hydro Assets and the Additional Collateral, the following subsidiaries of AbitibiBowater US Holding LLC are guarantors of the Senior Secured Loan:

   - Donahue Corp.
   - Abitibi Consolidated Sales Corporation
   - Abitibi Consolidated Alabama Corporation

- Alabama River Newsprint Company

- Abitibi Consolidated Corp.

- Augusta Woodlands LLC

(hereinafter the "**Senior Loan Guarantors**")

6. It is the Senior Noteholders Committees' and the Note Trustees' understanding from the materials provided by the Petitioners that the Amended Securitization Program will require that the Senior Loan Guarantors, guarantee the obligations of the borrowers under the Amended Securitization Program thereby adding potentially US $3,000,000 of debt load on the patrimony of the Senior Loan Guarantors as appears from the terms and conditions of the Amended Securitization Program produced by Petitioners as exhibit R-1 (as the Senior Loan Guarantors are either direct and indirect wholly owned subsidiaries of Donahue Corp);

7. As described in the first Monitor's report and in the Sixth Monitor's Report, Abitibi Consolidated Inc. ("**ACI**") and its subsidiaries listed in appendix A of the proceedings (collectively with ACI, the "**ACI Petitioners**") and D-Corp Group operate an integrated cash management system (the "**CMS**");

8. The loan to Abitibi Consolidated Company of Canada under the 364 day Senior Secured Term Loan in the amount of $347,000,000 (the "**Term Loan Facility**") by the term lenders (the "**ACCC Term Lenders**") is guaranteed by ACI, certain of its subsidiaries and by the DCorp Group;

9. It is the Respondents' understanding that the ACCC Term Lenders are seeking in the U.S. from the D-Corp Group (which includes the Senior Loan Guarantors) adequate protection to compensate for the use by D-Corp Group of their collateral namely inventory and receivables under the Amended Securitization Program;

10. The Borrower under the Term Loan Facility is ACCC;

11. In the course of the hearing on ACI Petitioners' motion for approval of a DIP Financing, the ACCC term lenders requested from this Court an adequate protection charge which was refused by this Court on May 6, 2009, this Court stating that:

"[43] as for the adequate protection charge in the event of the diminishing of value of the term lenders collateral because of the ongoing operation of ACI, the Court finds the request unfounded, and in fact questionable.

(…) On the other hand, the US concept of adequate protection charge is seldom, if ever, applied in Canadian Courts."

12. It appears that the ACCC Term Lenders have made a request before the US Courts to obtain an adequate protection charge as further described in paragraphs 46 and following of the Sixth Monitor's Report;

13. As a consequence to this adequate protection charge request, AbitibiBowater et al. have served and filed *a Debtor's motion for an order pursuant to sections 105, 362(d), 363(b)(l), 363(c), 363(f), 363(m), 364(e) and 365 of the Bankruptcy code (1) authorizing entry into an amended and restated guaranteed receivables purchase facility and authorizing the sale of receivables and related rights thereto, (2) authorizing Abitibi Consolidated Sales Corporation to cause payment of certain fees pursuant to the engagement letters, (3) modifying the automatic stay, (4) authorizing the use of cash collateral, (5) granting superpriority administrative expense claims, (6) granting adequate protection, (7) scheduling hearings and (8) granting other related relief* produced as exhibit SN-1 in support of this contestation (the "**U.S. Securitization Motion**").

14. As appears from the Sixth Monitor's Report, the D-Corp Group has agreed under the U.S. proceeding to grant an adequate protection charge to ACCC term lenders for the period of April 16, 2009 to June 1, 2009 as follows:

- The ACCC term lenders were granted replacement liens on post petition assets of the D-Corp Group

- The ACCC term lenders were granted liens and security on all unencumbered assets of the D-Corp Group and junior liens on encumbered assets of the D-Corp Group

15. Upon the refinancing of the existing securitization program namely the Amended Securitization Program, D-Corp Group has agreed to make an adequate protection payment in the amount of approximately $11,000,000 and to pay fees and expenses of certain professionals to the ACCC Term Lenders which accrued during the initial adequate protection period;

16. In the Sixth Monitor's Report it is stated that as an additional adequate protection measure, the D-Corp Group will also deposit in a separate bank account on the sixteenth day of each month, with the first deposit due as of April 15, 2009 sums of money on which the ACCC Term Lenders will be granted a first priority lien;

17. As indicated in the declaration of Steven Zelin of Blackstone Advisory Services LLP attached as appendix E to the Sixth Monitor's Report, the operations of some of the D-Corp Group entities have negative cash flows and losses from the operation of these business are funded directly by ACI and the ACI Petitioners, at the rate of presently $1.5 M per month;

18. As stated again in paragraph 53 of the Sixth Monitor's Report in paragraph 53:

"It is the Monitor's understanding that the Interim Payment was agreed to by the U.S. Debtors before the full implications of the effect of this payment on the ACI

Group, through the operation of the Existing Securitization Program and the CMS, were appreciated."

19. From the above mentioned fact, the Respondents are lead to believe that those adequate protection expenditures ultimately will be borne by the Canadian Debtors and not by the D-Corp Group;

20. The Monitor in his Sixth Monitor's Report indicates that the D-Corp Group debtors are currently experiencing, and are projected to continue to experience, substantial negative cash flow, while Canada-based ACI is projected to enjoy positive cash flow before debt service. As a result of the need to fund those operating losses, the net result of the proposed Amended Securitization Program will be that there will be a net cash drain from the ACI estate administered before the Canadian Court, into the D-Corp Group estates administered before the U.S. Courts, of approximately $1.5 million per month plus (i) the fees payable in connection with the facility, and (ii) the "adequate protection" payments to be made to the ACCC Term Lenders.

21. The reality is that any adequate protection payments awarded in the U.S. under the U.S. Securitization Motion will effectively be funded by ACI, by means of the monthly net cash drain from ACI to D-Corp Group. Essentially, ACI is being asked to provide "adequate protection" to the ACCC Term Lenders to fund the cost of preserving their own D-Corp Group collateral.

WHEREFORE, MAY IT PLEASE THIS COURT TO:

DISMISS Petitioners' Motion for an order authorizing a replacement securitization facility,

GRANT the Senior Noteholders' Committee and U.S. Bank National Association's contestation;

IN THE ALTERNATIVE, in the event that the Order is granted:

(a) **ORDER** that no payments be made directly or indirectly by ACI and or the ACI Petitioners towards the payment of any D-Corp Group adequate protection expenditures if granted by the U.S. Courts.

THE WHOLE WITH COSTS

Montreal, May 22, 2009

Borden Ladner Gervais LLP

Borden Ladner Gervais LLP
Attorneys for the Ad Hoc Committee of the Senior Secured Noteholders and U.S. Bank National Association, Indenture Trustee for the Senior Secured Notes

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SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL
No.: 500-11-036133-094

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Respondents

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CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

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Petitioners,

AND

ERNST & YOUNG INC.

Monitor,

AND
The Ad Hoc Committee of the Senior Secured Noteholders and U.S. Bank National Association, Indenture Trustee for the Senior Secured Notes

Respondents

LIST OF EXHIBITS

EXHIBIT SN-1: Debtor's motion for an order pursuant to sections 105, 362(d), 363(b)(l), 363(c), 363(f), 363(m), 364(e) and 365 of the Bankruptcy code (1) authorizing entry into an amended and restated guaranteed receivables purchase facility and authorizing the sale of receivables and related rights thereto, (2) authorizing Abitibi Consolidated Sales Corporation to cause payment of certain fees pursuant to the engagement letters, (3) modifying the automatic stay, (4) authorizing the use of cash collateral, (5) granting superpriority administrative expense claims, (6) granting adequate protection, (7) scheduling hearings and (8) granting other related relief;

Montreal, May 22, 2009

Borden Ladner Gervais

Borden Ladner Gervais LLP
Attorneys for the Ad Hoc Committee of the Senior Secured Noteholders and U.S. Bank National Association, Indenture Trustee for the Senior Secured Notes

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EXHIBIT SN-1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
ABITIBIBOWATER INC., *et al.*,[2]	)	Case No. 09-11296 (KJC)
Debtors.	)	(Jointly Administered)

DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTIONS 105, 362(d), 363(b)(l), 363(c), 363(f), 363(l), 363(m), 364(c), 364(e) AND 365 OF THE BANKRUPTCY CODE (1) AUTHORIZING ENTRY INTO AN AMENDED AND RESTATED GUARANTEED RECEIVABLES PURCHASE FACILITY AND AUTHORIZING THE SALE OF RECEIVABLES AND RELATED RIGHTS THERETO, (2) AUTHORIZING ABITIBI CONSOLIDATED SALES CORPORATION TO CAUSE PAYMENT OF CERTAIN FEES PURSUANT TO THE ENGAGEMENT LETTERS, (3) MODIFYING THE AUTOMATIC STAY, (4) AUTHORIZING THE USE OF CASH COLLATERAL, (5) GRANTING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (6) GRANTING ADEQUATE PROTECTION, (7) SCHEDULING HEARINGS AND (8) GRANTING OTHER RELATED RELIEF

AbitibiBowater Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (each a "**Debtor**," and collectively, the "**Debtors**"), by and through their undersigned counsel, hereby move this Court for entry of an order pursuant to sections 105, 362(d), 363(b)(l), 363(c), 363(f), 363(l) 363(m), 364(c), 364(e) and 365 of title 11 of the United

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2 The Debtors in these cases, along with the last four digits of each Debtor's federal or Canadian tax identification number, are: AbitibiBowater Inc. (6415), AbitibiBowater US Holding 1 Corp. (6050), AbitibiBowater US Holding LLC (N/A), AbitibiBowater Canada Inc. (3225), Abitibi-Consolidated Alabama Corporation (4396), Abitibi-Consolidated Corporation (9050), Abitibi-Consolidated Finance LP (4528), Abitibi Consolidated Sales Corporation (7144), Alabama River Newsprint Company (7247), Augusta Woodlands, LLC (0999), Bowater Alabama LLC (7106), Bowater America Inc. (8645), Bowater Canada Finance Corporation (8810), Bowater Canadian Forest Products Inc. (2010), Bowater Canadian Holdings Incorporated (6828), Bowater Canadian Limited (7373), Bowater Finance Company Inc. (1715), Bowater Finance II LLC (7886), Bowater Incorporated (1803), Bowater LaHave Corporation (5722), Bowater Maritimes Inc. (5684), Bowater Newsprint South LLC (1947), Bowater Newsprint South Operations LLC (0186), Bowater Nuway Inc. (8073), Bowater Nuway Mid-States Inc. (8290), Bowater South American Holdings Incorporated (N/A), Bowater Ventures Inc. (8343), Catawba Property Holdings, LLC (N/A), Coosa Pines Golf Club Holdings LLC (8702), Donohue Corp. (9051), Lake Superior Forest Products Inc. (9305) and Tenex Data Inc. (5913). The Debtors' corporate headquarters are located at, and the mailing address for each Debtor is, 1155 Metcalfe Street, Suite 800, Montreal, Quebec H3B 5H2, Canada.

States Code (the **"Bankruptcy Code"**): (1) authorizing entry into an amended and restated guaranteed receivables purchase facility (the **"Amended and Restated Securitization Program"**) and authorizing the sale of receivables and related rights pursuant thereto; (2) authorizing Abitibi Consolidated Sales Corporation (**"ACSC"**) to cause payment by Abitibi-Consolidated U.S. Funding Corp. (**"ACI Funding"**)[3] of certain fees pursuant to fee letters, executed or scheduled to be executed in accordance with that certain engagement letter attached hereto as an exhibit (the **"Citibank Engagement Letter"**) by and between Citibank, N.A. (**"Citibank"**), Abitibi-Consolidated Inc. (**"ACI"**) and ACI Funding and a substantially similar engagement letter, attached hereto as an exhibit, by and between Barclays Capital Inc. (**"Barclays"**), ACI and ACI Funding (collectively, the **"Engagement Letters"**); (3) modifying the automatic stay; (4) authorizing the use of cash collateral; (5) granting superpriority administrative expense claims; (6) granting adequate protection; (7) scheduling hearings on this motion to consider entry of an interim order substantially in the form attached hereto as Exhibit 1 (the **"Interim Order"**), and consider entry of a final order, pursuant to Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the **"Bankruptcy Rules"**) and Local Rules-2002-1, 4001 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the **"Local Rules"**); and (8) granting other related relief. In support of this motion (the **"Motion"**), the Debtors rely upon (i) the *Declaration of William G. Harvey in Support of Chapter 11 Petitions and Various First Day Applications and Motions* dated April 16, 2009, and (ii) the *Declaration of Steve Zelin In*

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[3] Any request for authority by ACI Funding herein shall be a request by ACSC to cause ACI Funding to perform such acts as described herein.

Support of the Motion (the **"Zelin Declaration"**)[4] filed contemporaneously herewith and incorporated herein by reference, and respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction to hear this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105, 362(d), 363(b)(l), 363(c), 363(f), 363(l), 363(m), 364(c), 364(e) and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and Local Rules 2002-1, 4001-1 and 6004-1.

BACKGROUND

3. AbitibiBowater Inc. (**"AbitibiBowater"** and together with its subsidiaries, the **"Company"**) is incorporated in Delaware and headquartered in Montreal, Quebec. The Company is the world's largest producer of newsprint by capacity and one of the largest publicly traded pulp and paper manufacturers worldwide. It produces an extensive range of commercial printing papers, market pulp, and wood products, serving customers in over 90 countries. The Company is also among the world's largest recyclers of newspapers and magazines, and has third-party certified 100% of its managed woodlands to sustainable forest management standards. As of December 31, 2008, it owned or operated 24 pulp and paper facilities and 30 wood products facilities located in the United States, Canada, the United Kingdom and South

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[4] The following documents referenced in the Zelin Declaration are attached hereto: The Borrowing Base Certificate dated March 31, 2009, delivered by ACCC to the ACCC Term Agent as Exhibit 2 (the **"Borrowing**

Korea, as well as recycling and power generation facilities. Employing around 15,900 people, the Company realized sales of approximately \$6.8 billion[5] in 2008. Its total assets were \$8.1 billion as of December 31, 2008.

4. The Company's financial performance depends primarily on the market demand for its products and the prices at which they can be sold. These products are globally traded commodities, and as such, the balance between supply and demand drive their pricing and shipment levels. Supply and demand, in turn, are affected by global economic conditions, changes in consumption and capacity, the level of customer and producer inventories, and fluctuations in currency exchange rates. The recent downturn in the global economy has resulted in an unprecedented decline in demand for newsprint, the Company's primary product. In addition, substantial price competition and volatility in the pulp and paper industry, along with negative trends in advertising, electronic data transmission and storage, and continued expansion of the Internet, have exacerbated downward pressure on revenue. At the same time, the global credit markets suffered a significant contraction, including the failure of some large financial institutions, which has resulted in a severe decline in the credit markets and overall availability of credit. These market disruptions, as well as the Company's high debt levels and the overall weakness in consumer demand, have adversely impacted the Company's financial performance and have necessitated the commencement of these chapter 11 cases and coordinated Canadian filings.

Base Certificate"); and Fifth Report of the Monitor, *In re AbitibiBowater, Inc.*, No. 500-11-036133-094 (S.C. Montreal May 13, 2009) as Exhibit 3 ("**Fifth Monitor's Report**").

[5] All monetary figures are presented in U.S. dollars unless specifically noted otherwise.

5. Specifically, on April 16, 2009 (the **"Petition Date"**), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the **"Chapter 11 Cases"**). On April 17, 2009, certain of the Debtors (the **"Canadian Debtors"**)[6] and non-debtor subsidiaries of AbitibiBowater (the **"CCAA Debtors"**)[7] applied for protection from their creditors under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the **"CCAA"**), in the Superior Court, Commercial Division, for the Judicial District of Montreal, Canada (the **"Canadian Court,"** and the filing, the **"CCAA Proceeding"**). Two of the CCAA Debtors -- ACI and Abitibi-Consolidated Company of Canada (**"ACCC"**) (together, the **"Chapter 15 Debtors"**) -- thereafter filed petitions for recognition under chapter 15 of the Bankruptcy Code (the **"Chapter 15 Cases"**) in this Court seeking emergency provisional relief in support of the CCAA Proceeding. AbitibiBowater and certain of the Debtors also filed for ancillary relief in Canada seeking provisional relief in support of the Chapter 11 Cases in Canada under the Canadian equivalent of chapter 15, section 18.6 of the CCAA.[8]

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6 The Canadian Debtors are: Bowater Canada Finance Corporation, Bowater Canadian Holdings Incorporated, AbitibiBowater Canada Inc., Bowater Canadian Forest Products Inc., Bowater Maritimes Inc., Bowater LaHave Corporation and Bowater Canadian Limited.

7 The CCAA Debtors are: Bowater Mitis Inc., Bowater Guerette Inc., Bowater Couturier Inc., Alliance Forest Products (2001) Inc., Bowater Belledune Sawmill Inc., St. Maurice River Drive Company, Bowater Treated Wood Inc., Canexel Hardboard Inc., 9068-9050 Quebec Inc., Bowater Canada Treasury Corporation, Bowater Canada Finance Limited Partnership, Bowater Shelburne Corporation, 3231378 Nova Scotia Company, Bowater Pulp and Paper Canada Holdings Limited Partnership, Abitibi-Consolidated Inc., Abitibi-Consolidated Company of Canada, Abitibi-Consolidated Nova Scotia Incorporated, 32117925 Nova Scotia Company, Terra-Nova Explorations Ltd., The Jonquiere Pulp Company, The International Bridge and Terminal Company, Scramble Mining Limited, 9150-3383 Quebec Inc., Star Lake Hydro Partnership, Saguenay Forest Products Inc., 3224112 Nova Scotia Limited, La Tuque Forest Products Inc., Marketing Donohue Inc., Abitibi-Consolidated Canadian Office Products Holdings Inc., 3834328 Canada Inc., 6169678 Canada Incorporated, 4042410 Canada Inc., Donohue Recycling and 1508756 Ontario Inc.

8 The Debtors that obtained section 18.6 relief are: AbitibiBowater Inc., AbitibiBowater US Holding 1 Corp., Bowater Ventures Inc., Bowater Incorporated, Bowater Nuway Inc., Bowater Nuway-Midstates, Inc., Catawba Property Holdings LLC, Bowater Finance Company Inc., Bowater South American Holdings Incorporated, Bowater

6. On April 28, 2009, the Office of the United States Trustee for the District of Delaware appointed a statutory committee of unsecured creditors (the **"Creditors' Committee"**) in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

RELIEF REQUESTED

7. Maintaining a securitization program at ACI Funding, a non-debtor entity, has been, and continues to be, an integral component of the Company's capital structure. The Company would have insufficient working capital to support its operations if it were unable to continue securitizing accounts receivable generated by ACI, a member of the Abitibi Group,[9] and ACSC, a member of the Donohue Group.[10] Accordingly, the Debtors are seeking authority to amend their existing securitization program by entering into the Amended and Restated Securitization Program to ensure that the Company will continue to have adequate liquidity to conduct its business. The Debtors also seek authority to use the collateral, including cash collateral, of the ACCC Term Lenders (as defined herein) that is located in the United States and grant adequate protection to the ACCC Term Agent (for the benefit of the ACCC Term Lenders) in connection with the use of such collateral for working capital purposes during the duration of these Chapter 11 Cases.

America Inc., Lake Superior Forest Products Inc., Bowater Newsprint South LLC, Bowater Newsprint South Operations LLC, Bowater Finance II, LLC, Bowater Alabama LLC and Coosa Pines Golf Club Holdings LLC.

9 The **"Abitibi Group"** consists of Canadian entities ACI, ACCC, and certain of their direct and indirect subsidiaries.

10 The **"Donohue Group"** consists of U.S. entities Donohue Corp. (**"Donohue"**), ACSC, Abitibi Consolidated Alabama Corporation, Alabama River Newsprint Company, Abitibi-Consolidated Corporation and Augusta Woodlands, LLC.

A. Capital Structure

8. AbitibiBowater was created in October 2007 by the merger of two North American leaders in the forest and wood products industry, Bowater Inc. and ACI. AbitibiBowater is a holding company with no independent operations. It principally conducts its business through three distinct groups of companies: the Bowater Group, the Abitibi Group and the Donohue Group.

9. The "Bowater Group" consists of certain of the "US Debtors"[11] and certain of the Canadian Debtors. The Bowater Group operates in the United States, Canada and abroad and is obligated under various forms of secured and unsecured debt. The Abitibi Group consists principally of Canadian companies, certain of which are debtors in the CCAA Proceeding, but none of which are Debtors in these Cases.[12] The Donohue Group, which operates principally in the United States, owns paper and production manufacturing facilities and operates the Company's recycling operations. The Donohue Group does not have any Canadian subsidiaries or significant Canadian assets.

10. Since the 2007 merger, the Company has realized meaningful synergies and efficiencies, and continues to rationalize its integrated operations. However, from a cash management and corporate finance point of view, the Bowater Group and the Abitibi and Donohue Groups remain essentially distinct. For example, the Bowater Group was financed

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[11] The US Debtors are Bowater, Bowater Newsprint South LLC (**"Newsprint South"**), Bowater Newsprint South Operations LLC, Bowater Finance II LLC, Bowater Alabama LLC, Coosa Pines Golf Club LLC, Catawba Property Holdings, LLC, Bowater Finance Company Inc., Bowater South American Holdings Incorporated, Bowater America Inc., Lake Superior Forest Products Inc., Bowater Nuway Inc. and Bowater Nuway Mid-States Inc.

[12] As noted above, ACI and ACCC are Chapter 15 Debtors.

prepetition by its own separate US and Canadian prepetition credit facilities, along with a series of unsecured bond issuances. The Abitibi Group and the Donohue Group were funded principally through the existing securitization program in ACI Funding. To the extent the Abitibi Group makes intercompany transfers to the Donohue Group, such intercompany transfers constitute administrative claims arising under the Debtors' cash management system.

11. Additionally, ACI's Canadian subsidiary, ACCC, entered into a prepetition credit agreement, dated April 1, 2008, that provided for a $400 million 364-day senior secured term loan (the **"ACCC Term Loan,"** the administrative and collateral agent thereunder the **"ACCC Term Agent,"** and the lenders thereunder, the **"ACCC Term Lenders"**). ACI and certain of its Canadian affiliates, as well as the following members of the Donohue Group, have guaranteed the ACCC Term Loan on a secured basis: Donohue, ACSC, Augusta Woodlands, Abitibi-Consolidated Corporation, Abitibi-Consolidated Alabama Corporation and Alabama River Newsprint Company.

12. The collateral securing the ACCC Term Loan includes, among other things: (a) certain inventory, accounts, and other current assets of ACCC, ACI and the other guarantors, including cash maintained in certain accounts of ACCC and ACI subject to valid and enforceable blocked account control agreements in favor of the ACCC Term Agent; (b) substantially all of the personal property of the Donohue Group and certain of its subsidiaries, including cash maintained in certain accounts of ACSC subject to valid and enforceable blocked account control agreements in favor of the ACCC Term Agent; (c) the pledge of stock or other equity interests of certain Donohue Group subsidiaries, including ACSC's ownership interest in the equity of ACI Funding, but excluding ACSC's partnership interest in the Augusta Newsprint

Company; and (d) real estate and fixtures relating to the Alabama River, Alabama newsprint mill.

13. The ACCC Term Loan matured on March 30, 2009 and had an outstanding principal balance as of the Petition Date of approximately $347,000,000.

14. The Company's proposed postpetition financing structure essentially mirrors the prepetition structure. First, the Bowater Group is being financed through a $206 million debtor-in-possession financing facility (the "**Bowater DIP Facility**") approved by this Court on an interim basis at the "first day" hearing in these Cases.[13] Second, ACI has sought and obtained approval from the Quebec Superior Court of Justice (Commercial Division) (the "**Canadian Court**") of a US$ 100,000,000 Super-Priority Senior Secured Debtor-in-Possession Credit Facility (the "**ACI DIP**"), pursuant to an order of the Canadian Court dated May 6, 2009 (the "**ACI DIP Order**").[14] Third, the existing securitization program (the "**Existing Securitization Program**"), described in detail below, has provided critical postpetition liquidity to the Abitibi and Donohue Groups during the early days of these Chapter 11 Cases. The Debtors now seek approval of the Amended and Restated Securitization Program to amend the Existing Securitization Program[15] on an interim basis, followed by approval on a final basis after a final hearing.

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[13] *See* Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, (5) Modifying the Automatic Stay and (6) Scheduling a Final Hearing, as amended and restated by Docket No. 115 entered on April 24, 2009.

[14] *See* Reasons for Judgment on Abitibi Petitioners Motion for Approval of DIP Financing (#39) and Second Amended Initial Order dated May 6, 2009, a copy of which is annexed hereto as Exhibit 4.

[15] *See* 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 (1) Authorizing Certain Debtors to Continue Selling Receivables and Related Rights Pursuant

B. The Existing Securitization Program and the Amended and Restated Securitization Program

15. At the "first day" hearing in these Cases, this Court approved the Debtors' motion to extend for 45 days the Existing Securitization Program. The Existing Securitization Program operates as described below and, with certain exceptions outlined in this Motion, operation of the proposed Amended and Restated Securitization Program will be substantially identical to the Existing Securitization Program.

16. ACI and ACSC originate accounts receivable. As "originators," ACI sells, and ACSC contributes, those receivables to a non-debtor bankruptcy-remote special purpose vehicle, ACI Funding. ACI Funding pays ACI in cash for the receivables using money from (a) collections on the accounts receivable previously sold or contributed to it, and (b) proceeds from the sale of undivided interests in such accounts receivable pursuant to the Existing Securitization Program. For purchases from ACSC, ACI Funding may also pay for receivables purchased by increasing the Deferred Purchase Note (as defined in the Existing PCA (*see* note 15, below)) or returning capital contributions to ACSC. The maximum outstanding balance of the Deferred Purchase Note is $35,000,000. The Deferred Purchase Note is pledged as collateral to the ACCC Term Agent. Under the Existing Securitization Program, Citibank has committed to purchase receivables from ACI Funding in an aggregate principal amount of up to $210 million.

17. Financing available under the Existing Securitization Program at any time is limited by the outstanding balance of the eligible receivables, the size of the total reserves

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to an Amended Securitization Facility, (2) Modifying the Automatic Stay and (3) Granting Other Related Relief (the "**Existing Securitization Order**") [Docket No. 73].

under the program and other factors. As a result of such limitations, ACI Funding owns a substantial number of accounts receivable against which Citibank does not advance funds. Accordingly, as discussed in the Zelin Declaration, the equity of ACI Funding owned by ACSC and pledged to the ACCC Term Agent has significant value.

18. To generate accounts receivable, ACI and ACSC sell inventory to customers that constitutes collateral of the ACCC Term Lenders. Upon the creation of accounts receivable as proceeds of the sale of inventory and immediate sale or contribution of such accounts receivable to ACI Funding, any lien on such accounts receivable held by the ACCC Term Lenders is automatically released (in accordance with the Intercreditor Agreement described below). The accounts receivable subsequently are collected through various lockboxes subject to blocked account control agreements in favor of Citibank. Funds from the lockboxes are transferred daily into accounts controlled by Citibank that serve to concentrate customer payments on receivables in United States and Canadian Dollars.

19. To obtain advances under the Existing Securitization Program, the Company provides Citibank with periodic reports. Based on these reports, the parties calculate advances based on an advance rate cap and the total amount of capital available under the program. Citibank advances any additional available capital to ACI Funding for ACI Funding to purchase new receivables from ACI and ACSC. The proceeds from the Existing Securitization Program are transferred into certain of the Abitibi and Donohue Groups' operating accounts

located in the U.S. and Canada that are subject to blocked account control agreements in favor of the ACCC Term Agent, and such proceeds are used to fund operations.[16]

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[16] This structure is implemented through various documents. Specifically, ACI and ACSC (together, the **"Originators"**) are parties to (a) that certain Amended and Restated Receivables Purchase Agreement, dated as of January 31, 2008, attached hereto as Exhibit 5 (as heretofore amended, supplemented or otherwise modified pursuant to various amendments and waivers, including by Omnibus Amendment No. 5 to Amended and Restated Receivables Purchase Agreement and Amendment No. 3 to Amended and Restated Purchase and Contribution Agreement and Waiver Agreement dated as of April 16, 2009, the **"Existing RPA"**) among ACI Funding, Eureka Securitisation, plc (**"Eureka"**), Citibank, Citibank, N.A., London Branch (the **"Existing Agent"**), ACI, in its capacity as Subservicer and an Originator, and ACSC, in its capacity as Servicer and an Originator and (b) that certain Amended and Restated Purchase and Contribution Agreement, dated as of January 31, 2008 attached hereto as Exhibit 6 (as heretofore amended, supplemented or otherwise modified pursuant to various amendments and waivers, including by Omnibus Amendment No. 5 to Amended and Restated Receivables Purchase Agreement and Amendment No. 3 to Amended and Restated Purchase and Contribution Agreement and Waiver Agreement dated as of April 16, 2009, the **"Existing PCA"**; the Existing RPA and PCA are collectively hereinafter referred to as the **"Receivables Agreements"**) among ACI and ACSC as Sellers and ACI Funding as Purchaser.

Other instruments and agreements related to the Existing Securitization Program (together with the Receivables Agreements, the **"Existing Financing Agreements"**), include: (a) the Undertaking Agreement (Servicer) dated as of October 27, 2005 by ACI in favour of Eureka, Citibank and the other Banks (as defined in the Existing RPA) that are party to the Existing RPA, as amended; (b) the Undertaking Agreement (Originator) dated as of October 27, 2005 by ACI in favour of ACI Funding, as amended; (c) the Deposit Account Control Agreement dated as of January 31, 2008 among ACI Funding, ACI, ACSC, Citibank and the Existing Agent, as amended (d) the Blocked Accounts Agreement dated as of October 27, 2005 among ACI, ACSC, the Existing Agent, Royal Bank of Canada and ACI Funding, as amended; (e) the Agreement Re: Pledged Deposit Accounts dated as of October 27, 2005 among ACSC, ACI, ACI Funding, the Existing Agent and LaSalle Bank National Association, as amended (f) the Second Amended and Restated Four Party Agreement for Sold Accounts (General) dated as of January 31, 2008 among Export Development Canada and Compagnie Francaise d'Assurance pour le Commerce Extérieur – Canada Branch, ACI, ACI Funding, the Existing Agent and Citibank, as amended; (g) the Intercompany Agreement dated as of December 20, 2007 between ACI and ACSC, as amended; (h) the Accounts Receivable Policy (Shipments) General Terms and Conditions, plus the Coverage Certificate effective September 1, 2008 (together with all schedules and endorsements thereto) issued by Export Development Canada and Compagnie Francaise d'Assurance pour le Commerce Extérieur - Canada Branch to ACI, as amended; (i) the fee letters dated April 1, 2009 between ACI Funding and the Existing Agent (the **"Fee Letters"**); and (j) the Intercreditor Agreement dated as of April 1, 2008 (the **"Intercreditor Agreement"**), by and between Citibank, N.A. London Branch as Securitization Agent, Goldman Sachs Credit Partners L.P. as Lender Agent, ACI Funding as Seller, ACSC as Originator and Servicer and ACI as Originator and Subservicer.

Copies of the following documents (each as defined in the Existing Securitization Order) are attached as Exhibits 7.A-7.J hereto: (i) Omnibus Amendment No. 5 to Amended and Restated Receivables Purchase Agreement and Amendment No. 3 to Amended and Restated Purchase and Contribution Agreement and Waiver Agreement, Amended and Restated Receivables Purchase Agreement; Amended and Restated Purchase and Contribution Agreement; (ii) Amendment No. 1 to Amended and Restated Receivables Purchase Agreement; (iii) Amendment No. 1 to Amended and Restated Purchase and Contribution Agreement; (iv) Amendment No. 2 to Amended and Restated Receivables Purchase Agreement; (v) Waiver and Amendment No. 3 to Amended and Restated Receivables Purchase Agreement; (vi) Waiver and Amendment No. 2 to Amended and Restated Purchase and Contribution Agreement; (vii) Waiver and Amendment No. 4 to Amended and Restated

20. Under the Existing Securitization Program, ACI Funding granted Citibank a security interest for its benefit and for the ratable benefit of the investor and the banks participating in the Existing Securitization Program[17] in all of ACI Funding's right, title and interest (collectively, the **"Collateral"**) in and to, among other things: (a) the Existing PCA, including (i) all rights of ACI Funding to receive monies due or to become due under the Existing PCA, (ii) all security interests and property subject thereto from time to time purporting to secure payment of monies due or to become due under the Existing PCA, (iii) all rights of ACI Funding to receive proceeds of insurance (including the right to receive proceeds under the Accounts Receivable Policy (Shipments) General Terms and Conditions issued by Export Development Canada and Compagnie Française d'Assurance pour le Commerce Extérieur – Canada Branch (the **"Insurance Proceeds"**)), indemnity, warranty or guaranty with respect to the Existing PCA, (iv) claims of ACI Funding for damages arising out of or for breach of or default under the Existing PCA, and (v) the right of ACI Funding to compel performance and otherwise exercise all remedies thereunder; (b) all Receivables, the Related Security with respect thereto and the Collections (each such term as defined in the Existing RPA (as defined in footnote 12, above)); (c) the lockboxes and deposit accounts to which collections of the Receivables are remitted and any funds on deposit in the foregoing; and (d) proceeds of any and all of the foregoing.

Receivables Purchase Agreement; (viii) the Intercreditor Agreement; (ix) the Waiver Letter, dated as of April 29, 2009, provided by Citibank, N.A. London Branch [Docket No. 147]; and (x) Waiver Letter, dated as of May 13, 2009, provided by Citibank, N.A. London Branch.

[17] Although the Existing Receivables Purchase Agreement contemplates the purchase of receivables by multiple investors and banks, the only purchaser currently is Citibank. The Amended and Restated Securitization Program contemplates syndication, with Barclays Capital Inc. to act as Syndication Agent.

21. As noted above, the Existing Securitization Program terminates on June 1, 2009, unless otherwise modified or extended. By this motion, the Debtors seek to amend and refinance the Existing Securitization Program with the Amended and Restated Securitization Program.

C. Adequate Protection Stipulation

22. On April 17, 2009, certain of the ACCC Term Lenders opposed the continuation of the Existing Securitization Program on adequate protection grounds.[18] The parties resolved the objections consensually, by agreeing to an adequate protection package for the ACCC Term Lenders. For the 45 day period during which the Existing Securitization Program is in effect, the parties agreed to the following adequate protection (as reflected in the record, *see* First Day Hr'g. Tr. 59:19-61:20, April 17, 2009 (the **"April 17 Transcript"**) attached hereto as Exhibit 8): subject to the carve-out for professional fees and superpriority claims of Citibank arising in connection with the Existing Securitization Program, replacement liens on postpetition assets of the Donohue Group consistent with the prepetition collateral of the ACCC Term Lenders; first priority liens on unencumbered assets of the Donohue Group on which liens can be granted; junior liens on assets of the Donohue Group encumbered by prepetition liens; and a superpriority administrative expense claim, which includes an allowed claim in an amount equal to interest at the contract rate accrued on the ACCC Term Loan through the Petition Date and interest accrued at the default rate on the ACCC Term Loan during the 45 day interim period. The Donohue Group has agreed to make an adequate protection

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[18] *See* Limited Objection to the Debtors' Motion for an Interim Order (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 "Limited Objection"). [Docket No. 60].

payment in the amount of the allowed portion of this superpriority claim upon the refinancing of the Existing Securitization Program, which is expected to be approximately $11 million. As additional adequate protection, the Donohue Group agreed to pay the reasonable fees and expenses of certain professionals to the ACCC Term Agent accrued during the 45 day interim period and to provide a budget for such period.

D. The Abitibi and Donohue Groups' Financing Needs.

23. The Abitibi and Donohue Groups' ability to maintain business relationships with their vendors, suppliers and customers, to pay their employees, to purchase and supply new inventory and otherwise finance their operations, is essential to their continued viability, and is largely dependent on the approval of the Amended and Restated Securitization Program. In addition, the need for the refinancing is immediate. The Existing Securitization Program terminates on June 1, 2009. Without the Amended and Restated Securitization Program amending and refinancing the Existing Securitization Program, the Existing Securitization Program would unwind and liquidate. Unable to obtain new financing secured by the Collateral while the Existing Securitization Program unwinds, serious and irreparable harm to the Debtors and their estates would occur.

24. As described more fully in the Zelin Declaration, the Company received three proposals to provide a postpetition financing facility to replace the Existing Securitization Program. After analyzing the strengths and weaknesses of all three offers, the Company determined that the Amended and Restated Securitization Program offered, on balance, the best terms and pricing and was the most likely to close within the 45 day period afforded under the Existing Securitization Program.

25. With the $300 million Amended and Restated Securitization Program and the ACI DIP, the Abitibi and Donohue Groups will continue to have the necessary liquidity to

operate their businesses. Moreover, permitting them access to the Amended and Restated Securitization Program as soon as possible will enable the Abitibi and Donohue Groups to demonstrate to their vendors, customers, employees and other stakeholders that they have sufficient resources to meet their obligations as they come due.

E. Requested Relief

26. Pursuant to this Motion, the Debtors seek authority to (a) enter into the Amended and Restated Securitization Program, on substantially the terms described in the Engagement Letters, (Exhibit 9) and the term sheet attached thereto (Exhibit 10, the "**Term Sheet**"), and as outlined and set forth in the proposed Interim Order, by and between ACI and ACSC, as originators (in such capacity, the **"Originators"**), ACI Funding, ACI and Donohue, along with all of Donohue's and each of the direct and indirect wholly-owned subsidiaries of Donohue that is a Debtor in these Chapter 11 Cases, as guarantors (each such Donohue entity, in such capacity, the **"Guarantors"**), Citibank, as Agent (in such capacity, the **"Agent"**) and Citibank together with Barclays as Joint Lead Arrangers and Joint Book Runners (in such capacity, the **"Arrangers"**), and the Arrangers or a respective affiliate of each of the Arrangers and other financial institutions or entities acceptable to the Arrangers, as purchasers (in such capacity, the **"Banks"**) and Barclays as Syndication Agent (in such capacity, the **"Syndication Agent"**), and (b) and authority to use collateral of ACCC Term Lenders, subject to the adequate protection in the form proposed herein, including, but not limited to cash collateral.

(i) Principal Order Terms

27. The Interim Order, provides, among other things, that:

(a) ACI, ACSC and the other Debtors, as applicable, are expressly authorized to enter into, and ACSC is authorized to cause ACI Funding, to enter into, (x) an assignment to the Administrative Agent of (i) the Existing RPA and (ii) all other Transaction Documents (as defined in the Existing RPA) (as necessary or desirable in the reasonable determination of the Administrative Agent), (y) an amendment and restatement of the Existing RPA (as so amended and restated, the **"Amended and Restated RPA"**), and the Existing PCA, dated as of January 31, 2008 (as so amended and restated, the **"Amended and Restated PCA"**) and (z) other guarantee, security and other relevant documentation (together with the Amended and Restated RPA and the Amended and Restated PCA, collectively, the **"Amended and Restated Financing Agreements"**) reflecting the terms and provisions set forth in the Term Sheet and otherwise in form and substance satisfactory to the Arrangers and ACI Funding;

(b) ACI, ACSC and the other Debtors, as applicable, are expressly authorized to transfer Receivables to ACI Funding in accordance with the terms of the Amended and Restated Financing Agreements, without recourse, free and clear of any liens, claims, charges, encumbrances or other interests;

(c) ACI, ACSC and the other Debtors, as applicable, are expressly authorized to otherwise perform and ACSC is authorized to cause ACI Funding, its wholly owned subsidiary, to otherwise perform their respective obligations under the Amended and Restated Financing Agreements;

(d) ACSC is authorized to cause ACI Funding pay all fees incurred in connection with the Amended and Restated Securitization Program, as set forth in ¶ 34 below and in ¶ 19 of the Interim Order;

(e) ACI, ACSC and the other Debtors, as applicable, are expressly authorized to obtain, pursuant to the Interim Order, financing up to an aggregate amount of $300,000,000 pursuant to the Amended and Restated Securitization Program;

(f) The Guarantors are authorized to guarantee all obligations of ACI Funding under the Transaction Documents, including, without limitation, payment of the Termination Amount and all Indemnified Amounts (each as defined in the Financing Agreements);

(g) The Agent (for itself and for the ratable benefit of the Banks and the Syndication Agent) is granted allowed superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code for the payment of all obligations arising under the Amended and Restated Securitization Program and the payment of the obligations of the Guarantors under the Amended and Restated Securitization Program, subject to the Carve-Out (as defined in the Interim

Order) and, in the case of Superpriority Guaranty Claims (as defined in the Interim Order) subject to any superpriority claims in respect of adequate protection provided to the ACCC Term Lenders, with priority above all other administrative claims;

(h) ACI, ACSC and the other Debtors, as applicable, are expressly authorized pursuant to section 363(c) of the Bankruptcy Code to use the proceeds of the Amended and Restated Securitization Program as "cash collateral," as such term is defined in section 363(a) of the Bankruptcy Code, in which the ACCC Term Lenders have an interest on the terms and conditions set forth in the Interim Order;

(i) ACI, ACSC and the other Debtors, as applicable, are expressly authorized to continue to use the collateral of the ACCC Term Lenders, including in connection with the Amended and Restated Securitization Program, and grant adequate protection to the ACCC Term Agent (for the benefit of the ACCC Term Lenders), as set forth in ¶ 63 below and in ¶ 30 of the Interim Order; and

(j) The automatic stay imposed by section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to implement and effectuate the terms and provisions of the Amended and Restated Securitization Program and the Interim Order.

28. The parties expressly contemplate that pursuant to the terms of the Amended and Restated Financing Agreements, ACI and ACSC will be authorized and empowered pursuant to section 363(b)(1) of the Bankruptcy Code to service, administer and collect the Transferred Receivables on behalf of ACI Funding pursuant to the Amended and Restated Financing Agreements, and with respect to ACI, ACSC and ACI Funding, each shall be expressly authorized and empowered pursuant to section 363(b)(l) of the Bankruptcy Code to make, execute and deliver all instruments and documents and perform all other acts (including, without limitation, the perfection of ACI Funding's ownership interest in the Transferred Receivables, which, pursuant to the Interim Order, shall be perfected on the date of entry of the Interim Order without the necessity of the execution or recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or

other similar documents) that may be required in connection with the Amended and Restated Financing Agreements and the transactions contemplated thereby. Moreover, ACI Funding will be entitled to the full benefits of section 363(m) of the Bankruptcy Code in connection with any transfers made pursuant to the provisions of the Amended and Restated Financing Agreements, with the Agent being entitled to assert ACI Funding's rights thereunder derivatively.

29. The Interim Order further provides that ACSC shall cause ACI Funding to grant a first priority perfected security interest in the Collateral to secure all amounts owing by the Sellers under the Amended and Restated Securitization Program. The Banks shall be granted a superpriority administrative claim under section 364(c)(1) of the Bankruptcy Code for the payment of the obligations of the Guarantors with priority above all other administrative claims (other than any superpriority claims in respect of adequate protection provided to the ACCC Term Lenders).

30. The Superpriority Receivables Claims will be payable from and have recourse to all pre- and postpetition property of ACI and ACSC, except that such claims shall not be satisfied from avoidance actions of the Guarantors arising under the Bankruptcy Code or the proceeds thereof, except to the extent of any amounts paid out under the Carve-Out. The Superpriority Guaranty Claims (together with the Superpriority Receivables Claims, the **"Superpriority Claims"**) will be payable from and have recourse to all pre- and postpetition property of ACI and ACSC, other than any superpriority claims in respect of adequate protection provided to the ACCC Term Lenders, except that such claims shall not be satisfied from avoidance actions of the Guarantors arising under the Bankruptcy Code or the proceeds thereof, except to the extent of any amounts paid out under the Carve-Out. The Agent will have the authority to enforce the Superpriority Claims in respect of ACI Funding's obligations on a

derivative basis on behalf of ACI Funding. The Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order or any provision thereof is vacated, reversed or modified, on appeal or otherwise.

(ii) Request for Limited Modification of the Automatic Stay

31. The Debtors also seek a limited modification of the automatic stay to implement the Amended and Restated Securitization Program. Specifically, pursuant to the Amended and Restated Financing Agreements, ACI Funding may deduct from the purchase price it pays for receivables amounts payable by ACI and ACSC in respect of violations of representations and warranties and dilution items (all of such amounts, collectively, the **"Repayment Amounts"**). The Repayment Amounts effectively operate as set-offs and are netted from the total purchase price due to ACI and ACSC upon the sale of receivables.

32. The Repayment Amounts are conceptually similar to ordinary course bank fees for overdrafts and returned checks. To fully implement the Amended and Restated Securitization Program, the automatic stay imposed pursuant to section 362 of the Bankruptcy Code must be modified to the extent necessary so as to permit the set-off and netting of the Repayment Amounts. In addition, when ACI Funding pays ACI and ACSC the full purchase price for receivables which are subsequently reduced by the Repayment Amounts (if any), ACI Funding is effectively extending ACI and ACSC credit to the extent of the Repayment Amount. Finally, the Debtors seek to modify the automatic stay to the extent necessary to permit the Agent, the Banks and the Syndication Agent to exercise certain remedies, upon the occurrence of any Event of Termination (as defined in the Interim Order). To fully protect ACI Funding's interests under the Amended and Restated Securitization Program, the Debtors accordingly have requested this Court to enter an order granting ACI Funding the Superpriority Claims.

(iii) Immediate Full Access to Funds Upon Entry of Interim Order

33. The Debtors seek immediate access to all funds available (the **"Purchase Limit"**) under the Amended and Restated Securitization Program, upon entry of the Interim Order. As stated above, absent modification of the Existing Securitization Program, an Event of Termination under the Existing Securitization Program will occur on June 1, 2009 and all obligations under that facility will be due in full. Thus, in order to continue operating, the Abitibi and Donohue Groups have an immediate need to access the Purchase Limit. *See* Zelin Decl.¶ 21. Absent the ability to immediately access the Purchase Limit upon entry of the Interim Order, the Debtors and their estates will suffer irreparable harm. *See id.* ¶ 18.[19]

(iv) Fees

34. Pursuant to the Engagement Letters, ACI Funding has agreed to pay certain fees in consideration of the Joint Lead Arrangers' and Joint Book Runners' services in structuring, negotiating and syndicating the Amended and Restated Securitization Program. The fees, consisting of approximately $9,950,000 payable to the Joint Lead Arrangers and Joint Book Runners, are due and payable upon the closing of the Amended and Restated Securitization Program.[20]

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[19] This Court granted the Debtors access to the full amount of the $206 million term loan provided under the Bowater DIP on an interim basis, and afforded the same relief with respect to a postpetition securitization facility in *In re Tribune Co.*, No. 08-13141(KJC) (Bankr. D. Del. Dec. 11, 2008) [Docket No. 67] (authorizing immediate access to all amounts under receivables securitization program). *See also In re Smurfit-Stone Container Corp.*, No. 09-10235 (BLS) (Bankr. D. Del. Jan. 27, 2009) [Docket No. 58] (authorizing debtors to access on an interim basis full amount of $400 million term loan facility); *In re Quebecor World (USA) Inc.*, No. 08-10152(JMP) (Bankr. S.D.N.Y. Jan. 23, 2008) [Docket No. 47] (authorizing debtors to access on an interim basis full amount of $600 million term loan facility).

[20] Fee letters, incorporating by reference the Engagement Letters and setting forth all such fees, have been shared on a professionals-only basis, with advisors to the Creditors' Committee and advisors to the ACCC Term Agent and will be shared, prior to the Interim Hearing, with the Office of the United States Trustee.

35. The Debtors do not believe that this Court's authorization is technically necessary for ACI Funding, not a debtor in the Chapter 11 or Chapter 15 Cases or the CCAA Proceeding, to pay fees pursuant to the Engagement Letters. Out of an abundance of caution, however, the Debtors respectfully request this Court to authorize ACSC to cause ACI Funding to pay the fees described herein, without the necessity of any further application being made to or order being obtained from this Court.

DISCLOSURE UNDER APPLICABLE BANKRUPTCY AND LOCAL RULES

36. Except as noted below, the provisions described in Bankruptcy Rule 4001(c)(1)(B)(i)-(xi), to the extent applicable, will be contained in the Interim Order. To the extent such provisions are incorporated into the Amended and Restated Financing Agreements, such provisions will be substantially identical to those provisions set forth in the Interim Order. Specifically, such provisions are set out at the following sections of the Interim Order:

a) Grant of Priority or a Lien on Property of the Estate (Bankruptcy Rule 4001(c)(1)(B)(i)). Interim Order ¶ 13 (grant of claims pursuant to section 364(c)(1) of the Bankruptcy Code).

b) Adequate Protection or Priority for a Claim that Arose before the Commencement of the Case (Bankruptcy Rule 4001(c)(1)(B)(ii)). Interim Order ¶¶ 30, 31 (granting ACCC Term Agent (for itself and on behalf of the ACCC Term Lenders) adequate protection as set forth therein).

c) Determination of the Validity, Enforceability, Priority, or Amount of a Claim that Arose before the Commencement of the Case, or of any Lien Securing the Claim (Bankruptcy Rule 4001(c)(1)(B)(iii)). Not applicable.

d) Waiver or Modification of the Automatic Stay (Bankruptcy Rule 4001(c)(1)(B)(iv)). Interim Order ¶¶ 17, 20 (modifying automatic stay to the extent necessary so as to permit the deduction of the Repayment Amounts and to the extent necessary to permit the Agent, the Banks and the Syndication Agent to exercise certain remedies, upon the occurrence of any Event of Termination).

e) Waiver or Modification of Authority to File a Plan, Seek an Extension of Time in which the Debtor has the Exclusive Right to File a Plan, Request Use of Cash Collateral or Request Authority to Obtain Credit (Bankruptcy Rule 4001(c)(1)(B)(v)). Interim Order ¶¶ 11, 12, 30 (authorizing entry into Amended and Restated Receivables Purchase Program and the use of cash collateral).

f) Establishment of Deadlines for Filing a Plan of Reorganization, for Approval of a Disclosure Statement, for a Hearing, on Confirmation or Entry of a Confirmation Order (Bankruptcy Rule 4001(c)(1)(B)(vi)). Consistent with the Term Sheet, the Amended and Restated Financing Agreements will include two three-month maturity extension options, predicated, among other things, on the Debtors having filed a plan of reorganization.

g) Waiver or Modification of Applicability of Non-Bankruptcy Law Relating to the Perfection of a Lien on Property of the Estate, or on the Foreclosure or Other Enforcement of the Lien (Bankruptcy Rule 4001(c)(1)(B)(vii)). Interim Order ¶ 11 Not applicable, however the order provides for the perfection of the Agent's first priority liens in certain assets of non-debtor ACI Funding upon the date of the Interim Order without the necessity of the execution, recordation or filings of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents.

h) Release, Waiver or Limitation on any Claim or Cause of Action Belonging to the Estate (Bankruptcy Rule 4001(c)(1)(B)(viii)) Interim Order ¶¶ 3, 4, 27 (stipulating to the general release of claims subject to identified exceptions, and to challenge by parties in interest for a limited period).

i) Indemnification of Any Entity (Bankruptcy Rule 4001(c)(1)(B)(ix)). Interim Order ¶ 13 (granting superpriority status to indemnification claims set forth in the Amended and Restated Financing Agreements).

j) Release, Waiver or Limitation of Any Right under section 506(c) of the Bankruptcy Code (Bankruptcy Rule 4001(c)(1)(B)(x)). Interim Order ¶ 26 (providing that no expenses of administration shall charged against the Transferred Receivables, or the proceeds thereof).

k) Liens Granted on Claims Arising Under sections 544, 545, 547, 548, 549, 553(b), 723(a) or 724(a) of the Bankruptcy Code

(Bankruptcy Rule 4001(c)(1)(B)(xi)). Interim Order ¶ 15 Not applicable, however claims against proceeds of avoidance actions are permitted to the extent of amounts paid under the Carve-Out.

37. In accordance with Local Rule 4001-2(a)(i)(A)-(G), the Debtors also draw the Court's attention to certain material provisions of the Interim Order:

a) Provisions that Grant Cross-Collateralization Protection (Other than Replacement Liens or Other Adequate Protection) to the Prepetition Secured Creditors (Local Rule 4001-2(a)(i)(A)). Not applicable.

b) Binding the Estate to Validity, Perfection or Amount of Secured Debt or Limitations on Investigation (Local Rule 4001-2(a)(i)(B)). Not applicable.

c) Waiver of section 506(c) Rights (Local Rule 4001-2(a)(i)(C)). Interim Order ¶ 26 (providing that no expenses of administration shall charged against the Transferred Receivables, or the proceeds thereof).

d) Immediate Grant of Liens on the Debtors' Claims and Causes of Action Arising Under sections 544, 547, 548 and 549 of the Bankruptcy Code (Local Rule 4001-2(a)(i)(D)). Interim Order ¶ 15 Not applicable, however claims against proceeds of avoidance actions are permitted to the extent of amounts paid under the Carve-Out.

e) Roll-Over Provisions (Local Rule 4001-2(a)(i)(E)). Not applicable.

f) Disparate Treatment of Professionals (Local Rule 4001-2(a)(i)(F)). Not applicable.

g) Priming Lien (Local Rule 4001-2(a)(i)(G)). Not applicable.

38. Though not required under Local Rule 4001-2, the Debtors wish to highlight the following additional provisions of the Interim Order, which the Debtors believe are necessary and justified in the context of and circumstances of these cases:

a) <u>True Sale</u>. The Debtors admit, stipulate and agree that transfers of the Transferred Receivables by the Originators pursuant to the provisions of the Amended and Restated Receivables Agreements whether occurring prior to or subsequent to the date hereof, constitute true sales or true contributions under applicable non-bankruptcy law and hereby are deemed true sales or true contributions, and were or will be for fair consideration and are not otherwise voidable or avoidable. The Debtors further admit, stipulate and agree that upon the transfer of the Receivables to ACI Funding, the Receivables did (with respect to transfers occurring prior to the date of entry of the Interim Order) and will (with respect to the transfers occurring on or after the date of entry of the Interim Order) become the sole property of ACI Funding, and none of the Debtors, their subsidiaries, nor any creditors of the Debtors or their subsidiaries, shall retain any ownership rights, claims, liens or interests in or to the Transferred Receivables, or any proceeds thereof pursuant to section 541 of the Bankruptcy Code, pursuant to any theory of substantive consolidation or otherwise. Interim Order ¶ 4.

b) Non-Consolidation. The performance by the Guarantors, the Originators and ACI Funding of their respective obligations under the Amended and Restated Financing Agreements, the consummation of the transactions contemplated by the Amended and Restated Financing Agreements, the entry by the Guarantors into the Guaranty, and the conduct by the Guarantors, the Originators and ACI Funding of their respective businesses, whether occurring prior to or subsequent to the date hereof, do not, and shall not, provide a basis for a substantive consolidation of the assets and liabilities of the Guarantors, the Originators, or any of them, with the assets and liabilities of ACI Funding or a finding that the separate corporate identities of the Guarantors, the Originators and ACI Funding may be ignored. Interim Order ¶ 16.

39. The circumstances of this case justify the requested relief to avoid immediate and irreparable harm to the Debtors' estates pending a final hearing. The Debtors determined in the exercise of their sound business judgment that agreeing to such provisions was appropriate under the circumstances of the case in light of the unavailability of other adequate financing alternatives.

TERMS OF AMENDED AND RESTATED SECURITIZATION PROGRAM

40. The material terms of the Amended and Restated Securitization Program[21] are set forth below:

TERM	DESCRIPTION
Purchase Limit	$300,000,000. All amounts shall become due and payable on the termination date.
Guarantees	The obligations of ACI Funding shall be unconditionally guaranteed by the Guarantors.
Termination Date:	The "**Termination Date**" shall be the earliest of (a) the date that is 364 days after the Closing Date, (b) the substantial consummation of a plan of reorganization filed in any of the Guarantors' Cases that is confirmed pursuant to an order entered by the Bankruptcy Court (or a corresponding order shall be entered by the Canadian Court) and (c) the declaration of the Facility Termination Date following an Event of Termination under the Facility Documents.
Fifteen Month Facility Extension Option:	ACI Funding may extend the Stated Termination Date from 364 days to 15 months upon satisfaction of the following conditions prior to the date that is 364 days after the Closing Date: 1. ACI Funding shall have provided written notice to the Administrative Agent not more than 60 nor less than 30 days prior to the date that is 364 days after the Closing Date. 2. ACI Funding shall have paid a fee to the Administrative Agent. 3. The Guarantors and ACI shall have filed with the Bankruptcy Court and the Canadian Court respectively, a Reorganization Plan providing for the full repayment of the Capital and all other amounts then due by ACI Funding under the Facility in cash upon consummation thereof. 4. Liquidity of the Donohue Group, ACI and its subsidiaries shall be not less than $150 million. 5. No Incipient Event of Termination or Event of Termination

[21] In the event of any conflict between this summary and the Interim Order or the Term Sheet (as applicable) the Interim Order and the Term Sheet shall govern.

	shall have occurred and be continuing. 6. Accuracy of representations.
Eighteen Month Facility Extension Option:	Following the exercise and effectiveness of the Fifteen Month Facility Extension Option, ACI Funding may extend the Stated Termination Date from 15 months to 18 months upon satisfaction of the following conditions prior to the date that is 15 months after the Closing Date: 1. ACI Funding shall have provided written notice to the Administrative Agent not more than 60 nor less than 30 days prior to the date that is 15 months after the Closing Date of its intention to exercise the Eighteen Month Facility Extension Option. 2. ACI Funding shall have paid a fee to the Administrative Agent. 3. The Guarantors and ACI shall not have withdrawn the Reorganization Plan, and confirmation of the Reorganization Plan shall not have been denied by the Bankruptcy Court or the Canadian Court. 4. Liquidity of the Abitibi Entities shall be not less than $150 million. 5. No Incipient Event of Termination or Event of Termination shall have occurred and be continuing. 6. Approval from Majority Banks and accuracy of representations.
Yield and Fees:	As described in the Zelin Declaration.
Availability:	Pursuant to an asset based borrowing base formula, availability to the Seller under the Facility will be equal to (i) the lesser of (A) the Collateral Availability and (B) the then effective Purchase Limit minus (ii) the aggregate amount of the outstanding Capital. **"Collateral Availability"** shall mean (v) up to 85% of the eligible accounts receivable of the Seller <u>minus</u> (w) such availability reserves as the Administrative Agent, in its reasonable judgment, deems appropriate and consistent with standards for similar asset-backed financings taking into account current market conditions <u>minus</u> (x) an availability block equal to the greater of (i) $30 million and (ii) 8% of the gross accounts receivable of the Seller <u>minus</u> (y) reserves for insurance deductibles <u>minus</u> (z) reserves for foreign currency exchange.
Security and Priority:	As described in the Interim Order, in the US Cases, the Banks will be granted a superpriority administrative claim under section

	364(c)(1) of the Bankruptcy Code for the payment of the obligations of the Guarantors under the Facility with priority above all other administrative claims (other than the Superpriority Guaranty Claims in respect of adequate protection provided to the lenders under Abitibi-Consolidated Company of Canada's prepetition secured credit and guaranty agreement having priority pursuant to section 507(b) of the Bankruptcy Code, subject to the Carve-Out). Notwithstanding the foregoing, any superpriority claim shall not be satisfied from avoidance actions of the Guarantors arising under the Bankruptcy Code or the proceeds thereof, except to the extent of any amounts paid out under the Carve-Out.
Carve-Out	As described in the Interim Order, customary post-event of default carve-out for allowed and unpaid professional fees and disbursements in aggregate amount not to exceed $7,500,000 (*minus* any payments made pursuant to any carve-out under any other postpetition credit facility of the Debtors in respect of professional fees and disbursements *plus* all unpaid professional fees and disbursements incurred prior to notice of an event of default).
Conditions Precedent:	Conditions to the assignment of the Facility Documents under the Facility customarily found in the Administrative Agent's agreements for similar financings and other conditions deemed by the Administrative Agent to be appropriate to the specific transaction. For example, documentation must be in a form and substance consistent with the term sheet, each of the Guarantors shall be a debtor and a debtor-in-possession in the Bankruptcy Case, and all reasonable and documented out-of-pocket fees must be paid on or before the Closing Date.
Affirmative Covenants	Usual and customary, including, among others, maintenance of and access to books and records, and quarterly calls with Banks.
Negative Covenants:	Usual and customary, including, among others, limitations on: debt and guarantees; liens; investments; and cancellation of debt and prepayments.
Financial Covenants	Minimum EBITDAR (springing), Minimum Liquidity, and Maximum Capital Expenditures
Events of Default	Usual and customary, including, among others, failure by ACI Funding to make required payments, failure to comply with covenants (with grace period as appropriate for affirmative covenants); change of ownership or control; and bankruptcy-related defaults.

41. Though the Amended and Restated Securitization Program contains components of an asset based revolving facility, such as borrowing base calculations and financial covenants, the Amended and Restated Securitization Program has many critical similarities to the Existing Securitization Program. Notably, the proposed advance rates result in the Amended and Restated Securitization Program providing substantially similar liquidity as available under the Existing Securitization Program. Equally important, the structure of the Existing Securitization Program (i.e., true sales of receivables to a non-debtor special purpose entity, with advances collateralized by the assets of the special purpose entity) will be preserved under the Amended and Restated Securitization Program, therefore, the need for significant modification to the Existing Securitization Program documentation is reduced.

APPLICABLE AUTHORITIES

42. The approval of the Amended and Restated Securitization Program and grant of authority to continue use of the ACCC Term Lenders' collateral is vital to the success of the Company's reorganization efforts. The preservation of the Company's business and the Company's ability to reorganize successfully depend heavily on the expeditious approval of this Motion. Absent the Court's approval of the relief sought herein, the Abitibi and Donohue Groups face a substantial risk of severe disruption to their business operations and irreparable damage to their relationships with their vendors, customers, and other stakeholders.

43. The Court should approve the relief sought in this Motion because: (a) the Abitibi and Donohue Groups are an integral part of the Debtors' restructuring efforts; (b) the Abitibi and Donohue Groups depend on the use of cash collateral and securitization of accounts receivable to fund day-to-day operations; (c) the Abitibi and Donohue Groups cannot obtain comparable financing on an unsecured, junior secured, or junior priority basis; (d) authorizing the entry into the Amended and Restated Securitization Program effectively maintains the

prepetition status quo among the Debtors' stakeholders and does not disadvantage stakeholders; and (e) approval of the Amended and Restated Securitization Program and grant of authority to continue use of the ACCC Term Lenders' collateral, subject to the adequate protection described herein and in the Interim Order, is in the best interests of the Debtors' estates.

I. THE AMENDED AND RESTATED SECURITIZATION PROGRAM SHOULD BE APPROVED PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE

44. Section 363 permits debtors to use, sell or lease property of the estate outside the ordinary course of business, after notice and a hearing. 11 U.S.C. § 363(b)(l). Courts typically approve sales of debtors' assets, including the receivables sales as described herein, where there is a sound business purpose, adequate notice, good faith negotiations, and a fair and reasonable purchase price. *See, e.g.*, *In re Tribune Co.*, No. 08-13141(KJC) (Bankr. D. Del.) (*Interim and Final Orders Pursuant to Sections 105, 362(d), 363(b)(1), 363(f), 363(m), 364(c)(2), 364(c)(3), 364(d), 364(e) and 365 of the Bankruptcy Code (1) Authorizing the Debtors to Guarantee an Amended Securitization Facility and for Certain Debtors to Continue Selling Receivables and Related Rights Pursuant Thereto, (2) Authorizing the Debtors to Enter into a Letter of Credit Facility, (3) Modifying the Automatic Stay and (4) Granting Other Related Relief*, dated December 11, 2008 and January 15, 2009, respectively [Docket Nos. 67 & 233], attached hereto as Exhibits 11 and 12 (collectively, the "**Tribune Orders**") (approving sales of receivables under securitization program pursuant to section 363(b)); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (sale of assets pursuant to section 363(b) is evaluated under the business judgment standard); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Exaeris, Inc.*, 380 B.R. 741, 744 (Bankr. D. Del. 2008).

45. The Debtors must implement the Amended and Restated Securitization Program to ensure continued liquidity to adequately finance the Abitibi and Donohue Groups. Refinancing of the Existing Securitization Program would instill confidence in the Company's employees, vendors, advertisers, service providers, and customers. The opportunity to refinance the Existing Securitization Program promotes stability during the chapter 11 process and facilitates the Abitibi and Donohue Groups' ability to operate normally and without undue disruption. Further, the Amended and Restated Securitization Program (together with the ACI DIP) presents the most favorable financing option available to the Abitibi and Donohue Groups to meet their continuing liquidity requirements. The Debtors therefore seek approval of the Amended and Restated Securitization Program pursuant to, inter alia, section 363(b) of the Bankruptcy Code.

II. THE RECEIVABLES SALES CONTEMPLATED BY THE AMENDED AND RESTATED SECURITIZATION PROGRAM CONSTITUTE TRUE SALES

46. The Debtors and the Agent for the Amended and Restated Securitization Program intend the sales of Receivables to be true sales, free and clear of all liens, claims or other interests within the meaning of section 363(f) of the Bankruptcy Code. Based upon the foregoing, the sale of receivables free and clear of liens, claims or other interests should be approved under section 363(f) of the Bankruptcy Code. *See, e.g.*, Tribune Orders (expressly providing that sales of receivables pursuant to an amended receivables facility guaranteed by the debtors will be free and clear of all liens pursuant to section 363(f) of the Bankruptcy Code and subject to the protections afforded by section 363(m) of the Bankruptcy Code).

47. In *Tribune*, the debtors sought and obtained an extension of a securitization facility substantially similar to the Amended and Restated Securitization Program.

Specifically, the debtor entities sold receivables to a non-debtor special purpose entity, which, in turn, relied on secured financing to purchase the receivables. The sales of receivables by the debtors were intended to be true sales. *See* Tribune Orders ¶ 4. Furthermore, in *Tribune*, as here, the obligations of the purchasing special purpose entity were guaranteed by certain debtors and the guarantees had the benefit of superpriority claims against the guarantors. *See id.* ¶ 9. Pursuant to the interim and final orders in *Tribune* authorizing the extension of the facility, the sales pursuant to the facility were deemed "true sales," free and clear of all liens.[22] *See id.* ¶ 4.

48. Likewise, the Term Sheet expressly contemplates that each receivables sale is a "true sale." The Term Sheet provides, *inter alia*, that each sale under the Amended and Restated Securitization Program "shall be a true sale, free and clear of any liens, claims, charges, encumbrances or other interests of any of ACI, ACSC or any of their creditors."

49. Courts will not recharacterize a transfer of ownership, such as a sale of receivables, as a secured loan where the parties' intent is clear. *Kassuba* v. *Realty Income Trust (In re Kassuba)*, 562 F.2d 511, 514 (7th Cir. 1977). Further, once the parties to a transaction establish that a true sale was intended, any party challenging that transaction must prove, by clear and convincing evidence, that the transaction is in fact a disguised loan. *Chicoine v. OMNE Partners II (In re OMNE Partners II)*, 67 B.R. 793, 795 (Bankr. D. N.H. 1986). Therefore, the Debtors respectfully request that this Court find that the sale of Receivables under the Amended and Restated Securitization Program constitutes a true sale, and not a disguised loan.

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[22] In *Tribune*, the finding that the transfers were "true sales" was subject to challenges within 60 days after formation of the creditors' committee or within 75 days after the petition date. *See* Tribune Orders at ¶ 4. Such time periods expired and no such challenges were made.

III. THE DEBTORS SATISFY THE REQUIREMENTS FOR OBTAINING CREDIT UNDER SECTION 364(C)(1) OF THE BANKRUPTCY CODE

50. The Debtors propose to obtain financing and continue true sales under the Amended and Restated Securitization Program by granting superpriority administrative claims as set forth above pursuant to section 364(c)(1) of the Bankruptcy Code. The statutory requirement for obtaining postpetition credit under section 364(c) of the Bankruptcy Code[23] is a finding, made after notice and a hearing, that the debtors in possession are "unable to obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense." *See* Tribune Orders (authorizing superpriority claims pursuant to section 364(c)(1) to guarantee receivables facility where debtors could not obtain unsecured credit); *In re The Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (debtor seeking unsecured credit under section 364(c) of the Bankruptcy Code must prove that it was unable to obtain unsecured credit pursuant to section 364(b) of the Bankruptcy Code); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36-37 (Bankr. S.D.N.Y. 1990) (debtor must show that it has made a reasonable effort to seek other sources of financing under sections 364(a) and (b) of the Bankruptcy Code).

51. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

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[23] Section 364(c) of the Bankruptcy Code provides that:

> (c) If the trustee [or debtor in possession] is unable to obtain unsecured credit allowable under § 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt –
> (1) with priority over any and all administrative expenses of the kind specified in § 503(b) or 507(b) of this title;
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
> (3) secured by a junior lien on property of the estate that is subject to a lien.

> (1) [the debtor] is unable to obtain unsecured credit [under section 364(b)], i.e., by allowing a lender only an administrative claim . . .;
>
> (2) [t]he credit transaction is necessary to preserve the assets of the estate; and
>
> (3) [t]he terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

Crouse Group, 71 B.R. at 549. *See also In re St. Mary Hosp.*, 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); *Ames*, 115 B.R. at 37-39.

52. Based on current capital market conditions and discussions with potential lenders, postpetition financing on an unsecured basis or on a junior priority basis alone is unobtainable. The Debtors conducted substantial negotiations in connection with the Amended and Restated Securitization Program and obtained the best financing proposal with the least amount of risk, the terms of which will be subject to objection from other parties in interest.

53. Without the Amended and Restated Securitization Program, the Abitibi and Donohue Groups would be unable to continue to operate their business as a going concern, which would significantly impair the value of the Debtors' assets. Moreover, of the proposals received, the Amended and Restated Securitization Program overall offered the most favorable terms. Given the Debtors' circumstances and the advantages of the Amended and Restated Securitization Program, the Debtors believe the terms of the Amended and Restated Securitization Program are fair, reasonable and adequate, all as more fully set forth below.

IV. THE ACCC TERM LENDERS ARE ADEQUATELY PROTECTED FOR THE USE OF COLLATERAL LOCATED IN THE UNITED STATES BY THE DEBTORS

54. Sections 361, 362, 363 and 1520 of the Bankruptcy Code set forth a debtor's statutory obligation to provide adequate protection for the use of a secured creditor's collateral. The Bankruptcy Code does not explicitly define "adequate protection." However,

section 361 of the Bankruptcy Code suggests that adequate protection may be provided by (i) making periodic cash payments to the extent that there is a decrease in the lien holder's interest in the property, (ii) granting additional or replacement liens, and/or (iii) granting other relief resulting in the realization of the "indubitable equivalent" of the lien holder's interest in the property. *See* 11 U.S.C. § 361. All three forms of adequate protection need not be provided in any given case, and, indeed, this Court has discretion to determine what form and degree of protection is appropriate to provide a secured party. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994). For example, replacement liens in and of themselves may constitute a sufficient form of adequate protection. *See, e.g.*, *In re Cafeteria Operators, L.P.*, 299 B.R. 400, 410 (Bankr. N.D. Tex. 2003) (replacement liens on debtors' inventory constitutes sufficient adequate protection). The goal of adequate protection is to protect a secured lender against a diminution in the value of its collateral during the reorganization process. *See, e.g.*, *Swedeland,* 16 F.3d at 564; *In re Shaw Indus., Inc.*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003).

55. The Debtors' obligation to provide adequate protection to the ACCC Term Lenders arises with respect to pledged assets of the Chapter 11 Debtors and pledged assets of the Chapter 15 Debtors (ACI and ACCC) that are located in the United States. *See* 11 U.S.C. § 1520 (section 361 only applicable to the property of Chapter 15 debtors within the United States). *See also In re Atlas Shipping A/S*, ---B.R.----, 2009 WL 1111209, at *8 (Bankr. S.D.N.Y. Apr. 27, 2009) ("The statute refers to 'property of the debtor' [located in the United States] to distinguish it from the 'property of the estate' created under § 541(a).").

56. The distinction between collateral pledged by Chapter 11 Debtors (the Donohue Group) and collateral pledged by Chapter 15 Debtors (ACI and ACCC) located in the United States, on the one hand, versus collateral pledged by Chapter 15 Debtors and non-Debtors

(the Abitibi Group) located in Canada and the rest of the world, on the other hand, is important in light of a recent decision rendered by the Canadian Court. Ruling on a request of the ACCC Term Lenders for adequate protection of their secured interests, in connection with approval of the ACI DIP in the CCAA Proceeding, the Canadian Court concluded that the ACCC Term Lenders' request was "unfounded, and in fact questionable", noting that "the U.S. concept of an Adequate Protection Charge is seldom, if ever, applied in Canadian Courts". (See ACI DIP Order, Ex. 4, at ¶¶ 43-44.)

57. Accordingly, to the extent the ACCC Term Lenders have a pledge of, and security interest in, assets of the Chapter 11 Debtors and assets of the Chapter 15 Debtors located in the United States, the Debtors are seeking approval to use this collateral and offering the ACCC Term Lenders adequate protection to protect against diminution in value during these Chapter 11 and the Chapter 15 Cases of the ACCC Term Lenders' interest in such assets.

58. The ACCC Term Lenders made secured loans to ACCC, a Canadian corporation, guaranteed by ACI and other Canadian affiliates and secured by certain assets located in Canada, as well as certain assets of ACI and ACCC located in the United States. The Donohue Group provided guarantees of the obligations of ACCC under the Term Loan Agreement, secured by certain inventory, net accounts receivable, and other assets located in the United States.

59. A preliminary summary analysis of certain assets pledged to secure the ACCC Term Loan, attached to the Zelin Declaration as Exhibit 1 (the "**Collateral Analysis**"), summarizes the value of ACCC Term Loan borrowing base assets as of March 31, 2009 (eligible inventory and accounts receivable, including the equity value of ACI Funding), and divides these

assets between the Donohue Group and the Abitibi Group (including assets attributable to the Abitibi Group's Bridgewater operations located in the United Kingdom).

60. As set forth in the Collateral Analysis, the combined value of the collateral of the Donohue and Abitibi Groups included on the March 31st borrowing base certificate pledged to secure the ACCC Term Loan is approximately \$435.6 million. Of this total value, approximately \$188.9 million (43.4%) of collateral is attributable to the Donohue Group and approximately \$246.7 million (56.6%) of collateral is attributable to the Abitibi Group.

61. The Collateral Analysis does not include values for the assets of Alabama River Newsprint Company, an idled newsprint mill, and Abitibi-Consolidated Corporation (the recycling business) that are pledged to secure the ACCC Term Loan. Values attributable to these assets are not included as part of the borrowing base governing the ACCC Term Loan and the Donohue Group has not undertaken appraisals of this collateral. Furthermore, the operations at Alabama River Newsprint Company and the recycling business have negative cash flow and losses from operation of these businesses are funded directly by the Abitibi Group pursuant to intercompany transfers in the ordinary course. The monthly cash intercompany transfers made by the Abitibi Group to the Donohue Group are approximately \$1.4 million per month. ACSC's ownership of a 52.5% partnership interest in Augusta Newsprint Company is also excluded from the Collateral Analysis because the partnership interest is not pledged as collateral to secure the ACCC Term Loan.

62. The Donohue Group does not have assets outside of the United States, and ACI and ACCC, both Chapter 15 Debtors, do not have any current or fixed assets located in the United States other than amounts on deposit in certain bank accounts which had approximately \$7 million on deposit on the Petition Date. Accordingly, for the purposes of the Collateral

Analysis, the assets of the Donohue Group (43.4% of the aggregate collateral value) represent assets of Chapter 11 and Chapter 15 Debtors located in the United States, and the assets of the Abitibi Group (including Bridgewater) (56.6% of the aggregate collateral value) represent assets of non-Chapter 11 Debtors located outside of the United States.

63. Based on the foregoing, the Debtors propose to provide the ACCC Term Lenders with the following adequate protection package to protect their interests in collateral located in the United States with respect to any aggregate postpetition diminution in value (the **"Aggregate Diminution in Value"**) resulting from the continued use of the collateral:

(a) Liens. To the extent, and in the amount, of Aggregate Diminution in Value, the ACCC Term Agent (for the benefit of the ACCC Term Lenders) will continue to have postpetition liens on the assets of the Donohue Group, consistent with the Interim Adequate Protection agreement;

(b) Cash Deposits. As discussed above, the Donohue Group proposes to provide adequate protection with respect to collateral located in the United States using a proxy derived from the Collateral Analysis. In particular, the Debtors will establish a bank account at Wells Fargo, N.A. in the name of Donohue Corp. (the **"Adequate Protection Account"**), subject to a first priority lien in favor of the ACCC Term Agent to collateralize the Aggregate Diminution in Value. In exchange for the continued use of collateral located in the United States, the Debtors will deposit, on a monthly basis, an amount equal to 43.4% of the interest payable to the ACCC Term Lenders into the Wells Fargo, N.A. account (the **"Monthly Deposits"**). Given the payment to the ACCC Term Lenders of the Initial Payment, the first of such Monthly Deposits will commence in the month upon which the aggregate Monthly Deposits would have exceeded the Initial Payment as if the payment of the Monthly Deposit began as of the Petition Date.

(c) Superpriority Claims. To the extent, and in the amount, of Aggregate Diminution in Value, the ACCC Term Agent (for the benefit of the ACCC Term Lenders) will be granted a superpriority administrative expense claim against the Donohue Group in the amount of diminution in value of the ACCC Term Lenders' interests in the collateral, such claim having the priority set forth in the Interim Order.[24]

(d) Professional Fees. The ACCC Term Agent will receive current payment of the monthly, reasonable fees and expenses arising from and after the Petition Date of the following advisors: (i) one financial advisor (payment of monthly fees only); (ii) one US restructuring counsel; (iii) one Delaware counsel; and (iv) one Canadian counsel; and (v) one counsel with respect to documentation of appointment of Wells Fargo, N.A. as Successor Administrative Agent and Collateral Agent.

(e) Reporting. The Donohue Group will provide monthly reporting of a rolling 13-week cash flow forecast to the ACCC Term Agent.

64. The foregoing provisions adequately protect the ACCC Term Lenders for any potential diminution in the value of their collateral subsequent to the Petition Date. First, the ACCC Term Lenders will receive the Initial Payment of approximately $11 million upon the closing of the Amended and Restated Securitization Program. Second, the Debtors propose to provide liens on additional assets in the form of substantial monthly cash deposits. Third, the protections described above will enable the ACCC Term Lenders to actively protect their

interests during these Chapter 11 and Chapter 15 Cases. The periodic reporting to be provided by the Debtors will allow the ACCC Term Agent to monitor the value of their collateral and the overall health of the Donohue Group. Equally important, the monthly reasonable fees and expenses of the ACCC Term Agent's professionals will be funded, so that the ACCC Term Agent will be able to continue to monitor the value of their collateral and to seek additional or different adequate protection in the future.

65. The adequate protection package offered to the ACCC Term Lenders is sufficient notwithstanding the absence of current pay interest. In addition to all of the reasons discussed above, the Collateral Analysis indicates that the ACCC Term Lenders are undersecured in the United States. As undersecured creditors of the Donohue Group, the ACCC Term Lenders are not entitled to current payment of interest from the Donohue Group and, in this context, the issue of payment of interest to the ACCC Term Lenders should be deferred to discussions on a plan of reorganization.

V. THE AMENDED AND RESTATED SECURITIZATION PROGRAM PROVIDES THE BEST FINANCING AVAILABLE TO THE DEBTORS

66. The Debtors have made a concerted, good-faith effort to obtain financing on the most favorable terms available. The proposed terms of the Amended and Restated Securitization Program are fair, reasonable and adequate. Likewise, the various fees and charges required by the Agent and the Banks under the Amended and Restated Securitization Program are necessary to secure their agreement to provide the financing notwithstanding the volatility that exists in today's capital markets. The terms and conditions of the Amended and Restated

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[24] Pursuant to the Interim Order, the Adequate Protection Claims are senior in priority to the Superpriority Guaranty Claims but junior in priority to the Superpriority Receivables Claims.

Securitization Program were negotiated by the parties in good faith and at arm's length, and are fair and reasonable under the circumstances. Accordingly, the Agent and the Banks under the Amended and Restated Securitization Program should be accorded the benefits of section 364(e) of the Bankruptcy Code.

67. Bankruptcy courts consistently defer to a debtor's business judgment on most business decisions, including the decision to borrow money, unless such decision is arbitrary and capricious. *See In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that an interim loan, receivables facility and asset-based facility were approved because they "reflect[ed] sound and prudent business judgment . . . [were] reasonable under the circumstances and in the best interests of [the debtor] and its creditors"); *cf. Group of Inst. Investors* v. *Chicago, Mil., St. P. & Pac. Ry.*, 318 U.S. 523, 550 (1943) (holding that decisions regarding assumption or rejection of leases are left to business judgment of the debtor); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985) ("[b]usiness judgments should be left to the board room and not to this Court."). In fact, "[m]ore exacting scrutiny [of the debtor's business decisions] would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co.* v. *Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

68. Furthermore, given the widespread usage of receivables purchase financing programs and the essential role of such programs in improving liquidity, courts frequently permit debtors-in-possession to continue operating receivables purchase facilities and have granted relief similar to that requested in this Motion. *See, e.g.*, *In re DJK Residential LLC*, No. 08-10375 (JMP) (Bankr. S.D.N.Y. Feb. 5, 2008) [Docket No. 59]; *In re J.L. French*

Automotive Castings, Inc., No. 06-10119 (MFW) (Bankr. D. Del. Mar. 3, 2006) [Docket No. 188]; *In re Blue Bonnet Logistics Corp.*, No. 03-12413 (FRM) (Bankr. W.D. Tex. June 3, 2003) [Docket No. 33]; *In re Checkmate Staffing, Inc.*, No. 03-19318 (RNK) (Bankr. C.D. Cal. Dec. 30, 2003) [Docket No. 29]; *In re Access Med. Staffing and Servs.*, No. 02-46731 (Bankr. N.D. Cal. Jan. 3, 2003) [Docket No. 21].

69. Consistent with this authority, the Debtors respectfully submit that the Court should approve the Debtors' decision to enter into the Amended and Restated Securitization Program.

VI. APPROVAL OF THE AMENDED AND RESTATED SECURITIZATION PROGRAM IS IN THE BEST INTERESTS OF THE DEBTORS' ESTATES

70. A denial of the Debtors' requested relief will cause immediate and irreparable harm to the Debtors and their estates, and will also have a detrimental effect on the collateral. The Abitibi and Donohue Groups require access to ongoing working capital which is critical to the Debtors' entire business. Absent access to the Amended and Restated Securitization Program and the use by the Donohue Group of the cash collateral, the Abitibi and Donohue Groups would not be able to meet their ongoing obligations to suppliers, vendors, employees and other creditors. If the Abitibi and Donohue Groups are unable to pay their ongoing obligations, they will not be able to operate. In contrast, the Abitibi and Donohue Groups' access to the Amended and Restated Securitization Program and continued use of cash collateral will ensure that the "going concern" value of Abitibi and Donohue Groups' assets is preserved, a value substantially greater than the value which would be realized from a piecemeal liquidation of those assets.

71. The Debtors submit for all these reasons that ample justification exists for the relief requested herein.

NO PRIOR REQUEST

72. The Debtors have not previously sought the relief requested herein from this or any other Court.

REQUEST FOR INTERIM RELIEF

73. Bankruptcy Rule 4001(b) permits a court to approve a debtor's request for use of cash collateral during the 15-day period following the filing of a motion for authority to use cash collateral "as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2). Similarly, Bankruptcy Rule 4001(c) permits a court to approve a debtor's request for authority to obtain financing during the same period "to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(c)(2). In examining such requests under Bankruptcy Rule 4001, courts apply the same business judgment standard as is applicable to other business decisions. *See, e.g., Ames*, 115 B.R. at 38. The Debtors submit that, for the reasons set forth herein, authority to enter into the Amended and Restated Securitization Program and the related use of cash collateral on an interim basis as requested in this Motion is necessary to avert immediate and irreparable harm to the Debtors' business.

F. REQUEST FOR FINAL HEARING

74. Pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2), the Debtors respectfully request that the Court set a date for the Final Hearing that is no later than 30 days following the filing of this Motion.

NOTICE

75. No trustee, examiner or statutory committee has been appointed in the Chapter 11 Cases. Notice of this Motion has been provided to the following parties, or, in lieu thereof, their counsel: (i) the Office of the United States Trustee; (ii) the United States Securities

and Exchange Commission; (iii) the Internal Revenue Service; (iv) counsel to the agents for the Debtors' prepetition secured bank facilities; (v) counsel to the agent for the Debtors' postpetition lenders; (vi) the indenture trustees for each series of the Debtors' prepetition notes; (vii) the Agent; (viii) the monitor appointed in the CCAA Proceeding; (ix) the Debtors' primary cash management banks; (x) the Debtors' primary lockbox banks; (xi) the Environmental Protection Agency; (xii) counsel to the Creditors' Committee; and (xiii) those parties entitled to notice pursuant to Bankruptcy Rule 2002, in accordance with Local Rule 2002-1. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially the form attached hereto as Exhibit 1: (1) authorizing entry into the Amended and Restated Securitization Program and authorizing the sale of receivables and related rights thereto; (2) authorizing ASCS to cause payment of certain fees pursuant to the Engagement Letters; (3) modifying the automatic stay; (4) authorizing the use of cash collateral; (5) granting superpriority administrative expense claims; (6) granting adequate protection; (7) scheduling hearings on this Motion to consider entry of the Interim Order and consider entry of a final order, pursuant to the Bankruptcy Rules and the Local Rules; and (8) granting other related relief.

Dated: Wilmington, Delaware
May 18, 2009

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